EXPLANATORY MEMORANDUM TO

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

2015 No. 1743

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 set out the information that is to be included as part of a notification by a specified public authority when discharging their duty under section 52 of the Modern Slavery Act 2015 ("the Act") - to notify the Secretary of State where they have reasonable grounds to believe that a person may be a victim of slavery or human trafficking.

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

3.1 None.

4. Legislative Context

4.1 These Regulations implement section 52 of the Act by setting out what information a notification to the Secretary of State must contain.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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 The Act seeks to improve the UK's response to modern slavery, including the identification and support of victims. It is estimated that there were 10-13,000 victims of modern slavery in the UK in 2013, with only 1746 potential victims referred to the National Referral Mechanism (NRM) (the non-statutory system through which victims

are identified and supported) in the same period.[1] Given the hidden nature of modern slavery, it is likely that only a small proportion of those who were victims of modern slavery in 2013 were encountered by public authorities and, of those, a smaller proportion will have been referred to the NRM. Reporting cases to the NRM not only provides victims of modern slavery with access to a range of support, it assists in developing our understanding of modern slavery, which can be used to improve our operational response and support for victims.

7.2 The Government, along with local partners and NGOs, is working to raise awareness of modern slavery. Section 52 of the Act will further improve identification of victims by creating a statutory duty for specified public authorities to notify the Secretary of State where they have reasonable grounds to believe that a person may be a victim of slavery or human trafficking. This will help raise awareness of modern slavery and build a more comprehensive picture of the nature and scale, to further inform the law enforcement response.

7.3 The public authorities to whom the duty applies, which are set out in section 52(5), are currently:

"(a) a chief officer of police for a police area,
(b) the chief constable of the British Transport Police Force,
(c) the National Crime Agency,
(d) a county council,
(e) a county borough council,
(f) a district council,
(g) a London borough council,
(h) the Greater London Authority,
(i) the Common Council of the City of London,
(j) the Council of the Isles of Scilly,
(k) the Gangmasters Licensing Authority."

Section 52(6) provides that "The Secretary of State may by regulations amend subsection (5) so as to—
(a) add or remove a public authority;
(b) amend the entry for a public authority."

The power to amend the list of public authorities has not been exercised.

7.4 These Regulations will set out what information specified public authorities should provide when discharging the duty set out in section 52 of the Act.

7.5 The Regulations provide the maximum extent of immunity to the reporter as may be imposed by the enabling legislation. Section 52(4)(a) of the Act permits the

[1] Data on potential victims who have been referred to the National Referral Mechanism are published by the National Crime Agency and are available at: http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics.

Regulations to provide the public authority with immunity from any cause of action under the law of confidence as a result of making a notification – regulation 3(3) does this.

7.6 No statutory immunity from defamation is considered necessary as the Department considers that the existing common law is sufficiently clear to protect a reporter who provides the information required by the Regulations. As a notification which names alleged perpetrators may be the commencement or form part of a criminal investigation, the Department considers that public authorities and their staff acting under the duty are likely to benefit from the protection of absolute privilege (see *Westcott v Westcott* [2008] EWCA Civ 818). Furthermore, the Act, in conjunction with the Regulations, imposes a legal duty between parties with a common interest (i.e. specified public authorities and the Secretary of State). This means that the reporter should have the protection of qualified privilege as a minimum – that is to say, provided the reporter acts without malice, the reporter should have a defence to any defamation claim under the common law.

- Consolidation

7.7 As this is the first instrument made under the relevant enabling power in the Act, consolidation is not applicable.

8. Consultation outcome

8.1 There has been no public consultation on the Regulations. The Act 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 The impact on business, charities or voluntary bodies is nil as the duty does not apply to them.

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 small business.

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

Suzanne Farrell at the Home Office Tel 020 7035 3445 or email: Suzanne.farrell7@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.