EXPLANATORY MEMORANDUM TO

THE MODERN SLAVERY ACT 2015 (CONSEQUENTIAL AMENDMENTS) (NO. 2) REGULATIONS 2015

2015 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 These regulations make amendments to primary legislation in consequence of the commencement of sections 1 (the offence of slavery, servitude and forced or compulsory labour), 2 and 3 (the offence of human trafficking), and sections 8 to 10 (slavery and trafficking reparation orders) of the Modern Slavery Act 2015 (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 varies between provisions.

4. Legislative Context

4.1 Sections 1 to 3 of the 2015 Act make provision for the criminal offences related to slavery and human trafficking. The offences consolidate and replace the existing criminal offences of slavery, servitude and forced or compulsory labour (section 71 of the Coroners and Justice Act 2009), trafficking for the purpose of sexual exploitation (section 59A of the Sexual Offences Act 2003) and trafficking for other forms of exploitation (section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. These regulations make consequential changes to primary legislation which refers to the existing offences so as to include the new offences in the 2015 Act. Certain references to the predecessor offences are indirect, for example references to offences in Part 1 of the Sexual Offences Act 2003.

5. Extent and Territorial Application

5.1 As this instrument makes consequential amendments the extent of each provision has the same extent as the provision being amended. Most provisions extend to England and Wales only save for regulations 2 to 3 and 15 to 16 which extend to the United Kingdom.

5.2 The Territorial application of this instrument varies as between provisions. Most of the provisions in the instrument apply to England and Wales only. Regulations 6 to 7 apply to England only.

6. European Convention on Human Rights

6.1 The Minister for Preventing Abuse and Exploitation has made the following statement regarding Human Rights:

"In my view the provisions of the Modern Slavery Act 2015 (Consequential Amendments and Repeal) Regulations 2015 are compatible with the Convention rights.".

7. Policy background

What is being done and why

7.1 The purpose of the amendments made by this instrument is to ensure primary legislation which contains references to the existing offences is updated to reflect the new offences under the 2015 Act. The regulations ensure various provisions in primary legislation, which apply to the existing offences, apply to the relevant provisions of the 2015 Act.

7.2 The purpose of the specific consequential amendments are:

a) Regulations 2 and 3 amend the Visiting Forces Act 1952 which implements the NATO Status of Forces Agreement of 1951 (SOFA). Paragraph 3 to Article VII of the SOFA provides that in cases where the right to exercise jurisdiction over a member of a visiting force is concurrent, the military authorities of the sending State shall have the primary right to exercise jurisdiction over their personnel in relation to, among other things "offences solely against the person or property of another member of the force or civilian component of that State or of a dependant". Section 3 of, and the Schedule to, the Visiting Forces Act detail which offences in the UK meet that description. The consequential amendment ensures the list of relevant offences includes offences under the slavery, servitude and forced or compulsory labour and human trafficking offences under section 1 and 2 of the 2015 Act.

b) Regulations 4 and 5 amend section 80 of the Police and Criminal Evidence Act 1984, which ensures that, subject to certain exemptions, a spouse cannot be compelled to give evidence against their partner. There is an exception in relation to certain specified offences, notably for sexual offences committed against a person under the age of 16. Sexual offences include offences under Part 1 of the Sexual Offences Act 2003 (which includes the previous offence of trafficking for sexual exploitation). Regulations 4 to 5 ensure that the exemption in relation to trafficking for sexual exploitation continues to apply under the new 2015 Act offence by including the offence in the list of exceptions provided by section 80(7) of the Police and Criminal Evidence Act 1984.

c) Regulations 6 and 7 amend Schedule 2A of the Housing Act 1985 as it applies in England. The Schedule lists certain serious offences which can be grounds for a possession order and includes offences under Part 1 of the Sexual Offences Act 2003 (including trafficking for sexual exploitation). The consequential amendment adds the slavery, servitude and forced or

compulsory labour and human trafficking offences under sections 1 and 2 of the 2015 Act to the list of offences which will be able to form the basis of a possession order. The Welsh Government has the power to amend Schedule 2A as it applies in Wales and will introduce its own consequential amendment.

d) Regulations 8 and 9 amend section 51C of the Crime and Disorder Act 1998, which gives the Director of Public Prosecutions the ability to fast track to the Crown Court certain cases in which a child will need to give evidence. Previously this included the predecessor offence of trafficking for sexual exploitation. The consequential amendment ensures the power will in future also include offences under the slavery, servitude and forced or compulsory labour and human trafficking offences under section 1 and 2 of the 2015 Act.

e) Regulations 10 to 12 make amendments to the Youth Justice and Criminal Evidence Act 1999.

   i. Section 35 of the Youth Justice and Criminal Evidence Act 1999 provides protection for child witnesses from cross-examination in person by the defendant in respect of a number of offences including offences under Part 1 of the Sexual Offences Act 2003 (which includes the previous offence of trafficking for sexual exploitation), and a range of non-sexual offences including kidnapping, false imprisonment and offences involving an assault, injury or threat of injury to a person. Regulation 11 makes a consequential amendment to ensure that both the slavery, servitude and forced or compulsory labour and human trafficking offences under sections 1 and 2 of the 2015 Act are included in the list of offences subject to the protections from cross-examination for child witnesses.

   ii. Under section 34 of the Youth Justice and Criminal Evidence Act 1999, a defendant charged with a sexual offence cannot cross-examine the complainant in person. Sexual offences include offences under Part 1 of the Sexual Offences Act 2003 (which includes the previous offence of trafficking for sexual exploitation). Regulation 12 makes a consequential amendment to update the definition of sexual offence to include trafficking for sexual exploitation under section 2 of the 2015 Act.

f) Regulations 13 and 14 amend the closure order provisions in the Sexual Offences Act 2003. Closure orders may be imposed on premises used for activities related to prostitution and other sexual offences. The consequential amendment ensures that the list of prostitution and sexual offences which can form the basis of a closure order will include trafficking for sexual exploitation under the section 2 of the 2015 Act; the previous offence of trafficking for sexual exploitation is already included in the list.

g) Regulations 15 and16 amend Schedule 2 of the Armed Forces Act 2006 to include both section 1 (slavery, servitude and forced or compulsory labour) and 2 (human trafficking) offences under the 2015 Act. Schedule 2 lists certain serious offences, where a commanding officer is bound to make the

Service Police aware of an allegation, and a service policeman is similarly bound to refer to the Director of Service Prosecutions those cases where there is considered to be sufficient evidence to charge.

h) Regulations 17 and 18 insert slavery and trafficking reparation orders into the list of financial penalties that may be enforced in other EU member states. This will ensure that as is the case with compensation orders, slavery and trafficking reparation orders will still be effective against defendants who are normally resident in, or have property or income in, a member state other than the United Kingdom.

i) Regulations 19 and 20 amend Paragraph 39 of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to ensure that victims of human trafficking for sexual exploitation may receive legal aid available to victims of sexual offences. This is necessary now that trafficking for sexual exploitation is captured under section 2 of the 2015 Act rather than under Part 1 of the Sexual Offences Act 2003. This does not affect the other basis on which victims of human trafficking can access legal aid (whatever form of exploitation they have suffered) under paragraph 32 of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

j) Regulations 21 and 22 amend section 116 of the Anti-Social Behaviour, Crime and Policing Act 2014, which provides powers for the police to require hoteliers to provide information about guests believed to be engaged in child sexual exploitation. The consequential amendments update the provision to include trafficking for sexual exploitation under section 2 of the 2015 Act as conduct which amounts to child sexual exploitation; the predecessor offence of trafficking for sexual exploitation is already included.

k) Regulations 23 and 24 amend section 69 of the Serious Crime Act 2015, which sets out the offence of possessing paedophile manuals. Paedophile manuals are items which include advice or guidance on abusing children sexually. Sexual abuse is defined by reference to offences in Part 1 of the Sexual Offences Act 2003. This includes the predecessor offence of trafficking for sexual exploitation. Regulations 23 and 24 ensure that the new human trafficking offence, under section 2 of the 2015 Act, is included in the definition of sexual abuse where the trafficking offence is committed for the purpose of sexual exploitation.

l) Regulations 25 and 27 are necessary to rectify problems with the consequential amendments in Part 2 of Schedule 5 to the 2015 Act caused by the commencement of other enactments.

m) Regulation 26 makes a Slavery and Trafficking Reparation Order a priority order for the purposes of the Proceeds of Crime Act 2002. Under the Proceeds of Crime Act, where a confiscation order and one or more priority orders are made against the same Defendant in the same proceedings, and the court believes that the Defendant will not have sufficient means to satisfy each order in full, the court must direct that some or all of the amount due under any

priority orders must be paid from the sums recovered under the confiscation order. A Slavery and Trafficking Reparation Order is made in circumstances where assets have been identified for confiscation, and a confiscation order has been made. This amendment ensures that the payment of reparation to a victim under a Slavery and Trafficking Reparation Order is given priority over any recovery of assets by the state under the confiscation order.

n) Regulation 28 ensures that where the confiscation order upon which a slavery and trafficking reparation order is based is discharged because the offender has died and there is no prospect of recovering assets from the deceased's estate, the court may take a similar approach to the slavery and trafficking reparation order.

Consolidation

7.3 As this instrument simply makes minor consequential amendments no question of consolidation arises.

8. Consultation outcome

8.1 As this instrument makes minor amendments to legislation consequential on the commencement of the offences and slavery and trafficking reparation orders in the 2015 Act, no consultation has been carried out.

9. Guidance

9.1 No guidance has been prepared in relation to this instrument.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies as these regulations add the offences under the 2015 Act to existing legislation which deals with slavery and trafficking.

10.2 There is no impact on the public sector for the same reason.

10.3 A full impact assessment was carried out on the Modern Slavery Bill (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371057/MSB_IA.pdf). A separate 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 provisions of the 2015 Act and, by extension, the provisions of these regulations, will be subject to the normal post-legislative review three to five years after Royal Assent.

13. Contact

13.1 Tez Ilyas at the Home Office Tel: 0207 035 6975 or email: tez.ilyas@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.