EXPLANATORY MEMORANDUM TO

THE SLAVERY AND HUMAN TRAFFICKING (DEFINITION OF VICTIM) REGULATIONS 2022

2022 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 utilise delegated power conferred by section 69(1) of the Nationality and Borders Act 2022 to set out definitions for the terms "victim of slavery" and "victim of trafficking". These definitions ensure that modern slavery provisions in Part 5 of the Nationality and Borders Act 2022 (the 2022 Act), which rely on these definitions, can function in practice.

3. Matters of special interest to Parliament

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is UK wide.

5. European Convention on Human Rights

5.1 Rachel Maclean, Minister for Safeguarding, has made the following statement regarding Human Rights:

"In my view the provisions of the Slavery and Human Trafficking (Definition of Victim) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Measures relating to modern slavery in the 2022 Act rely on the terms "victim of slavery" and "victim of human trafficking" for legislative clarity. Section 69 of the 2022 Act confers a power on the Secretary of State to set out the meaning of "victim of slavery" and "victim of trafficking" by affirmative Regulations. This instrument invokes that power to set out a definition for the aforementioned terms, for the purposes of identification, protection and support of victims, that are consistent with the 2022 Act, Modern Slavery Act (MSA) 2015 and all Modern Slavery Statutory Guidance.

7. Policy background

What is being done and why?

7.1 The 2022 Act confers a power to set out the meaning of "victim of slavery" and "victim of human trafficking" for the purposes of the Act.

7.2 Currently, definitions of "victim of slavery" and "victim of human trafficking" are outlined in section 56 of the MSA 2015 and are based on the criminal offences,

therefore a victim is defined through the committing of an offence. For example, under section 56, a person is a victim of slavery if he or she is a victim of conduct which constitutes an offence under section 1 of the MSA 2015, or conduct which would have constituted an offence under that section if that section had been in force when the conduct occurred.

7.3 However, for the purposes of identifying and supporting victims we require definitions that enable victims to be identified as such whether or not a threshold of criminality has been evidenced and that align with the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT). The section 56 definition requires evidence of conduct amounting to a criminal offence which is not a requirement for the purposes of victim identification.

7.4 This instrument will provide the definitions for "victim of slavery" and "victim of human trafficking" that align with existing statutory guidance and international obligations without the dependence on criminal activity that features in the definitions in section 56 of the MSA 2015.

7.5 The definitions of victim for the purposes of identification and support currently being utilised operationally more closely align with those contained within ECAT and the Palermo Protocol.1 These definitions draw from victim identification indicators. For example, setting out the methods of the threat or use of force or other coercive behaviour that include abduction, kidnap or false imprisonment; fraud or other deception; abuse of power or a position of vulnerability; the giving of payments or other benefits to achieve the consent of a person who has control over the victim. Therefore, when drafting the proposed definitions, we have sought to define the terms using the MSA 2015, operational practices and our international obligations.

7.6 The definitions in these Regulations will be used operationally when identifying and providing support to victims. This definition will provide more clarity and certainty to victims of modern slavery or trafficking, and will provide those involved in identifying victims through the National Referral Mechanism and modern slavery stakeholders (charities, NGO's etc.) clear parameters and terms to rely upon in the implementation of modern slavery policies. This will help provide legal certainty in operationalising Part 5 of the 2022 Act.

7.7 The revised definitions will not be used by the criminal justice system since the proposed definition will only apply to the modern slavery provisions in the 2022 Act, relating to the identification and support of victims and sections 48-53 of the MSA 2015 (rather than sections 1-2 of the MSA 2015, which relate to the offences of slavery, servitude and forced or compulsory labour, to which section 56 is currently linked). The criminal definitions contained within the MSA 2015 do not correspond with the process of identification and support since the terms currently rely upon the prosecution or conviction of an individual perpetrator.

7.8 The benefit of this approach is that, by aligning these definitions, for the purposes of Part 5 of the 2022 Act, with international definitions, we are seeking to make operational practice run more smoothly

[1] The Palermo Protocol is a United Nations (UN) protocol to prevent, suppress and punish trafficking in human beings, especially women and children, supplementing the UN Convention against Transnational Organized Crime and its Protocols.

7.9 Crucially, the instrument also ensures that the relevant provisions in the 2022 Act can function in practice by providing a clear definition, without which the modern slavery provisions in the 2022 Act will contain an undefined term. This could lead to misinterpretation of the terms by those applying modern slavery policies and risk a lack of legislative clarity.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 We did not undertake a formal consultation. However, we engaged with stakeholders through the policy development process. This included: the Victim Support Modern Slavery Strategy Implementation Group. This is made up of key voices in the sector including victim support charities, NGOs and support providers. They agreed that ECAT and the Palermo Protocol accurately represented their understanding of a "victim" and highlighted specific indicators, and we have reflected this within the draft definition. Changes to align more with international definition under ECAT were welcomed. We also engaged with Modern Slavery Organised Immigration Crime (MSOIC) police leads, Crown Prosecution Service, Home Office Colleagues including Immigration Enforcement, Homeland security and Home Office Lawyers, and the Gangmasters and Labour Abuse Authority (GLAA). We have sought to thoroughly identify potential risks from wider engagement with stakeholders, to ensure there are no unintended consequences or impacts from this SI.

11. Guidance

11.1 The statutory guidance issued under section 49 of the MSA 2015 will be updated to reflect the provisions in these regulations. This will ensure references to the legislative provisions that set out the definitions for "victim of slavery" and "victim of human trafficking" refer to this instrument.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Equalities Impact Assessment has been completed in developing this policy.

12.4 An Economic Impact Assessment has not been completed, as we assess that there is no significant impact on the private, voluntary sector or public sector. The change in the legal definition of victim of human trafficking and victim of slavery will have an insignificant impact on businesses, charities and voluntary bodies and the police. This is because the new definitions will be used for identification and support by decision makers in the NRM process, the change will not impact on the operational definition of victim of human trafficking and victim of modern slavery as decision makers already use these definitions through guidance and international definitions. There may be some familiarisation costs, for decision makers, associated with the

introduction of the victim definition to the MSA 2015. These are minimal because the definition, which is currently used for operational purposes found in Modern Slavery: Statutory Guidance for England and Wales (issued under section 49 of the MSA 2015) and Non-Statutory Guidance for Scotland and Northern Ireland, will be unchanged.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Government will continue to monitor and review the secondary legislation as to its impact on the identification of victim of modern slavery or human trafficking through the National Referral Mechanism.

15. Contact

15.1 Edward Fairhead at the Home Office email: Edward.Fairhead@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Charlotte Breen Deputy Director for the Modern Slavery Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean, Minister for Safeguarding at the Home Office can confirm that this Explanatory Memorandum meets the required standard.