EXPLANATORY MEMORANDUM TO

THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015 (CONSEQUENTIAL PROVISIONS AND MODIFICATIONS) ORDER 2016

2016 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order is made in consequence of the Human Trafficking and Exploitation (Scotland) Act 2015 ("the 2015 Act"), the purpose of which is to introduce a clearer, more robust framework for combatting human trafficking in Scotland, through making provision on human trafficking and slavery, servitude and forced or compulsory labour. The Order would contain provisions to ensure that relevant United Kingdom legislation is updated to reflect the 2015 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 This Order is to be made in exercise of the powers conferred by section 104 of the Scotland Act 1998 ("the 1998 Act"). Section 104 of the 1998 Act provides for subordinate legislation to be made by the UK Government, which contains provisions that are necessary or expedient in consequence of any provision made by, or under, an Act of the Scottish Parliament. In this case, provision is required in consequence of provision made by the 2015 Act, which was passed by the Scottish Parliament in October 2015 and which received Royal Assent on 4 November 2015. The Order is subject to affirmative resolution procedure in the UK Parliament.

4.2 The Order will update references to existing Scottish offences in relevant legislation (principally in the Modern Slavery Act 2015) to the new single offence of 'human trafficking' (section 1 of the 2015 Act) and the new offence of 'slavery, servitude and forced or compulsory labour' (section 4 of the 2015 Act).

4.3 It will replicate, in respect of the new offences, the powers that immigration officers currently have in the context of an arrest for the existing offences, and ensure joined-up and robust enforcement by enabling English and Welsh courts to enforce Scottish trafficking and exploitation prevention and risk orders.

4.4 Finally, it will implement the policy intention of some aspects of the Modern Slavery Act 2015 that relate to Scotland by ensuring the scope of the Independent Anti-Slavery Commissioner's work and the duty of large companies to report on transparency in supply chains are both updated so that in Scotland these flow from the new Scottish offences.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales, Scotland and Northern Ireland except where otherwise specified.

5.2 The territorial application of this instrument is England and Wales, Northern Ireland and Scotland.

6. European Convention on Human Rights

6.1 The Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

6.2 "In my view the provisions of the Human Trafficking and Exploitation (Scotland) Act 2015 (Consequential Provisions and Modifications) Order 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The main aim of the 2015 Act is to make Scotland a more hostile place for human trafficking, including through the introduction of a single offence of human trafficking and increasing the maximum penalty to life imprisonment.

7.2 The Act will, amongst other things, replace references to existing Scottish trafficking and exploitation offences to the new single offence of human trafficking and the new offence of slavery, servitude and forced or compulsory labour, ensure that immigration officers continue to have equivalent powers in relation to the new offences to those they currently have and ensure that the scope of the Independent Anti-Slavery Commissioner's work, as set out by the Modern Slavery Act 2015, will flow from the new Scottish offences.

Consolidation

7.3 This Order stands alone.

8. Consultation outcome

8.1 No formal consultation has taken place on the Order. This is because these matters are considered to be directly consequential to the provisions in the 2015 Act. Prior to the Scottish Government Bill being introduced into the Scottish Parliament, the issue of human trafficking was the subject of numerous reports, inquiries, and consultations which the Scottish Government used to inform the Bill.

8.2 The Equal Opportunities Committee of the Scottish Parliament, for example, published the report of its inquiry into migration and trafficking in December 2010. The Committee heard evidence of problems and issues faced by the diverse migrant communities in Scotland as well as on the extent of trafficking of persons in Scotland and protection available to victims of trafficking.

8.3 Subsequent reports and documents, including inquiries by the Equality and Human Rights Commission (EHRC)[1] and Scottish Commissioner for Children and Young People[2], have built on the understanding and analysis of human trafficking in Scotland. There was widespread support for Jenny Marra MSP's proposal[3] for a member's Bill on human trafficking when her Office undertook a consultation in February 2014.

9. Guidance

9.1 This Order stands alone, and guidance is not necessary.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and, therefore, no monitoring or review of the effects of this Order are required.

13. Contact

13.1 Stuart Matheson at the Scotland Office (telephone: 0131 244 9029 or email: stuart.matheson@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.

[1] https://www.equalityhumanrights.com/en/publication-download/inquiry-human-trafficking-scotland

[2] http://www.cypcs.org.uk/uploaded_docs/policy/sccyp%20child%20trafficking%20report.pdf

[3] http://www.parliament.scot/parliamentarybusiness/Bills/67134.aspx