EXPLANATORY MEMORANDUM TO

THE MAGISTRATES' COURTS (MODERN SLAVERY ACT 2015) RULES 2015

2015 No. 1478 (L. 17)

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Modern Slavery Act 2015 introduces new civil orders which enable restrictions to be imposed by the court on individuals convicted of a slavery or trafficking offence (the slavery and trafficking prevention order), or those who have not been convicted of a slavery or trafficking offence but are considered likely to commit such an offence if not restrained (the slavery and trafficking risk order). These Rules contain provision for the procedure for applications to the court for the new orders.

3. Matters of Special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 144 of the Magistrates' Courts Act 1980 allows the Lord Chief Justice with the concurrence of the Lord Chancellor to make rules regulating and prescribing the practice and procedure of Magistrates' Courts, except in relation to any criminal cause or matter, or family proceedings. These Rules are made under that power, as extended by specific provision in the Modern Slavery Act 2015 explained below. Applications for slavery and trafficking prevention orders and slavery and trafficking risk orders are by virtue of sections 15(5) and 23(4) to be made by complaint. The basic procedure for proceedings by way of complaint is contained in the Magistrates' Courts Rules 1981, and these Rules cover only the essential additional matters required for the new orders.

4.2 Sections 14 to 34 of the Modern Slavery Act 2015 make provision for slavery and trafficking prevention orders and slavery and trafficking risk orders.

4.3 Section 15 of the Modern Slavery Act 2015 provides that a slavery and trafficking prevention order may be made on application to a Magistrates' Court. One of the requirements for the making of an order is that the defendant is a "relevant offender", as defined by section 16. Section 16 defines a relevant offender as a person convicted or cautioned (or who has had a finding made against them of either not guilty by reason of insanity or of having done the act but is under a disability) in respect of a slavery and human trafficking

offence as set out in Schedule 1 to the Modern Slavery Act 2015, or in respect of an equivalent offence under the law of countries outside the UK. Section 16(4)-(6) deals with applications where the offence is an equivalent offence outside the UK. Section 16(6) provides that the that an offence is an equivalent offence will be taken as met unless the defendant serves on the applicant a notice indicating why the defendant does not believe the condition is met, or unless the court permits the defendant to put the applicant to proof without a notice being served. Section 16(6)(a) of the Modern Slavery Act 2015 states that the time limit will be provided for by rules of court.

4.4 Section 32 of the Modern Slavery Act 2015 (Rules of court) creates a power to make rules to allow certain over 18s to appear in the youth court in relation to slavery and trafficking prevention orders and slavery and trafficking risk orders.

5 Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- What is being done and why

7.1 These Rules form part of the implementation of sections 14 to 34 of the Modern Slavery Act 2015, which make provision for slavery and trafficking prevention orders and slavery and trafficking risk orders. These orders are designed to give law enforcement authorities the necessary tools to protect the public by helping to prevent the harm caused by the commission of slavery and trafficking offences.

7.2 The slavery and trafficking prevention order made on application allows restrictions to be placed on persons who have been convicted, cautioned, or subject to a finding of fact in relation to a UK slavery and trafficking offence listed in Schedule 1 to the Modern Slavery Act 2015, or to an equivalent offence outside the UK, subject to the court's assessment of the criteria related to the risk of future harm. As noted at paragraph 4.3 above, rules of court are needed to support the provisions in relation to equivalent offences outside the UK, in particular to set out a time limit for a notice served by the defendant on the applicant stating why the conditions around an equivalent offence are not met.

7.3 Rules 2-3 set out the process whereby an applicant can challenge whether the condition around an equivalent non-UK offence has been met, and requirements about the information about this foreign conviction that the defendant must be sent. Rule 3 provides that the time limit for the notification

under section 16(6) Modern Slavery Act 2015 is 21 days after service on the defendant of the summons, unless the court decides to extend the deadline in the interests of justice. There is a reserve power for the court to set a deadline in the interests of justice in cases where no summons has been issued. Rule 2 sets out requirements to ensure that the defendant has the information necessary from the summons to consider whether to serve a notice under section 16(6)(a) by requiring that details of the equivalent offence be included by the applicant in the complaint and then in the summons.

7.4 Rules 4-5 make provision for youth courts to hear applications for slavery and trafficking prevention and risk orders in respect of those aged over 18 in line with the principles set out in section 32(1) Modern Slavery Act 2015. Under the Modern Slavery Act 2015, youth courts hear applications in relation to defendants under the age of 18.

7.5 Rule 4 allows a youth court to hear an application against person aged over 18, where it would be in the interests of justice to hear that application with an application against a person aged under 18.

7.6 Rule 5 sets out how a youth court can deal with a young person who turns 18 during an application. The youth court will continue to hear the application unless the court makes a direction to transfer the application to an adult magistrates' court or another youth court. Rule 5 sets out that the court must hold a hearing before an application can be transferred to an adult Magistrates' Court. In deciding whether to transfer the case the court will consider the stage which the proceedings have reached; the circumstances of the applicant and the defendant; and the need to ensure fairness between the applicant and the defendant.

- Consolidation

7.7 These Rules are in themselves largely new and self-contained. They do not directly amend the Magistrates' Courts Rules 1981, and there are no immediate plans to consolidate those rules.

8. Consultation outcome

8.1 As this instrument makes technical rules of court needed to implement the slavery and trafficking prevention orders and slavery and trafficking risk orders set out in the Modern Slavery Act 2015. Given the technical nature of the Rules, no public consultation has been carried out.

9. Guidance

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

9.2 Section 33 of the Modern Slavery Act 2015 requires the Secretary of State to issue guidance to chief officers of police, immigration officers and the Director General of the National Crime Agency in relation to the exercise of

their powers in relation to slavery and trafficking prevention and risk orders. This guidance is being prepared.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies or on the public sector from these Rules of Court, which simply make technical procedural rules needed to implement the slavery and trafficking prevention orders and slavery and trafficking risk orders set out in the Modern Slavery Act 2015.

10.2 An Impact Assessment has not been prepared for this instrument. However, a full impact assessment was carried out on the Modern Slavery Bill and this is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371057/MSB_IA.pdf

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and 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 Jane Wright at the Ministry of Justice Tel: 020 3334 3184 or email: jane.wright@justice.gov.gsi.uk can answer any queries regarding the instrument.