



The Scottish Parliament  
Pàrlamaid na h-Alba

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16 January 2015

Dear David,

**Legislative Consent Motion: Modern Slavery Bill: UK Legislation**

I am writing to notify you that, on Thursday 15 January 2015, the Scottish Parliament agreed to Legislative Consent Motion S4M-11999 on the Modern Slavery Bill which is currently under consideration at Westminster.

I attach an extract of the relevant Minutes of Proceedings and associated memorandum.

Yours sincerely  
Paul Grice

**P E GRICE**  
Clerk/Chief Executive

EXTRACT OF MINUTE OF PROCEEDINGS OF 15 JANUARY 2015

**MINUTES OF PROCEEDINGS**

**Parliamentary Year 4, No. 68 Session 4**

**Meeting of the Parliament**

**Thursday 15 January 2015**

**Modern Slavery Bill – UK Legislation: The Cabinet Secretary for Justice** (Michael Matheson) moved S4M-11999—That the Parliament agrees that the relevant provisions of the Modern Slavery Bill, introduced in the House of Commons on 10 June 2014, relating to enforcement powers in relation to ships and the Anti-Slavery Commissioner, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the functions of the Scottish Ministers, should be considered by the UK Parliament.

The motion was agreed to (DT).

**P E Grice**  
Clerk of the Parliament  
15 January 2015

## LEGISLATIVE CONSENT MEMORANDUM

### MODERN SLAVERY BILL

#### Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Justice, is:

“That the Parliament agrees that the relevant provisions of the Modern Slavery Bill, introduced in the House of Commons on 10 June 2014, relating to enforcement powers in relation to ships and the Anti-Slavery Commissioner, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the functions of Scottish Ministers, should be considered by the UK Parliament.”

#### Background

2. This memorandum has been lodged by Kenny MacAskill, Cabinet Secretary for Justice, under Rule 9B.3.1(c)(i) of the Parliament’s Standing Orders. The Modern Slavery Bill was introduced in the House of Commons on 10 June 2014 and the relevant amendments made 28 October 2014. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2014-15/modernslavery.html>

#### Content of the Bill

3. The Bill makes provision about slavery, servitude and forced or compulsory labour and human trafficking including:
  - Consolidation of the current offences of slavery and human trafficking whilst increasing the maximum penalty for such offences;
  - Creation of enforcement powers in relation to ships;
  - Provision for two new civil preventative orders, the Slavery and Trafficking Prevention Order and the Slavery and Trafficking Risk Order;
  - Creation of the office of Independent Anti-slavery Commissioner and sets out the functions of the Commissioner;
  - Measures focused on supporting and protecting victims, including a statutory defence for slavery or trafficking victims and special measures for witnesses in criminal proceedings.

#### Provisions which relate to Scotland

4. The Bill did not extend to Scotland on introduction. However, amendments lodged on 28 October 2014 aim to extend two provisions to Scotland, namely those provisions relating to enforcement powers for ships and the Independent Anti-Slavery Commissioner. These areas are discussed in detail below.

## Enforcement powers in relation to ships

5. Clause 13 of and Schedule 1 to the Bill as introduced set out powers enabling an enforcement officer in England and Wales to exercise powers to pursue, stop, board and investigate vessels for the purposes of preventing, detecting, investigating and prosecuting offences under the main slavery and human trafficking provisions of the Bill.
6. Following detailed discussions the UK Government, on 28 October, introduced a series of amendments to the Bill which are designed to confer equivalent powers to enforcement officers in Scotland and Northern Ireland, and a further provision enabling officers from the various administrations to pursue these powers into adjacent waters.
7. Clause 36 of the Bill sets out “Enforcement powers in relation to ships: Scotland”. This, combined with the detailed powers set out in Part 2 to Schedule 1 of the Bill, will allow a Scottish constable as defined by section 99 of the Police and Fire Reform (Scotland) Act 2012 or a National Crime Agency Officer having the powers and privileges of a Scottish constable, to stop, board, divert and detain a vessel for the purpose of preventing, detecting or investigating a relevant offence under the Bill. The detailed powers in the Schedule include the power to search a ship and to obtain information, to seize items found and to arrest persons suspected of committing an offence. Offences for the purposes of this part of the Act are listed at clause 36(8) and include offences under the Criminal Justice (Scotland) Act 2003, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the Criminal Justice and Licensing (Scotland) Act 2010.
8. Detailed provisions within the new clause also set out the requirement that a Scottish constable or enforcement officer will require the consent of the Secretary of State before exercising these powers in relation to a UK ship in foreign waters, or a foreign ship within UK territorial waters. Equivalent provisions are set out elsewhere in relation to Northern Ireland.
9. In addition, Clause 38 sets out provisions to allow for, and to govern “Hot pursuit in United Kingdom Waters”. This provision allows, at subsections (1) to (3), an English and Welsh constable or enforcement officer to pursue a vessel into Scottish (or Northern Ireland) waters and to exercise all other relevant powers there. Subsections (4) to (6) provide equivalent powers to Scottish constables or enforcement officers, allowing pursuit into England and Wales waters or Northern Ireland waters, from Scottish or international waters. Powers are given to Northern Ireland officers in subsections (7) to (10).
10. For the purposes of the Legislative Consent Motion, these provisions allow a constable of a police force in England and Wales, or of the Police Service of Northern Ireland or PSNI Reserve, an immigration officer or designated customs official, or an officer in the armed forces to continue pursuit of a vessel into Scottish territorial waters and to exercise appropriate police powers in those waters, regardless of where the criminal conduct or pursuit started.

## The Independent Anti - Slavery Commissioner

11. Clause 40 provides for the establishment of a UK wide independent Anti-Slavery Commissioner in consultation with Scottish Ministers and the terms of the appointment.
12. Clause 41 sets out the general functions of the Commissioner. 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 the offences. The aim is to encourage effective investigations in order to enhance the prospect of the successful prosecution of perpetrators and the prevention of future offences. The Commissioner may consult any person he/she considers appropriate in discharging these functions and cooperate and working jointly with others in the UK or abroad. He/she may make recommendations to public authorities about the exercise of their functions; undertake research and support others to do so; provide reports on any matter which he/she has been asked to report on by the Scottish Ministers, Department of Justice Northern Ireland or the Secretary of State. Accordingly provision is included to permit Scottish Ministers to commission Scotland specific reports and requiring them to lay before Parliament any such reports published by the Commissioner. Powers are included for the redaction of any reports which might jeopardise the safety of any person in Scotland, or might prejudice the investigation or prosecution of an offence under the law of Scotland.
13. Clause 42 provides for the Commissioner to prepare, for a specified period of not less than one year and not more than three years, a strategic plan and, if necessary, revised strategic plans setting out how the Commissioner proposes to exercise the Commissioner's functions. The plan must contain the objectives and principles for the period to which the plan relates, state any matters on which the Commissioner proposes to report and any other activities the Commissioner proposes to undertake during that period. The Secretary of State must consult the Scottish Ministers before approving a strategic plan. Clause 42 also requires the Commissioner to publish and submit to Scottish Ministers an annual report in respect of each calendar year. Scottish Ministers are required to lay before Parliament any strategic plan approved by the Secretary of State and any annual report they receive.
14. Clause 43 places a duty on specified public authorities to co-operate with the Commissioner. Provision is included for Scottish ministers to specify in regulations the authorities having only functions exercisable in or as regards Scotland who are to be subject to this duty. Authorities having a UK wide remit relating to reserved issues will be specified in regulations made by the Secretary of State.
15. Clause 44 sets out restrictions on the functions of the Commissioner in relation to individual cases but allows the commissioner if necessary to draw conclusions in the context of considering a general issue.
16. Clause 53 provides for the parliamentary procedure to be adopted for the regulation making powers under the Bill and contains provisions that Regulations made by the Scottish Ministers under this Bill are subject to the negative procedure.

## **Reasons for seeking a legislative consent motion**

17. The Bill as amended, contains provisions which are within the legislative competence of the Scottish Parliament, making it a “relevant Bill” under Chapter 9B of the Standing Orders and consequently requiring the consent of the Scottish Parliament.

### Enforcement powers in relation to ships

18. Human trafficking is a crime that does not respect borders or national boundaries and it is crucial that we work with the UK and Northern Irish Governments to make sure our laws take this into account. Provisions on the exercise of police powers as regards offences in Scotland or in Scottish territorial waters are – so far as they amend Scots law – within the Parliament’s legislative competence and therefore have a devolved purpose. Policing, and the exercise of police powers in Scottish territorial waters fall within the legislative competence of the Scottish Parliament. The consent of the parliament is therefore required to the inclusion of the relevant enforcement provisions of the Bill as regards Scotland.

### Independent Anti-Slavery Commissioner

19. As noted above, human trafficking does not respect national boundaries. Having one UK-wide Commissioner will provide consistency across the board and hold each jurisdiction to account on the same basis.

20. Provisions in the Bill which create the office of Independent Anti-slavery Commissioner and confer functions on that office-holder in relation to Scotland and Scottish public authorities have a devolved purpose. Those provisions also alter the executive competence of the Scottish Ministers (for example by the conferral of regulation-making powers). Given the nature of the provisions in question and the importance of having a Commissioner who can operate with a UK-wide remit, it is appropriate to agree that the UK Parliament can legislate in respect of this matter.

## **Consultation**

21. The UK Government consulted widely on the provisions of its Bill in England and Wales and also published a draft Bill for pre-legislative scrutiny. Scottish delivery partners were encouraged to offer views to that consultation. The issue of human trafficking has been the subject of a number of reports, inquiries and consultations over recent years. Each of these inquiries and reports has sought views from relevant interests and made specific recommendations to reform and strengthen the response to human trafficking in Scotland including the appointment of an independent rapporteur.

22. Given the extensive engagement activity already undertaken and available reports and consultation, the Scottish Government does not propose to undertake formal consultation on the Independent Anti-Slavery Commissioner. Informal consultation has taken place with delivery partners such as police, Crown, CoSLA and victim support providers, who are members of the Progress Group established following the Human Trafficking Summit held in October 2012. In general, the main delivery partners have been supportive of the Scottish Government’s position but it is expected that there will be calls for a specific Scottish Commissioner.

## **Financial implications**

23. It is expected that there will be no costs to the Scottish Government or public authorities as a result of the Independent Anti-Slavery Commissioner provisions. The only exception would be if a Scottish specific report was to be commissioned.

24. Similarly, no significant new or additional costs are anticipated to the Scottish Government, the Police Service of Scotland or other agencies as a result of the new enforcement powers.

## **Conclusion**

25. It is the view of the Scottish Government that it is in the interests of the Scottish people and good governance that the relevant amendments made to the UK Modern Slavery Bill as outlined above, which fall within the legislative competence of the Scottish Parliament or which alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.

## **SCOTTISH GOVERNMENT**

November 2014

