EXPLANATORY MEMORANDUM TO

THE MODERN SLAVERY ACT 2015 (DUTY TO CO-OPERATE WITH COMMISSIONER) REGULATIONS 2016

2016 No. 1043

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 The instrument places the Director of Labour Market Enforcement under a duty to co-operate with the Independent Anti-slavery Commissioner.

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 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The instrument is being made as part of the implementation of the Immigration Act 2016 which created the Director of Labour Market Enforcement.

5. Extent and Territorial Application

5.1 The instrument extends to the United Kingdom.

5.2 The instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 The Secretary of State has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Modern Slavery Act 2015 (Duty to co-operate with Commissioner) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 Section 43 of the Modern Slavery Act 2015 requires specified public authorities to cooperate with the Independent Anti-slavery commissioner in order for him to successfully undertake his duties. This may include requests for data and or reviewing how such bodies and authorities tackle modern slavery. The Government committed to keep the list of authorities under review and the list can be added to through regulations subject to the negative procedure, enabling the addition of other

authorities that have a key role to play in supporting the Commissioner in delivering his functions and supporting victim identification and the effective prosecution of offenders.

7.2 The Immigration Act 2016 created the statutory role of Director of Labour Market Enforcement, whose primary functions include setting the strategic direction for three labour market enforcement bodies (the Gangmasters and Labour Abuse Authority, Her Majesty's Revenue and Customs (in respect of the enforcement of national minimum wage legislation), and the Employment Agency Standards Inspectorate) and running an information hub to collate and disseminate information about non-compliance with legislation governing the labour market.

7.3 The Director of Labour Market Enforcement's remit will stretch across the whole of the labour market – including direct employment as well as labour providers – and the whole of the spectrum of non-compliance, from accidental infringement to serious criminality, including offences under sections 1 and 2 of the Modern Slavery Act 2015 (see sections 11A and 30A of that Act). As part of this, the Director will be responsible for assessing the scale and nature of non-compliance in the labour market and producing the annual strategy for the enforcement bodies, including the Gangmasters and Labour Abuse Authority which is already under a duty to co-operate with the Commissioner. To support the effectiveness of their work, we want to ensure that their role in tackling modern slavery is properly aligned with the role of the Commissioner.

7.4 The Independent Anti-slavery Commissioner must encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences and the identification of victims of those offences. Accordingly, the Commissioner has a broad role to look at the effectiveness of bodies working against modern slavery and make recommendations for improvements.

7.5 To support the Independent Anti-slavery Commissioner to fulfil this remit, we are adding the Director to the list of bodies with a duty to cooperate with the Commissioner. This will allow the Commissioner to request the Director to co-operate with him in any way that he considers necessary for the purposes of his functions. The Director must, where it is reasonably practicable to do so, comply with any such request.

Consolidation

7.6 As this is the first instrument to be made under the enabling power, the issue of consolidation does not arise.

8. Consultation outcome

8.1 The Home Office and the Department for Business, Innovation and Skills held a joint consultation on exploitation in the labour market from 13 October to 7 December 2015. This sought views on the Government's proposals for enhancing the capability of the existing framework to deal with individuals and businesses that breach labour market regulation. 93 responses were received, from a wide range of respondents including trade bodies/business representative organisations, labour providers, charities, academia, business, local and central government and trade unions. Alongside the consultation, the Government held two stakeholder events to listen to the views of business and non-governmental organisations about the proposals.

8.2 The Government received support for the proposals set out in the consultation, including creating the role of Director of Labour Market Enforcement to set the strategic priorities for the labour market enforcement bodies. The consultation also proposed supporting the Commissioner to fulfil his remit as part of the changes in labour market enforcement by ensuring that the Director was added to the list of bodies with a duty to cooperate with the Commissioner. The Government's response can be viewed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491260/BIS-16-11-government-response-to-tackling-exploitation-in-the-labour-market.pdf

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.

10.2 The impact on the public sector is minimal and indirect. There is no impact on the resources of the Commissioner. There may be a minimal impact on the resources of the Director in complying with any requests for co-operation made by the Commissioner.

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 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 Helen Harper at the Home Office Telephone: 020 7035 1934 or email: helen.harper@homeoffice.gsi.gov.uk, can answer any queries regarding this instrument.