EXPLANATORY MEMORANDUM TO

THE MODERN SLAVERY ACT 2015 (DUTY TO NOTIFY) (AMENDMENT) REGULATIONS 2016

2016 No. 762

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument corrects drafting errors in the Modern Slavery Act 2015 (Duty to Notify) Regulations 2015. Primarily, the Regulations clarify that only the consent of the principal victim is required when providing certain information under the duty.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument responds to drafting defects in the Modern Slavery Act (Duty to Notify) Regulations 2015 (S.I. 2015/1743) identified by the Joint Committee on Statutory Instruments in its ninth report of session 2015-2016 (HL Paper 57 / HC 352-ix) published on 20th November 2015. As the instrument simply corrects drafting errors identified by the Committee, it is subject to the free issue procedure.

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 amends the Modern Slavery Act 2015 (Duty to Notify) Regulations 2015.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 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 As explained at paragraph 3.1 above, the instrument simply corrects drafting errors identified by the Joint Committee on Statutory Instruments. It ensures that only the consent of the principal adult victim to whom a notification relates is necessary in order for a public authority to inform the Secretary of State about who they believe may be the perpetrators of the slavery or human trafficking, or who they believe are other victims of slavery and human trafficking by the same perpetrators. This reflects the underlying policy intention behind the duty to notify – to build a better intelligence picture of modern slavery in the UK and to enable a law enforcement response where necessary.

7.2 The instrument prevents the identification of adult victims without their consent to ensure that those victims are not dissuaded from accessing essential public services through a misplaced fear of a law enforcement response against them. It is not necessary for such safeguards to be extended to information provided by the principal victim about other victims of slavery or human trafficking by the same perpetrator, as this should not have any deterrent effect on those other victims. Nor is it necessary for any safeguards to be extended to information pertaining to suspected perpetrators. Indeed, the operation of the duty to notify may be the only way such victims come to the attention of law enforcement to enable appropriate action to be taken to safeguard them and convict those responsible. Due to the special vulnerability of child victims, their consent is not required for public authorities to identify them under the duty.

7.3 The instrument amends the original Regulations to give effect to the above and makes some further minor technical amendments to improve the clarity of the drafting and remove duplication.

Consolidation

7.4 As the amendments are relatively minor, the Department does not consider consolidation appropriate at this stage.

8. Consultation outcome

8.1 There has been no public consultation on the Regulations. The Modern Slavery Act 2015 was subject to pre-legislative scrutiny.

9. Guidance

9.1 This change will be reflected in guidance and forms on the gov.uk website.

10. Impact

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

10.2 The impact on the public sector is small – the Impact Assessment produced when the Draft Modern Slavery Bill was published estimated total costs of £36,000 per annum for all public authorities (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371057/MSB_IA.pdf).

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 Home Office has published a Modern Slavery Strategy and will review the effectiveness of the duty to notify and these regulations alongside the strategy. In addition, the provisions of the Act, and by extension these Regulations, will be subject to the normal post-legislative scrutiny three to five years after Royal Assent.

13. Contact

13.1 Harrison Cooter at the Home Office Telephone: 020 7035 0573 or email: harrison.cooter@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.