

## **MODERN SLAVERY ACT 2015**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

#### **Part 3: Maritime Enforcement**

#### ***Section 35 and Part 1 of Schedule 2: Enforcement powers in relation to ships: England and Wales***

120. *Section 35* provides additional powers for law enforcement in England and Wales (the police, port police, British Transport Police, designated NCA officers, customs officials, or a member of Her Majesty's Armed Forces) to tackle suspected human trafficking or slavery at sea. The details of the additional powers are set out in Part 1 of Schedule 2. This is an issue because victims are in many cases trafficked illegally on vessels, and also may be the subject of slavery, servitude and forced or compulsory labour on board vessels. Extending law enforcement powers in relation to suspected modern slavery offences will enable the police and other relevant bodies to better protect suspected victims and bring offenders to justice.
121. *Subsection (1)* sets out the scenarios in which a constable or law enforcement officer may use additional powers in relation to vessels where an offence of human trafficking or slavery is suspected. These restrictions are in line with UK court jurisdiction, so wherever a suspect is apprehended prosecution can take place. The only exception to this is in the case of a UK vessel or stateless vessel in the territorial waters of another state or relevant territory, where UK court jurisdiction only applies where the offender is a British citizen. However, as the nationality of a suspected offender may not be apparent prior to investigation, the power is provided for all UK vessels in this scenario.
122. *Subsection (2)* provides that these powers are only exercisable for the purpose of preventing, detecting, investigating or prosecuting a human trafficking or slavery offence, and in accordance with the conditions of this section.
123. *Subsection (3)* provides that an enforcement officer must gain the authority of the Secretary of State prior to exercising the powers set out in Part 1 of Schedule 2 in relation to a UK vessel in foreign waters.
124. *Subsection (4)* sets out that the approval of the Secretary of State for the scenario in *Subsection (3)* can only be provided if the state or relevant territory in whose waters the powers would be exercised consents to the use of these powers.
125. *Subsection (5)* confirms that the authority of the Secretary of State is also required for law enforcement to use these powers in relation to a foreign vessel, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to the United Kingdom.
126. *Subsection (6)* sets out that, in relation to foreign ships, the approval of the Secretary of State for the scenario in *Subsection (5)* can only be provided if one of the listed conditions has been met. This ensures the measure is aligned with the UN Convention on the Law of the Sea (UNCLOS). The conditions are: that the home state has requested

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(c.30) which received Royal Assent on 26 March 2015*

the assistance of the UK for the purposes set out in *subsection (2)(a)*; the home state has authorised the UK to act in that way; or UNCLOS otherwise permits the exercise of these powers.

127. *Subsection (7)* adds that, in giving this authority, the Secretary of State must also give effect to any conditions or limitations the home state in question has made a condition of their authority.
128. The detail of the powers set out in section 35 is set out in Part 1 of Schedule 2. *Paragraph 1* introduces Part 1 of Schedule 2, which sets out the powers exercisable by the police, port police, British Transport Police, designated NCA officer, customs officials, or a relevant member of the Armed Forces ('enforcement officer') in relation to suspected slavery and human trafficking offences at sea (section 35) and section 38 (Hot pursuit of ships in United Kingdom waters).
129. *Paragraph 2* provides a power to stop and board a ship, and to direct the vessel to be taken to a port in England and Wales, or elsewhere, and detained there, where there are reasonable grounds to suspect that a slavery or human trafficking offence is being, or has been committed or the vessel is being used in connection with a slavery or trafficking offence. It notes that if the enforcement officer is acting on the authority of the Secretary of State, as set out in section 35(5), the officer can require the vessel to be taken to a port in another country willing to take the vessel. In operating this power an enforcement officer has the power to require any member of a vessel's crew to take action necessary to support their enforcement activity in relation to the powers set out in *sub-paragraph 2(1)*. Written notice must be provided to the master of any vessel detained under this paragraph, which must state the ship is to be detained until withdrawn via a further written notice, signed by a constable or an enforcement officer.
130. *Paragraph 3* provides a power to search a vessel and any person or object on that vessel, where a constable or an enforcement officer has reasonable grounds to suspect that there is evidence on the ship relating to a slavery or trafficking offence, or a connected offence. It gives a constable or an enforcement officer the power to require a person on the vessel under investigation to give information about themselves or about anything on the vessel. It confirms that searching may include (although is not limited to) opening containers, requiring the production of documents, books or records (in either hard copy or electronic form) and making photographs or copies of anything the constable or officer has power to require. This power can only be used where a search is reasonably required to discover evidence of a slavery, trafficking or connected offence and does not authorise the removal of any clothing in public other than an outer coat, jacket or gloves.
131. *Paragraph 4* provides a power of arrest where a constable or an enforcement officer has reasonable grounds to suspect a slavery or human trafficking offence has been committed on the vessel under investigation. A constable or an enforcement officer can arrest without warrant anyone they have reasonable grounds to suspect may be guilty of a slavery or human trafficking offence. A constable or an officer may also seize and detain anything that appears to be evidence of that offence. The exception to this is any materials that the constable or officer has reasonable grounds to suspect are subject to legal privilege.
132. *Paragraph 5* provides for a Code of Practice for constables or law enforcement officers exercising the power of arrest set out in *paragraph 4*. The Code will provide guidance on the information to be given to a person at the time of arrest. Where a constable or an enforcement officer fails to comply with any provision of the Code it does not of itself render the constable or officer liable to any criminal or civil proceeding. The code may be admissible in evidence in criminal and civil proceedings and may be taken into account by a court or tribunal where it appears to them to be relevant. The Secretary of State may at any time revise the whole, or a part of the Code. Any revision to the Code does not come into operation until the Secretary of State has provided for it in regulations, which will be made by statutory instrument.

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133. *Paragraph 6* provides that a constable or an enforcement officer may take another person or relevant equipment or materials on board a vessel to support them in exercising the powers set out in this Part of the Schedule. The assistant may perform functions on behalf of the constable or officer under their supervision.
134. *Paragraph 7* confirms that a constable or an enforcement officer may use reasonable force, where necessary, in order to perform the functions set out in this Part of the Schedule.
135. *Paragraph 8* provides that, when required, a constable or an enforcement officer must provide evidence of their authority.
136. *Paragraph 9* confirms that a constable or an enforcement officer is not liable in any civil or criminal proceedings for anything done in performance of the functions in this Schedule, provided that a court is satisfied that the constable or officer acted in good faith and there were reasonable grounds for their actions.
137. *Paragraph 10* creates two offences where a person does not comply with the investigation. The first makes it an offence where a person intentionally obstructs a constable or an enforcement officer in exercising the powers in this Schedule, or fails to comply with a requirement of a constable or an enforcement officer, without reasonable excuse. The second makes it an offence where a person knowingly or recklessly provides false information, or intentionally fails to disclose anything material, in response to a constable or an enforcement officer requiring information when exercising the powers within this Schedule. Both of these offences are summary only and on conviction the defendant is liable to a fine.