

Independent Review of the Modern Slavery Act 2015

First interim report:
The Independent Anti-Slavery Commissioner

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The Rt Hon Maria Miller MP
The Rt Hon Baroness Butler-Sloss GBE

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Introduction to the Review

- i. In July 2018, the Home Secretary, at the request of the Prime Minister, announced a review of the Modern Slavery Act 2015 (the Act). The members of the Review are Frank Field MP (chairman), Maria Miller MP and the Baroness Butler-Sloss. The Review's terms of reference are set out at **Annex A**.
- ii. We have been provided with a secretariat seconded from the Home Office to support us, and we are very grateful to them for their hard work, efficient research, and for providing us with the relevant information we need to formulate and substantiate our conclusions and recommendations. We have also secured the services of a former House of Commons Clerk who has provided independent support and advice on the drafting of our report. Although we have been set up by the Home Office, we have made it very plain to Government that we are carrying out an entirely independent review of the working of the Act. As such, the conclusions and recommendations set out in this interim report and all other reports are entirely our own.
- iii. We have set up an independent website that can be found at www.independentmsareview.co.uk.
- iv. We were asked to focus on four areas of the Act and produce a final report for the Home Secretary with our recommendations by the end of March 2019. These four areas are:
 - The Independent Anti-Slavery Commissioner (sections 40 – 44)
 - Transparency in supply chains (section 54)
 - Independent Child Trafficking Advocates (section 48)
 - The legal application of the Act, comprising:
 - The definition of exploitation (section 3)
 - Reparation orders (sections 8-10)
 - The statutory defence (section 45)

Of these areas, we were invited to give our views on the Independent Anti-Slavery Commissioner and transparency in supply chains before the end of 2018. We have therefore decided to prioritise writing interim reports on these two issues, and this is the first such report. In accordance with our terms of reference, this report addresses the question: “how to ensure the independence of the Anti-Slavery Commissioner”.

- v. In order to achieve the maximum information on the areas under review in a limited time, we invited nine Expert Advisers to gather and

collate evidence for us from a range of sectors and interest groups. The Expert Advisers we have appointed are:

- Vernon Coaker MP (Parliamentarians)
- Rt Revd Dr Alastair Redfern (Faith Groups)
- Baroness Young of Hornsey, OBE and John Studzinski, CBE (Business)
- Anthony Steen, CBE (Civil Society)
- Christian Guy (Commonwealth and International)
- Professor Ravi Kohli (Child Victims)
- Peter Carter QC and Caroline Haughey QC (Criminal Justice System).

We are very grateful to the Expert Advisers, as well as all the individuals and organisations that provided evidence to them. We have drawn on their evidence and recommendations in this interim report on the Independent Anti-Slavery Commissioner and will continue to do so for the other areas under review.

- vi. The Home Affairs Select Committee (HASC), chaired by Yvette Cooper MP, is currently undertaking a wide-ranging inquiry into policy and implementation issues relating to modern slavery. It has conducted an open call for evidence, as well as holding a series of evidence sessions. We have analysed this evidence in full, and taken it into account where it is particularly relevant to the Review's terms of reference as part of our own evidence base. The work of the inquiry will complement the deep dive that our Review is conducting into specific provisions of our modern slavery legislation. The HASC inquiry is also dealing with evidence on a range of non-legislative issues that this Review will not specifically cover.

The Independent Anti-Slavery Commissioner (Part 4 of the Act)

1. Introduction

1.1 It is clear that the Act is an innovative piece of legislation that has influenced parliaments across the world in efforts to combat the global evil of modern slavery. Other countries are following our lead, so it is of the utmost importance that we get this legislation right and properly implemented. The role of the Independent Anti-Slavery Commissioner (the Commissioner) is a vital part of the efforts to make progress in this enormously important battle.

1.2 The Commissioner's appointment, role, duties and responsibilities are set out in part 4 of the Act (see **Annex B**). Section 40 of the Act requires the Secretary of State - in practice the Home Secretary - in consultation with Scottish Ministers and the Northern Irish Executive, to appoint a Commissioner. By extension, the Commissioner is answerable to the Home Secretary, who also set the Commissioner's budget. The first Commissioner appointed under the Act served for just over three and a half years. His relationship with the Home Office was managed by the department's Modern Slavery Unit, and he was line-managed by the Director for Tackling Slavery and Exploitation.

1.3 Section 41(1) of the Act states that:

"The Commissioner must encourage good practice in-

(a) The prevention, detection, investigation and prosecution of slavery and human trafficking offences;

(b) The identification of victims of these offences."

1.4 Section 41(3) sets out the action the Commissioner can take in order to fulfil this role, which includes making reports and recommendations, undertaking research, and cooperating with public authorities. The Act also places limits on the Commissioner's powers. For example, he/she must only report on permitted matters (those matters agreed to in his/her strategic plan, or requested by Ministers); the Secretary of State must approve his/her strategic plans; and Ministers can redact or omit any material from the Commissioner's reports that would be against the interests of national security, or prejudice an ongoing investigation or a person's safety.

- 1.5 The first Commissioner, Kevin Hyland, had much success within the constraints which he felt were imposed upon him. He has played a significant role in shining a spotlight on the scale and nature of modern slavery and in driving progress in the UK response to this abhorrent crime. He identified many issues which required attention, some urgent. According to his own testimony, working relations with Ministers were often productive,¹ and he produced a number of confidential reports and recommendations directly commissioned by the then Home Secretary, upon which action was taken quickly. He told us that the relationship was less constructive with Home Office officials.² We are concerned by the statements of several stakeholders that the Commissioner was not free to scrutinise and criticise Government policy and performance in addressing modern slavery.
- 1.6 The first Commissioner was also very successful overseas in raising awareness and encouraging other countries to follow our example. For instance, at the time of writing, the Australian parliament had just approved a Modern Slavery Act inspired by ours upon which the Commissioner gave advice.
- 1.7 In addition to the first Commissioner's own evidence, we received helpful reports from our Expert Advisers on the role of the Commissioner and how it should be improved. They consulted widely from their respective interest groups. We also received input from a number of Government departments and agencies, and the Devolved Administrations. Finally, we undertook some comparative research that looked at the roles and responsibilities of human trafficking rapporteurs in other countries, as well as the powers and obligations of other UK Commissioners. This evidence can be found at **Annex C**.

¹ Kevin Hyland OBE, Home Affairs Committee Oral evidence: Modern Slavery, HC 1460, Q46, Tuesday 23 October 2018.

² Kevin Hyland OBE, Home Affairs Committee Oral evidence: Modern Slavery, HC 1460, Q38 – 42 & Q44, Tuesday 23 October 2018.

2. Findings

2.1 Current Recruitment

2.1.1 A number of voices, particularly in the voluntary sector, expressed concerns during consultation that the recruitment process for a new Commissioner was being undertaken before this Review could provide its recommendations to the Home Secretary. It was noted that the job description for the role showed many similarities to the one advertised in 2014 and little sign of considering measures to augment the Commissioner's independence from the Home Office. One new addition to the latest job description that is of particular concern to us was the requirement for the successful candidate to undertake "active participation in annual performance appraisals with the Home Office Director of Tackling Modern Slavery and Exploitation",³ which fundamentally contradicts our conclusion in this report that Home Office officials should play no part in the direction-setting or appraisal of the role.

2.1.2 ***The present recruitment process for a new Commissioner should be scrapped and a new job description drafted once the recommendations of this report have been considered in full by the Home Secretary.***

2.2 Independence and Role

2.2.1 The Commissioner's independence is a key issue for the credibility and transparency of the post. It is, therefore, essential that the next Commissioner is independent from the influence of Government, a point that most of our Expert Advisers agreed with. For us, independence means that the Commissioner has maximum freedom from Government influence and direction in undertaking his/her existing statutory functions. He/she must have the freedom to scrutinise and advise on the efforts of Government departments and agencies, the police, the Crown Prosecution Service and others in the areas of prevention, prosecution and protection. ***The Government must respect the requirement for the Commissioner to carry out his/her statutory functions independent of Government.***

2.2.2 We have recognised above that the Act places some statutory limits on the Commissioner's powers. However, we believe that these limits can

³ <https://publicappointments.cabinetoffice.gov.uk/wp-content/uploads/2018/08/180813-IASC-Candidate-Pack-Final.pdf>, p5

be managed pragmatically by both the Commissioner and the Government in order to avoid them becoming restrictions on the role's independence.

- 2.2.3 ***In our view, the Commissioner's primary roles in carrying out these duties should be to advise the Government on measures to tackle modern slavery; to scrutinise and hold the Government and its agencies to account on their performance; and to raise awareness and promote cooperation between sectors and interest groups.*** These duties will inevitably require the Commissioner to monitor Government plans, initiatives and strategies.⁴ These duties will also, from time to time, require the Commissioner to express criticisms, to tread on toes and to make recommendations. This aspect of his/her duties has to be understood and accepted by the Government and all its agencies.
- 2.2.4 According to section 43 of the Act, statutory agencies have a duty to co-operate with the Commissioner. The Commissioner should be able to work collaboratively with all sectors, while retaining sufficient distance to objectively evaluate their performance. ***He/she should have sufficient access to Government data to be able to carry out the duty of scrutiny.***
- 2.2.5 ***We consider that the Commissioner's focus should be primarily on tackling modern slavery domestically, but there will need to be some continued international focus. When the Commissioner engages internationally, the majority of his/her work should be focussed on countries of direct strategic importance to the UK on modern slavery. This work should be analytical and advisory in nature to create a momentum for change and improvement, as opposed to project delivery or representation of the UK Government's interests.*** We recommend later in this report the creation of a new post of envoy or ambassador to advance the Government's policy objectives on modern slavery and human trafficking overseas, and to represent the UK Government at international fora.
- 2.2.6 The importance of the role of the Commissioner makes it necessary to appoint a senior figure of stature with a strong reputation and wide-ranging experience, able to perform the duties set out in the Act. He/she will need to be able to engage at every level and to maintain a strong position at the Prime Minister's Task Force, as well as

⁴ In particular, the Government should consider reviewing its Modern Slavery Strategy that was published in 2014 and predates the passing of the Act.

influencing key strategic partners across the business sector, the criminal justice system and civil society.

2.3 Appointment and Accountability

- 2.3.1 The Expert Advisers were in agreement that the current process not only for appointment, but also for providing the budget and monitoring the work of the Commissioner, is not ideal and may be compromising the Commissioner's independence.
- 2.3.2 The current process is in the hands of the Home Office. We believe this is a clear conflict of interest, in particular with the requirement of the Home Office to manage immigration. The Home Office appears not to have recognised sufficiently the statutorily independent role of the Commissioner and have imposed a Home Office line manager which is inconsistent with independence from a Government department. It is also important to recognise and to be sensitive to the public perception of the role, particularly among non-governmental organisations with whom the Commissioner needs to work. The current public perception, at least within the UK, appears to be that the first Commissioner was not seen as being sufficiently independent of Home Office control, and was seen by some as an employee of the department. There are therefore strong arguments for change.
- 2.3.3 A sponsoring Secretary of State other than the Home Secretary would not just be preferable but essential to underline the statutory independence of the Commissioner. ***Our preference would be for a Sponsoring Minister in the Cabinet Office, acting on behalf of the Prime Minister.***
- 2.3.4 ***The Commissioner should be recruited and appointed in accordance with the Cabinet Office's Governance Code for Public Appointments. The appointment should be subject to a Pre-Appointment Hearing with a Parliamentary Select Committee. To reflect the cross-government response required to tackle modern slavery, we suggest the lead Committee invites members of other Committees with an interest in the work of the Commissioner to join the Pre-Appointment Hearing. The Committee should be given the preferred candidate to consider. If the Committee approves the selection, the final appointment should be by order of the***

Prime Minister. Any extension to the length of appointment of the Commissioner should be in consultation with the lead Committee.

- 2.3.5 The Commissioner should be accountable to the sponsoring Minister in the Cabinet Office and should not have a line manager within a Government department. The lead Committee referred to should be encouraged to play a significant role in scrutinising the work of the Commissioner, as well as the Government's response to the Commissioner's work.

2.4 Funding

- 2.4.1 All our Expert Advisers reported on points raised by their sectors regarding resourcing. This ranged from the budget setting process to the level and source of funding. It is essential that the Commissioner should have access to sufficient resources to appoint specialist staff of high quality and commission academic research. The first Commissioner told the Home Affairs Select Committee that his budget was never set before the start of the financial year.⁵ This is in breach of the Secretary of State's duty under section 40(4)(a) of the Act. ***We consider that in support of that statutory duty the process for establishing the Commissioner's budget should be set out in a memorandum of understanding with the sponsoring department and it must be adhered to.***
- 2.4.2 ***Preferably the Commissioner's budget should be set on a multi-year basis for the duration of each Spending Review period, providing certainty for the Commissioner to determine a strategic multi-year work plan. The budget should be sufficient to ensure the Commissioner has adequate funds to fulfil his/her functions effectively.*** We understand this is the basis on which the Equality and Human Rights Commission's (EHRC) budget was set at the last Spending Review. The EHRC has been accredited as an A-rated National Human Rights Institution, part of which requires the institution to have "adequate funding [...] in order to be independent of the government and not be subject to financial control which might affect this independence".⁶ ***We also consider that there should be an agreed mechanism to assist the Commissioner to meet***

⁵ Kevin Hyland OBE, Home Affairs Committee, Oral evidence: Modern Slavery, [HC 1460](#), Q33, Q34, Tuesday 23 October 2018.

⁶ United Nations, Principles relating to the Status of National Institutions ([The Paris Principles](#)), Adopted by General Assembly resolution 48/134 of 20 December 1993.

unexpected or additional financial requirements which may arise in the course of the year.

2.5 Reports

- 2.5.1 Section 42(1) of the Act requires the Commissioner to prepare and submit a strategic plan to the Secretary of State. He/she by section 42(8) is required to submit an annual report to the Secretary of State, as well as to Scottish Ministers and the Northern Ireland Executive. In our view, that annual report should set out the work of the previous year, but should also outline the proposed strategy for the next two years in so far as it may differ from the earlier strategic plan. The Commissioner should be able to have the courage to set out in the annual report unpopular and critical comments relating to the Government's or others' actions.
- 2.5.2 In addition to strategic plans and annual reports, we consider that the Commissioner should be able to make reports on any matters that he/she considers necessary. The Act restricts the Commissioner to reporting on "permitted matters". Permitted matters are either matters a Minister has asked the Commissioner to report on, or matters identified in the strategic plan, which must be approved by the Secretary of State. This should not be read restrictively; if the sponsoring Minister were to refuse to allow the Commissioner to include in his/her strategic plan a matter that he/she feels should be reported on, the Commissioner can refer to the refusal in the annual report and/or bring the matter to the attention of the relevant Select Committee. From what has already been stated in this interim report, the strategic plan, the annual report and any other reports should be submitted to the sponsoring Minister and made available to Parliament in accordance with strict timeframes, which we think should be set out in a memorandum of understanding.
- 2.5.3 ***All reports should be made public and the Government should be required to give a public response. If the Government fails to accept or to implement recommendations, the Commissioner should be able to seek the opportunity from relevant Select Committees to attend and give evidence.*** Sections 41(7) and 42(14) giving the Secretary of State the power to redact parts of a report (and similar powers in Scotland and Northern Ireland⁷) should be read

⁷ Sections 41(8), (9) and (10); sections 42(15), (16) and (17).

restrictively so that there should be no fear of redaction of reports for political reasons.

2.6 Governance

2.6.1 The first Commissioner set up an advisory panel, chaired by Bishop Alastair Redfern with a wide variety of members, including the Baroness Butler-Sloss. It was an informal panel whose advice the Commissioner found helpful. A number of our Expert Advisers have recommended ***the introduction of a statutory board chaired by a person of stature, to be drawn from outside the Government or Civil Service. We agree. The Board and its chair should be independently appointed in consultation with the Commissioner, and drawn from many sections of society.*** The members of the Board should be unpaid but receive, where appropriate, reasonable expenses. The Board should be entirely advisory, imaginative and knowledgeable but without the powers to tell the Commissioner what to do.

2.7 Complaints Procedure

2.7.1 As with all public bodies, ***there should be a formal complaints procedure in place.*** This is important to ensure proper accountability but also to protect the Commissioner from unjustified allegations. ***The procedure should be clearly set out on the Commissioner's website, be in line with the Parliamentary and Health Service Ombudsman's Principles of Good Complaints Handling⁸ and should be a tiered procedure with the final stage of escalation independent of the sponsoring Department.***

2.8 International Role

2.8.1 Section 41(3)(f) of the Act states that the Commissioner may cooperate with or work jointly with international partners should he/she wish to, and the first Commissioner had considerable success pursuing an overseas agenda. Our evidence revealed that in effect he had to act in some ways as a quasi-rapporteur, with EU counterparts sometimes looking to him and not the UK Government to advise on certain

⁸ The Parliamentary and Health Service Ombudsman, [Principles of Good Complaints Handling](#), 10 February 2009.

matters. We believe this would be a role better carried out by a representative of the Government and not the Independent Commissioner.

- 2.8.2 ***We agree with the recommendation of some of our Expert Advisers that an international role should be created in the form of an Envoy or Ambassador, who would represent the UK Government overseas and ensure close co-operation and dialogue with other nations, for instance against organised crime.*** He/she would work closely with the Commissioner, and might advise him/her and the Government on overseas initiatives, legislation and good practice. It would not be necessary to be a full-time appointment and might be filled by a senior (possibly retired) person of standing or existing civil servant, receiving modest remuneration and reasonable expenses. Further consideration should be given to the extent of this role.

3. Summary of Recommendations

1. **Current recruitment:** The present recruitment process for a new Commissioner should be scrapped and a new job description drafted once the recommendations of this report have been considered in full by the Home Secretary.
2. **Statutory independence:** The Government must respect the Commissioner's statutory independence
3. **Role:**
 - a. The Commissioner's primary roles in carrying out the role set out in section 41(1) of the Act should be to advise the Government on measures to tackle modern slavery; to scrutinise and hold the Government and its agencies to account on their performance; and to raise awareness and promote cooperation between sectors and interest groups.
 - b. The Commissioner should have sufficient access to Government data to be able to carry out the duty of scrutiny.
 - c. The Commissioner's focus should be primarily on tackling modern slavery domestically, but there will need to be some continued international angle. The Commissioner's international role should be focussed on countries of direct strategic importance to the UK on modern slavery. This work should be analytical and advisory, as opposed to project delivery or representation of the UK Government's interests.
4. **Appointment and Accountability:**
 - a. The Commissioner should be appointed by a sponsoring Secretary of State other than the Home Secretary. Our preference would be for a Sponsoring Minister in the Cabinet Office, acting on behalf of the Prime Minister.
 - b. The Commissioner should be recruited and appointed in accordance with the Cabinet Office's Governance Code for Public Appointments. The appointment should be subject to a Pre-Appointment Hearing with a Parliamentary Select Committee. If the Committee approves the selection, the final appointment should be by order of the Prime Minister. Any extension to the length of appointment of the Commissioner should be in consultation with the Parliamentary Committee.

5. Funding:

- a. The process for agreeing the Commissioner's budget should be set out in a memorandum of understanding with the sponsoring department and it must be adhered to.
 - b. The Commissioner's budget should be agreed on a multi-year basis for the duration of each Spending Review period, providing certainty for the Commissioner to determine a strategic multi-year work plan. The budget should be sufficient to ensure the Commissioner has adequate funds to fulfil his/her functions effectively.
 - c. There should be an agreed mechanism to assist the Commissioner to meet unexpected or additional financial requirements which may arise in the course of the year.
6. **Reports:** All reports should be made public and the Government should be required to give a public response. If the Government fails to accept or to implement recommendations, the Commissioner should be able to seek the opportunity from relevant select committees to attend and give evidence.
7. **Statutory board:** A statutory board should be introduced, chaired by a person of stature, to be drawn from outside the Government or Civil Service. The Board and its chair should be independently appointed in consultation with the Commissioner and drawn from many sections of society.
8. **Complaints procedure:** There should be a formal complaints procedure in place. The procedure should be clearly set out on the Commissioner's website and should be a tiered procedure with the final stage of escalation independent of the sponsoring Department.
9. **Envoy or Ambassador:** An international role should be created in the form of an Envoy or Ambassador, who would represent the UK Government overseas and ensure close co-operation and dialogue with other nations, for instance against organised crime.

4. Annexes

Annex A: Terms of Reference for the Independent Review of the Modern Slavery Act

1. Background

The introduction of the Modern Slavery Act 2015, the first legislation of its kind in the world, has helped to transform the UK's response to modern slavery. More victims are being identified and supported; more offenders are being prosecuted; and thousands of companies have published statements setting out the steps they have taken to tackle modern slavery in their supply chains.

The UK is determined to lead global efforts to tackle this barbaric crime and as the methods used by criminals to exploit vulnerable people evolve, and our understanding of this crime evolves, it is important to consider our legislative approach.

2. Aim of the review

The aim of the review is to report on the operation and effectiveness of, and potential improvements to, provisions in the Modern Slavery Act 2015, which provides the legal framework for tackling modern slavery.

3. Structure of the review

The review will gather evidence and seek views from relevant stakeholders. This process could include a call for written submissions, evidence sessions on particular aspects of the legislation, and interviews with representatives from civil society, business, law enforcement and other interested bodies.

The review will be independent; the findings and recommendations of the review will represent the views of the reviewers. The reviewers will be supported by a secretariat which will be seconded from the Home Office, and sponsored by the Director for Tackling Slavery and Exploitation.

The review will aim to report to the Home Secretary before the end of March 2019. On completion, the review is to be compiled into a report, including recommendations, to be presented to the Home Secretary for approval.

Following approval, the Home Secretary will lay the report in Parliament.

4. Scope of the review

This review aims to understand how the 2015 act is operating in practice, how effective it is, and whether the legal framework for tackling modern slavery is fit for purpose now and in the future. In doing so, the review will need to take

into account any significant political, economic, social and technological changes since the 2015 act was passed.

The following provisions of the act must be considered in the review:

- section 3 on the meaning of exploitation
- sections 8-10 on reparation orders
- sections 40 to 44 on the Independent Anti-Slavery Commissioner
- section 45 on the statutory defence
- section 48 on independent child trafficking advocates
- section 54 on transparency in supply chains

In particular, the review should consider the following questions which have been brought to the attention of the government by the sector and others as issues requiring consideration:

- in relation to section 3, how to ensure the act is 'future-proof' given our evolving understanding of the nature of modern slavery offences, for example the recent and emerging issues of county lines and orphanage trafficking
- in relation to sections 8 to 10, how to ensure access to legal remedies and compensation for victims and would a specific civil wrong improve access to compensation for victims
- in relation to sections 40 to 44, how to ensure the independence of the Anti-Slavery Commissioner
- in relation to section 45, how to ensure an appropriate balance between the need to protect victims from criminal prosecution and preventing criminals from abusing this protection to avoid justice
- in relation to section 48, how to ensure the right support for child victims given the changing profile of child victims
- in relation to section 54, how to ensure compliance and drive up the quality of statements produced by eligible companies

The review should take into account the following principles:

- recommendations should only relate to the legal framework provided by the act and its implementation
- recommendations must be sustainable and take into account the financial and practical impact of implementation
- the review may consider other matters in relation to modern slavery subject to the agreement of the Home Secretary
- purdah guidelines should be adhered to where appropriate

Annex B: Part 4 (sections 40 – 44) of the Modern Slavery Act 2015

40 The Independent Anti-slavery Commissioner

(1) The Secretary of State must, after consulting the Scottish Ministers and the Department of Justice in Northern Ireland, appoint a person as the Independent Anti-slavery Commissioner (in this Part “the Commissioner”).

(2) The Commissioner is to hold office in accordance with the terms of the Commissioner’s appointment.

(3) The Secretary of State may pay in respect of the Commissioner any expenses, remuneration or allowances that the Secretary of State may determine.

(4) The Secretary of State—

(a) must before the beginning of each financial year specify a maximum sum which the Commissioner may spend that year,

(b) may permit that to be exceeded for a specified purpose, and

(c) subject to paragraphs (a) and (b), must defray the Commissioner’s expenditure for each financial year.

(5) In this Part, “financial year” means—

(a) the period beginning with the day on which the first Commissioner takes office and ending with the following 31 March, and

(b) each successive period of 12 months.

(6) The Commissioner may appoint staff.

(7) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership: other disqualifying offices) at the appropriate place insert—

- “Independent Anti-slavery Commissioner”.

(8) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (offices disqualifying for membership: other disqualifying offices) at the appropriate place insert—

- “Independent Anti-slavery Commissioner”.

(9) In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general) at the appropriate place insert—

- “The Independent Anti-slavery Commissioner”.

41 General functions of Commissioner

(1) The Commissioner must encourage good practice in—

- (a) the prevention, detection, investigation and prosecution of slavery and human trafficking offences;
- (b) the identification of victims of those offences.

(2) For the purposes of this section a slavery and human trafficking offence is an offence under—

- (a) section 1, 2 or 4 of this Act,
- (b) section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2 (N.I.)) (equivalent offences in Northern Ireland),
- (c) section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (traffic in prostitution etc),
- (d) section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking for exploitation),
- (e) section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (slavery, servitude and forced or compulsory labour).

(3) The things that the Commissioner may do in pursuance of subsection (1) include—

- (a) making reports on any permitted matter to the Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland;
- (b) making recommendations to any public authority about the exercise of its functions;
- (c) undertaking or supporting (financially or otherwise) the carrying out of research;
- (d) providing information, education or training;
- (e) consulting public authorities (including the Commissioner for Victims and Witnesses), voluntary organisations and other persons;
- (f) co-operating with or working jointly with public authorities (including the Commissioner for Victims and Witnesses), voluntary organisations and other persons, in the United Kingdom or internationally.

(4) The matters to which the Commissioner may have regard in pursuance of subsection (1) include the provision of assistance and support to victims of slavery and human trafficking offences.

(5) In subsection (3)(a) “permitted matter” means a matter which—

(a) the Secretary of State, the Scottish Ministers or the Department of Justice in Northern Ireland have asked the Commissioner to report on, or

(b) the current strategic plan, approved by the Secretary of State under section 42(6), states is a matter the Commissioner proposes to report on.

(6) The Commissioner must (after ascertaining whether the Secretary of State, the Scottish Ministers, the Lord Advocate or the Department of Justice in Northern Ireland wish to exercise the powers conferred by subsections (7) to (10)) publish each report made under subsection (3)(a).

(7) The Secretary of State may direct the Commissioner to omit from any report before publication any material whose publication the Secretary of State thinks—

(a) would be against the interests of national security,

(b) might jeopardise the safety of any person in England and Wales, or

(c) might prejudice the investigation or prosecution of an offence under the law of England and Wales.

(8) The Scottish Ministers may direct the Commissioner to omit from any report before publication any material whose publication the Scottish Ministers think—

(a) might jeopardise the safety of any person in Scotland, or

(b) might prejudice the investigation of an offence under the law of Scotland.

(9) The Lord Advocate may direct the Commissioner to omit from any report before publication any material whose publication the Lord Advocate thinks might prejudice the prosecution of an offence under the law of Scotland.

(10) The Department of Justice in Northern Ireland may direct the Commissioner to omit from any report before publication any material whose publication the department thinks—

(a) might jeopardise the safety of any person in Northern Ireland, or

(b) might prejudice the investigation or prosecution of an offence under the law of Northern Ireland.

(11) If the Secretary of State, the Scottish Ministers or the Department of Justice in Northern Ireland lay before Parliament, the Scottish Parliament or the Northern Ireland Assembly a report made by the Commissioner under subsection (3)(a), they must lay the report as it is published by the Commissioner under subsection (6).

42 Strategic plans and annual reports

(1) The Commissioner must, as soon as reasonably practicable after the Commissioner's appointment, prepare a strategic plan and submit it to the Secretary of State for approval.

(2) The Commissioner must, before the end of the period to which a strategic plan relates ("the current period"), prepare a strategic plan for a period immediately following the current period and submit it to the Secretary of State for approval.

(3) The Commissioner may at any time prepare a revised strategic plan and submit it to the Secretary of State for approval.

(4) A strategic plan is a plan setting out how the Commissioner proposes to exercise the Commissioner's functions in the period to which the plan relates, which must be not less than one year and not more than three years.

(5) A strategic plan must in particular—

(a) state the Commissioner's objectives and priorities for the period to which the plan relates;

(b) state any matters on which the Commissioner proposes to report under section 41(3)(a) during that period;

(c) state any other activities the Commissioner proposes to undertake during that period in the exercise of the Commissioner's functions.

(6) The Secretary of State may approve a strategic plan either without modifications or with modifications agreed with the Commissioner.

(7) The Secretary of State must—

(a) before approving a strategic plan, consult the Scottish Ministers and the Department of Justice in Northern Ireland, and

(b) after approving a strategic plan, send a copy of the plan to the Scottish Ministers and the Department of Justice in Northern Ireland.

(8) As soon as reasonably practicable after the end of each financial year the Commissioner must submit to the Secretary of State, the Scottish Ministers and the Department of Justice in Northern Ireland an annual report on the exercise of the Commissioner's functions during the year.

(9) An annual report must include—

(a) an assessment of the extent to which the Commissioner's objectives and priorities have been met in that year;

(b) a statement of the matters on which the Commissioner has reported under section 41(3)(a) during the year;

(c) a statement of the other activities the Commissioner has undertaken during the year in the exercise of the Commissioner's functions.

(10) The Secretary of State must lay before Parliament—

(a) any strategic plan the Secretary of State approves, and

(b) any annual report the Secretary of State receives,

and must do so as soon as reasonably practicable after approving the plan or receiving the report.

(11) The Scottish Ministers must lay before the Scottish Parliament—

(a) any strategic plan the Secretary of State approves, and

(b) any annual report they receive,

and must do so as soon as reasonably practicable after receiving the plan or the report.

(12) The Department of Justice in Northern Ireland must lay before the Northern Ireland Assembly—

(a) any strategic plan the Secretary of State approves, and

(b) any annual report it receives,

and must do so as soon as reasonably practicable after receiving the plan or the report.

(13) An annual report laid under any of subsections (10) to (12) must not contain material removed from the report under any of subsections (14) to (17).

(14) The Secretary of State may remove from an annual report any material whose publication the Secretary of State thinks—

- (a) would be against the interests of national security,
- (b) might jeopardise the safety of any person in England and Wales, or
- (c) might prejudice the investigation or prosecution of an offence under the law of England and Wales.

(15) The Scottish Ministers may remove from an annual report any material whose publication the Scottish Ministers think—

- (a) might jeopardise the safety of any person in Scotland, or
- (b) might prejudice the investigation of an offence under the law of Scotland.

(16) The Lord Advocate may remove from an annual report any material whose publication the Lord Advocate thinks might prejudice the prosecution of an offence under the law of Scotland.

(17) The Department of Justice in Northern Ireland may remove from an annual report any material whose publication the department thinks—

- (a) might jeopardise the safety of any person in Northern Ireland, or
- (b) might prejudice the investigation or prosecution of an offence under the law of Northern Ireland.

43 Duty to co-operate with Commissioner

(1) The Commissioner may request a specified public authority to co-operate with the Commissioner in any way that the Commissioner considers necessary for the purposes of the Commissioner's functions.

(2) A specified public authority must so far as reasonably practicable comply with a request made to it under this section.

(3) A public authority which discloses information to the Commissioner in pursuance of subsection (2) does not breach any obligation of confidence owed by the public authority in relation to that information; but this does not apply in relation to patient information.

- (4) “Patient information” means information (however recorded) which—
- (a) relates to the physical or mental health or condition of an individual, to the diagnosis of an individual’s condition or to an individual’s care or treatment, or is to any extent derived directly or indirectly from such information, and
 - (b) identifies the individual or enables the individual to be identified (either by itself or in combination with other information).
- (5) Except as provided by subsection (3), subsection (2) does not require or authorise any disclosure of information which contravenes a restriction on the disclosure of information (however imposed).
- (6) In this section “specified public authority” means a public authority listed in Schedule 3.
- (7) The Scottish Ministers may by regulations amend that Schedule so as to—
- (a) add or remove a public authority having only functions which are exercisable in or as regards Scotland (a “Scottish public authority”);
 - (b) amend an entry relating to a Scottish public authority.
- (8) The Department of Justice in Northern Ireland may by regulations amend that Schedule so as to—
- (a) add or remove a public authority having only functions which are exercisable in or as regards Northern Ireland (a “Northern Irish public authority”);
 - (b) amend an entry relating to a Northern Irish public authority.
- (9) The Secretary of State may by regulations amend that Schedule so as to—
- (a) add or remove a public authority which is not a Scottish public authority or a Northern Irish public authority;
 - (b) amend an entry relating to a public authority which is not a Scottish public authority or a Northern Irish public authority.
- (10) Regulations under subsection (7), (8) or (9) which add a public authority to Schedule 3 may contain provision modifying the application of this section in relation to that authority.

44 Restriction on exercise of functions

(1) The Commissioner must not exercise any function in relation to an individual case.

(2) Subsection (1) does not prevent the Commissioner considering individual cases and drawing conclusions about them for the purpose of, or in the context of, considering a general issue.

Annex C: Models of UK and International Commissioners

Independent Review of the Modern Slavery Act 2015

Models of Commissioner

Comparative Study of UK and International Commissioners

Introduction

- We studied a sample of five UK Commissions/Commissioners and five international human trafficking commissioners.
- There are a range of factors that may affect the degree of a Commissioner's independence. We asked the following questions:
 - Who is responsible for the appointment, accountability and budget of the Commissioner?
 - Who does the Commissioner submit reports and recommendations to, and how are these reports dealt with?
 - What governance and oversight structures are in place to set the Commissioner's strategic direction?
- We also asked questions about the Commissioners' roles internationally

Independent Anti-Slavery Commissioner

Theme	Section of the Act (if applicable)	Description
Statutory footing and Summary of role	s41 & s43	Modern Slavery Act 2015. The Commissioner has a UK-wide remit to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences. In order to achieve his aims the Commissioner works directly with statutory agencies, who have a duty to co-operate with the Commissioner as set out in the Modern Slavery Act.
Appointment	s40(1)	The Home Secretary, in consultation with Northern Irish Executive and Scottish Government. Not subject to pre-appointment parliamentary scrutiny.
Accountability	N/A	In accordance with the Code of Practice on Public Appointments, the appointing Minister is also accountable for the position.
Budget	s40(3) and s40(4)(a)	Home Secretary determines and pays the Commissioner's expenses, remuneration and allowances. The Home Secretary must set the Commissioner's maximum budget before the beginning of each financial year.
Submission of reports and recommendations	s41(3) s42(1), (2)	The Act empowers the Commissioner to make reports on any matters stated in his strategic plan, or that the Home Secretary or Devolved Administrations have asked him to report on. It is inferred in s41 that the Commissioner must send all reports to the Home Secretary and Devolved Administrations for approval before they can be published.
Redaction of reports by Ministers	s41(7), (8), (9), (10) s42(14), (15), (16), (17)	The Secretary of State, Scottish Ministers, Lord Advocate, and Department of Justice in Northern Ireland may direct the Commissioner to omit from any report before publication any material whose publication the Secretary of State thinks – (a) Would be against the interests of national security (b) Might jeopardise the safety of any person, or (c) Might prejudice the investigation or prosecution of an offence under the law
Obligation for Ministers to act on reports and recommendations	s42(10), (11), (12)	The Home Secretary and Devolved Administrations must lay strategic plans and annual reports in parliaments and assemblies as soon as reasonably practicable after receiving them.
Governance and Oversight	N/A	There is no governance or oversight mechanism provided for in the Act. In practice, the Commissioner was overseen by the Home Office Modern Slavery Unit on behalf of the Home Secretary, and supported by an ad hoc advisory board that he set up.
International	s41(3)(f)	The Act makes provisions for the Commissioner to co-operate with or work jointly with public authorities, voluntary organisations and other persons, in the United Kingdom or internationally.

INDEPENDENT REVIEW OF THE MODERN SLAVERY ACT 2015

Sample

Country	Commissioner	Statutory footing and Summary of role
UK	Independent Chief Inspector of Borders and Immigration (ICIBI)	UK Borders Act 2007, Section 48. Monitors and reports on the efficiency and effectiveness of the immigration, asylum, nationality and customs functions carried out by the Home Secretary and by officials and others on his behalf. The Chief Inspector is a public appointee and independent from government. His reports are laid before Parliament.
England and Wales	Lead Commissioner for Countering Extremism	Non-statutory. Supports society to fight all forms of extremism. Advises the government on new policies to deal with extremism, including the need for any new powers.
England and Wales	Victims Commissioner	Domestic Violence, Crime and Victims Act 2004, section 49. Promote the interests of victims and witnesses, encourage good practice in their treatment, and regularly review the Code of Practice for Victims which sets out the services victims can expect to receive.
GB for equality and diversity; Eng & Wales for Human Rights	Equality and Human Rights Commission	Established in 2007 under the Equality Act 2006; Works to safeguard and enforce the laws that protect people against discrimination due to certain protected characteristics and their human rights.
England	Children's Commissioner for England	Children and Families Act 2014. Speaks up for children and young people so that policymakers and the people who have an impact on their lives take their views and interests into account when making decisions about them.
Greece	National Rapporteur on Trafficking in Human Beings	Transposition of the EU Directive. Responsibilities include the integration of the NRM for the identification of victims, the creation of a national database, the training of agencies, and the strengthening of cooperation with all those active in raising public awareness of human trafficking issues.
Finland	Non-Discrimination Ombudsman	Non Discrimination Act. The Rapporteur monitors action against human trafficking in Finland, human trafficking at large, compliance with international obligations and the effectiveness of national legislation.
Sweden	Ambassador At Large for Combating Trafficking in Human Beings	Role intended to strengthen Sweden's international profile as a defender of human rights - contribute to the dialogue between national authorities, international organisations and governments about issues concerning the prevention of human trafficking and prosecution of perpetrators
Netherlands	National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children	Act Establishing a National Rapporteur. Conducts research on trafficking in human beings and sexual violence against children, as well as the effects of policy measures taken to tackle trafficking in human beings and sexual violence against children.

Appointment, Accountability and Budget

Appointment

- All five UK commissioner models are appointed by the Secretary of State of their sponsoring department (in line with the Governance Code on Public Appointments).
- The Finnish Ombudsman is appointed by the Government as a whole on advice of the Ministry of Justice.
- The Dutch Rapporteur is appointed by Royal decree on advice of Minister of Security and Justice, after consultation with Minister of Health, Welfare and Sport.
- Both the Greek Rapporteur and Swedish Ambassador at Large are appointed by the Minister for Foreign Affairs.

Accountability

- Most of the Commissioner models, both UK and international, are accountable to Government Ministers.
- The Children's Commissioner is accountable to Parliament via accountability hearings to the Education Select Committee.

Budget

- In all five UK cases, the Secretary of State sets and grants the commissioners' budgets.
- In Finland, the Ombudsman agrees the her budget with the Ministry of Justice, Treasury and Parliament.
- In the Netherlands, the budget is set and granted by four different government departments.

INDEPENDENT REVIEW OF THE MODERN SLAVERY ACT 2015

Reports and Recommendations

Methods vary significantly between commissioner models on how they submit reports and recommendations:

- The ICIBI and the Lead Commissioner for Countering Extremism send all their reports to the Home Secretary.
- The EHRC publishes its reports directly on its own website.
- The Victims Commissioner has no formal process for sharing reports and recommendations. She publishes her reports online at the same time as sending them to the Justice Secretary, Home Secretary and Attorney General.
- The Children's Commissioner sends her annual reports to the Education Secretary to be laid in Parliament once signed off by the National Audit Office. All other reports are published directly online.
- The Greek, Swedish and Dutch rapporteurs send reports to their sponsoring Ministers. The Finnish Ombudsman sends reports to the Justice Minister annually, and to Parliament every four years.

Redaction and Omissions by Ministers before publication

- The Home Secretary is permitted to redact parts of the ICIBI's reports on the grounds of national security or personal safety.
- The Education Secretary is only permitted to redact and omit from the Children's Commissioner's annual report, although this has never occurred in practice.
- None of the other UK Commissioners' reports can be redacted or undergo omissions before publication.
- The Dutch and Finnish rapporteurs' reports are published unredacted.

Government obligation to act on reports

- The Home Secretary must lay the ICIBI's reports in Parliament
- The Education Secretary must lay the Children's Commissioner's annual report in Parliament.
- The Secretary of State for the Department for International Development must lay the EHRC's 3 yearly Strategic Plan and the Annual Report and Accounts in Parliament.
- The Dutch Ministry of Justice sends the Rapporteur's reports to the Dutch Parliament for information.

Section 107 of the Children and Families Act 2014

Primary function: reports

Where the report contains recommendations about the exercise by a person of functions of a public nature, the Commissioner may require that person to state in writing, within such period as the Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.

INDEPENDENT REVIEW OF THE MODERN SLAVERY ACT 2015

Governance and Oversight

Governance structures and oversight vary significantly between commissioner models:

- The EHRC has the most complex governance structure. A board of 10-15 commissioners have strategic oversight. It delegates operational management to a CEO. The Commissioners hold the executive to account by monitoring performance against the Commission's strategic priorities. The EHRC has two statutory committees, one for Scotland and one for Wales that provide information and advice to the Devolved Administrations. It also has three non-statutory committees for audit, HR, and disability.
- The ICIBI reports to the Home Secretary, with the Second Permanent Secretary acting as the Senior Sponsor.
- The Lead Commissioner for Countering Extremism is line managed by the Director General for Crime, Policing and Fire in the Home Office.
- The Victims Commissioner has no formal oversight. She has created an ad-hoc advisory group to advise on positions she might adopt or issues she might raise.
- The Children's Commissioner is advised by a statutory Advisory Board and a non-statutory audit and risk committee.
- In the Netherlands there is no formal oversight. Review and evaluation of the role is undertaken every four years. The rapporteur can be dismissed by royal decree on advice of the Justice Minister.

Section 111 of the Children and Families Act 2014

Advisory board

(1)The Children's Commissioner must appoint an advisory board to provide the Commissioner with advice and assistance relating to the discharge of his or her functions.

(2)The advisory board must consist of persons who (taken together) represent a broad range of interests which are relevant to the Children's Commissioner's functions.

(3)The Children's Commissioner must from time to time publish a report on the procedure followed and the criteria used when making appointments to the advisory board."

INDEPENDENT REVIEW OF THE MODERN SLAVERY ACT 2015

International

- None of the UK Commissioners have a formalised or statutory obligation to undertake work with international partners. Some undertake limited international engagement to share best practice.
- The Dutch, Finnish, and Greek rapporteurs undertake some limited international work but their primary focus is domestic.
- The Swedish Ambassador at Large's role is primarily international, but also plays a role in formulating government strategy. Works closely with the National Rapporteur and attend some international EU meetings together.

INDEPENDENT REVIEW OF THE MODERN SLAVERY ACT 2015

Annex D: Full list of contributors to the Independent Review of the Modern Slavery Act on the Independent Anti-Slavery Commissioner

Contributor	Interest Group
BT	Business
Verisio Ltd	Business
Amnesty International UK	Civil Society
Anti-Trafficking Monitoring Group	Civil Society
Barts Health Trust, London	Civil Society
Business and Human Rights Resource Centre	Civil Society
Care	Civil Society
Caritas Project Bakhita	Civil Society
Equality Now	Civil Society
Flex	Civil Society
Hope for Justice	Civil Society
Institute of Environmental Management & Assessment (IEMA)	Civil Society
NHS England	Civil Society
Northern College for Residential Adult Education	Civil Society
Office of the Police and Crime Commissioner for West Yorkshire	Civil Society
Safer London	Civil Society
Snowdrop Project	Civil Society
Soroptimist International of Great Britain and Ireland	Civil Society
St Mary's University Twickenham	Civil Society
Student	Civil Society
The Children's Society	Civil Society
The Salvation Army	Civil Society
UNICEF UK	Civil Society
University of Newcastle upon Tyne	Civil Society
University of Sheffield	Civil Society
University of Warwick	Civil Society
Ambassador at Large for Combating Trafficking in Persons, Sweden	Commonwealth and International
Commonwealth Parliamentary Association	Commonwealth and International
Department for International Development	Commonwealth and International
Department for Work and Pensions	Commonwealth and International
Foreign and Commonwealth Office	Commonwealth and International
Freedom Fund	Commonwealth and International
International Labour Organisation	Commonwealth and International
National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, The Netherlands	Commonwealth and International

National Rapporteur on Trafficking in Human Beings, Greece	Commonwealth and International
Non-Discrimination Ombudsman, Finland	Commonwealth and International
People Smuggling and Human Trafficking Team at the Department of Home Affairs, Australia	Commonwealth and International
Sweden	Commonwealth and International
Trafficking in Persons Office, United States of America	Commonwealth and International
Crown Prosecution Service	Criminal Justice System
National Crime Agency	Criminal Justice System
Office of the Police and Crime Commissioner for Bedfordshire	Criminal Justice System
Office of the Police and Crime Commissioner for Gwent, and Gwent Police	Criminal Justice System
Office of the Police and Crime Commissioner for Lancashire	Criminal Justice System
Police and Crime Commissioner for Northumbria	Criminal Justice System
Police and Crime Commissioner for West Yorkshire and Chair of the National Anti-Trafficking and Modern Slavery Network for Police and Crime Commissioners	Criminal Justice System
Kevin Hyland, Independent Anti-Slavery Commissioner (2014 - 2018)	Cross-cutting
Arise Foundation	Faith Groups
Clewer Initiative	Faith Groups
DeMontford University	Faith Groups
Jesuit Refugee Service UK	Faith Groups
Medaille Trust	Faith Groups
Santa Marta Group	Faith Groups
STN Trust	Faith Groups
The Passage	Faith Groups
The Salvation Army	Faith Groups
Seyfarth Shaw LLP (UK)	Faith Groups
University of Derby	Faith Groups
Gangmasters and Labour Abuse Authority	Government/public authority
Northern Ireland Executive	Government/public authority
Scottish Government	Government/public authority
Welsh Government	Government/public authority
Anne Marie Morris MP	Parliamentarians
Baroness Hamwee	Parliamentarians
Gareth Snell MP	Parliamentarians
Lord McColl of Dulwich	Parliamentarians
Mary Creagh MP	Parliamentarians