

EXPLANATORY MEMORANDUM TO

THE MODERN SLAVERY ACT 2015 (CODE OF PRACTICE) REGULATIONS 2016

2016 No. 823

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 This instrument brings into force a Code of Practice to be followed by constables and enforcement officers when arresting a person under the maritime enforcement powers set out in the Modern Slavery Act 2015 in relation to the England and Wales slavery and human trafficking offences.

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 Part 3 of the Modern Slavery Act 2015 sets out maritime enforcement powers for constables and enforcement officers to use in relation to ships on which slavery and/or human trafficking is suspected of taking, or having taken, place. There are separate powers in relation to England and Wales, Scotland and Northern Ireland respectively, although there are provisions for hot pursuit between territorial waters.
- 4.2 The maritime powers in relation to England and Wales are set out in section 35 and Part 1 of Schedule 2 to the Modern Slavery Act 2015. Paragraph 5 of that Schedule requires that a Code of Practice be prepared and issued about the practice to be followed by English and Welsh constables and enforcement officers when arresting a person under paragraph 4 of the Schedule, in particular what information needs to be given to the arrested person. Paragraph 4 provides a power to English and Welsh constables and enforcement officers to arrest without warrant any person whom the constable or officer has reasonable grounds to believe to be guilty of an offence under section 1 or 2 of that Act that has been, or is being, committed on the ship. This instrument is necessary to bring this Code into force.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom as Schedule 2 of the Modern Slavery Act 2015 extends to the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom. Whilst the Code concerns a power of arrest for modern slavery offences under the law of England and

Wales, the power can in limited circumstances (namely hot pursuit of a ship into Scotland or Northern Ireland waters) be exercised in Scotland waters or Northern Ireland waters.

6. European Convention on Human Rights

- 6.1 The Minister for Preventing Abuse, Exploitation and Crime has made the following statement regarding Human Rights:

“In my view the provisions of the Modern Slavery Act 2015 (Code of Practice) Regulations 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Code of Practice needs to be in place so that the maritime powers in respect of England and Wales can be commenced and used. The Government is also working with the Scottish Government and Northern Irish Executive with a view to commencing the maritime powers in Parts 2 and 3 of Schedule 2 simultaneously across the United Kingdom on 31 May 2016. The Government will ensure that this instrument is brought into force on the same date that Part 1 of Schedule 2 comes into force.
- 7.2 In the absence of the powers provided by Part 3 of the Modern Slavery Act 2015, law enforcement authorities do not have sufficient powers to effectively police modern slavery offences that take place in international waters, and do not have the power to stop or divert vessels in UK territorial waters.
- 7.3 This is an issue because victims may be trafficked on vessels, and also may be the subject of slavery, servitude and forced or compulsory labour while on board vessels. Extending law enforcement powers in relation to suspected slavery and human trafficking offences at sea will enable the police and other relevant bodies to better protect victims and bring offenders to justice.
- 7.4 Part 3 of the Modern Slavery Act 2015 provides for maritime enforcement powers in relation to ships where it is suspected that slavery or human trafficking is taking, or has taken, place. In summary these are: the power to stop, board, divert and detain a vessel, the power to search a vessel and obtain information and the power to make arrests and seize any relevant evidence.
- 7.5 The maritime enforcement provisions are divided between provisions for England and Wales, Northern Ireland and Scotland. For England and Wales, the Modern Slavery Act 2015 requires the preparation of a Code of Practice to ensure that constables and enforcement officers have clear information on what to do when exercising the power of arrest, including what information to give suspects at the point of arrest.
- 7.6 The Home Office has prepared the Code both to ensure that appropriate information is provided to arrested persons and to enable the commencement of important new legislative powers needed to better tackle slavery and human trafficking.

Consolidation

- 7.7 As this instrument simply brings into force a standalone Code of Practice no question of consolidation arises.

8. Consultation outcome

- 8.1 This instrument has not been the subject of consultation.
- 8.2 The Home Office has sought views from interested stakeholders on a draft of the Code of Practice. The draft Code of Practice was sent to operational law enforcement agencies that will be responsible for using the power of arrest, representatives of the legal profession, Devolved Administrations, and interested Government departments. Stakeholders were given four weeks to respond in writing and the opportunity to attend a meeting with officials to discuss the Code. The Home Office received responses or engaged orally at the meeting with operational law enforcement, interested Government departments and Devolved Administrations. In response to comment, the Code was amended to improve provisions for record keeping by constables and enforcement officers, and enhance the information to be provided to arrested persons on the period of time likely to be spent in transit to a police station or other authorised place of detention.

9. Guidance

- 9.1 No guidance has been prepared in relation to this instrument. However, the Code of Practice to which this instrument relates has been laid before Parliament.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is also no material impact on the public sector. When exercising a power of arrest, constables and enforcement officers are expected to provide appropriate information to the arrested person. The requirement for a Code under the Modern Slavery Act demonstrates that Parliament intended that this expectation would apply for arrests at sea as well as arrests on land. This instrument and accompanying Code simply provide the detail of how the power of arrest should be used.
- 10.3 A full impact assessment was carried out on the Modern Slavery Bill (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371057/MSB_IA.pdf). A separate 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 this instrument, will be subject to the normal post-legislative review three to five years after Royal Assent.

13. Contact

- 13.1 Maarit Virenius-Varela at the Home Office Telephone: 020 7035 3188 or email: Maarit.Virenius-Varela@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.