EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (PROCUREMENT, SLAVERY AND HUMAN TRAFFICKING) REGULATIONS 2025

No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Karin Smyth MP, Ministry of State for Health (Secondary Care) at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

2.2 Sachin Joshi, Deputy Director for Commercial Policy, at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ren Blackwell at the Department of Health and Social Care Telephone: 01132546959 or email: commercialpolicy@dhsc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The SI fulfils a duty to make regulations as set out in section 12ZC of the National Health Service Act 2006 with a view to eradicate the use of goods and services tainted by slavery and human trafficking in the NHS in England.

4.2 The proposed regulations impose a duty on public bodies procuring goods and services for the purposes of the NHS in England to assess the level of modern slavery risk related to the procurement and to take reasonable steps to mitigate the risk. The purpose is to leverage significant spend across the NHS to incentivise and drive ethical behaviour down supply chains.

4.3 The proposed duties build on existing government efforts by bringing all procurement for the purpose of the NHS in to scope and the making of regulations creates a stronger legislative footing for enforcement. This will ensure that approaches to managing and mitigating risks will be standardised across all NHS supply chains which will send a strong signal to suppliers that human rights abuses will not be tolerated in NHS supply chains.

4.4 In addition to expanding existing measures to NHS supply chains, the regulations will impose a new duty on owners of frameworks and dynamic markets which may be used to supply goods and services for the purposes of the NHS. This duty requires

framework owners and dynamic market operators to assess and manage risks associated to their frameworks and dynamic markets and to set out what reasonable steps public bodies must take to mitigate modern slavery risk when using these buying solutions.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 The Government has made clear its determination to tackle modern slavery crimes, referring to them as "the great human rights issue of our time". Modern slavery encompasses the offences of slavery, servitude, forced and compulsory labour and human trafficking. It is the Government's view that the NHS has a significant role to play in combatting it, including through taking steps to ensure that NHS supply chains and business activities are free from ethical and labour standards abuses.

5.2 The Health and Care Act 2022 amended the National Health Service Act to introduce a duty on the Secretary of State to make regulations containing such provision as he thinks appropriate with a view to eradicating the use in the NHS in England of goods or services that are tainted by slavery or human trafficking. The regulations can, in particular, include steps that the NHS should be taking to assess the level of risk associated with their supply chains; provision in relation to procurement processes, including the basis on which the NHS should exclude suppliers from a tendering process; and measures that should be included in contracts.

5.3 Modern slavery is pervasive and can be found in all supply chains, including in the NHS, making it necessary to address risks effectively and consistently. NHS supply chains are vast and complex, making it challenging to fully assess the scale of modern slavery in its supply chains. NHS England and NHS Supply Chain published a review in December 2023 of the risk of modern slavery in NHS supply chains[1]. Covering 60% of NHS spend on medical consumables procured through NHS supply chain, the review found that:

> 21% of suppliers are at high risk of slavery and human trafficking.
>
> 16% are at medium risk.
>
> 62% are at low risk.
>
> Surgical instruments, gloves, gowns, uniforms, and face masks are the 5 types of products at highest risk.

5.4 The NHS has a significant role to play in taking steps to ensure that NHS supply chains and business activities are free from abuses of ethical and labour standards. The NHS is one of the biggest commercial organisations in the UK, spending £35 billion with approximately 80,000 suppliers annually[2]. The NHS has the opportunity to use

[1] https://www.gov.uk/government/publications/review-of-risk-of-modern-slavery-and-human-trafficking-in-the-nhs-supply-chain/review-of-risk-of-modern-slavery-and-human-trafficking-in-the-nhs-supply-chain
[2] https://www.england.nhs.uk/long-read/system-guidance-for-the-implementation-of-framework-host-management/

its extensive buying power to mitigate the risk of modern slavery in their supply chains. When the NHS identifies and mitigates risk, a clear signal is sent to suppliers that the NHS will not tolerate human rights abuses in its supply chains. That will create an incentive for suppliers to review and improve their practices.

5.5 As well as supporting the NHS to identify and mitigate risk with a view to resolving issues, the intention of these regulations is to send a signal to suppliers that the NHS will not tolerate human rights abuses in its supply chains and to create a significant incentive for those suppliers to review and improve their practices.

What was the previous policy, how is this different?

5.6 Government efforts to address modern slavery in its supply chains are included in both legislation and in policy.

5.7 The Procurement Act 2023 provides a statutory duty to apply exclusion grounds (either mandatory or discretionary) of suppliers who have committed human rights offences. NHS bodies are in scope of this requirement, but procurement of health services are not.

5.8 Procurement Policy Note (PPN) 009: Tackling Modern Slavery in Government Supply Chains[3] sets out how UK Government departments must take action to ensure modern slavery risks are identified and managed in government supply chains. NHS bodies are in scope of the requirements within this PPN, but it is not universally adopted.

5.9 The purpose of these regulations is to extend existing government efforts to all NHS supply chains. The regulations will therefore interact with different areas of existing legislation on procurement and modern slavery and NHS-specific legislation but no changes to existing legislation is proposed.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 81 of the Health and Care Act 2022 (c. 31) inserted section 12ZC into the National Health Service Act 2006 (c. 41) (the "2006 Act"). Section 12ZC requires the Secretary of State to make regulations which he thinks appropriate with a view to eradicating the use in the health service in England of goods or services that are tainted by slavery and human trafficking ("the regulations").

6.2 Section 12ZC sets out that the regulations may include, in particular, provision in relation to:

a) procurement processes – in particular excluding suppliers from consideration where their goods or services have been tainted by slavery or human trafficking;

b) steps to be taken in order to assess and address risks – to make sure risks are actively and effectively handled; and

c) provisions which must be included in contracts with suppliers, which could include provisions allowing for the termination of contracts where modern slavery is found.

6.3 The regulations will need to be made using the affirmative procedure (see section 272(6)(zzf) of the 2006 Act).

[3] https://www.gov.uk/government/publications/ppn-009-tackling-modern-slavery-in-government-supply-chains

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes (under section 12ZC of the 2006 Act, the Secretary of State must make regulations).

7. Consultation

Summary of consultation outcome and methodology

7.1 There has been extensive consultation[4] on the draft regulations and draft guidance.

7.2 Public consultation[5] invited views from public bodies, suppliers and interested members of the public. The government's response to feedback received via the consultation has been published on the same page.

7.3 We have engaged directly with other departments - including Cabinet Office, Home Office, Foreign, Commonwealth and Development Office and the Department of Business and Trade - to ensure alignment with existing policy, legislation and operational activities.

7.4 The consultation response report provides a summary of the consultation responses received and our government response. Any changes made are largely technical or superficial amendments to add further clarity to the draft regulations or guidance, including:

- updated references to existing policies
- clarity of the scope and application of the regulations and guidance
- additional information regarding catalogue procurements
- additional information on the approach to 'reasonable steps'
- additional information in relation to key performance indicators (KPIs), contract management, and audits and intelligence
- reference to the Transparency in supply chains (TISC)[6] guidance

8. Applicable Guidance

8.1 There is no statutory requirement to lay guidance in relation to the powers, but the regulations will require public bodies to have regard to the statutory guidance. The draft guidance was included as part of the consultation. The draft guidance has been updated in line with the feedback received and published on NHSengland.uk - NHS England » Tackling modern slavery in NHS procurement[7].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

[4] https://www.gov.uk/government/consultations/tackling-modern-slavery-in-nhs-procurement-proposed-regulations-and-guidance
[5] https://www.gov.uk/government/consultations/tackling-modern-slavery-in-nhs-procurement-proposed-regulations-and-guidance
[6] https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide
[7] https://www.england.nhs.uk/publication/tackling-modern-slavery-in-nhs-procurement/

9.2 The impact on the public sector is calculated based on the familiarisation costs. This impact is expressed as the cost of time which is based on the average salary of commercial professionals who will be assessing and mitigating the modern slavery risks. Some net costs of implementing a risk assessment tool have been included in the assessment.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because the regulations will impose a duty on public bodies only. Businesses may experience increased monitoring of supply chain risks. All efforts will be carried out in a proportionate and relevant manner, and in line with existing risk management practices, to ensure that no undue burden is imposed on suppliers.

9.4 The legislation does not impact small or micro businesses directly and impact is mitigated as per paragraph 9.2.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is included in the impact assessment. This outlines an intention to carry out a post implementation review following implementation of the regulations to determine whether training implementation uptake has been successful and to ensure that all relevant procurements are risk assessed. Following the post implementation review, further monitoring will be carried out to determine whether further intervention or improvement is required to achieve the policy objectives.

10.2 Throughout the implementation stage, monitoring will be carried out to assess the level of uptake of training offers. Evaluation will be carried out following one year after implementation to determine whether uptake of training has been satisfactory (+80%). Following the implementation of a standardised risk assessment tool, the evaluation will also determine whether all in-scope procurements have been risk assessed.

10.3 Further intervention seeking to improve outcomes of the policy will be taken based on the findings of the evaluation.

10.4 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Commitment - A commitment[8] was made in Parliament, confirming government's intent and commitment to fulfilling the duties under section 12ZC of the National Health Service Act 2006.

11.2 Enforcement – The duty to assess and manage risks will be a legal requirement for all public bodies who fall in scope and procure goods and services for the NHS. Failure to do so will be a breach of law and could result in legal challenge by way of judicial

[8] Statement made in the House of Commons 21 November 2024
https://questions-statements.parliament.uk/written-statements/detail/2024-11-21/hcws245

Statement made in the House of Lords 21 November 2024
https://questions-statements.parliament.uk/written-statements/detail/2024-11-21/hlws242

review. Public bodies will be required to have regard to guidance to ensure compliance. This guidance will set out what measures are available to take when managing modern slavery risks. Public bodies may comply with the requirements of the regulations by excluding suppliers breaching modern slavery laws. Contracts may also be terminated if suppliers fail to address modern slavery concerns.

12. European Convention on Human Rights

12.1 The Minister of State for Health (Secondary Care) has made the following statement regarding Human Rights:

"In my view the provisions of the National Health Service (Procurement, Slavery and Human Trafficking) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").