

HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part One – Offences

Aggravation as to human trafficking

Section 5: General aggravation of offence

31. **Section 5** makes provision for a statutory aggravation which applies in cases where an accused commits any other offence and that offence has a connection with a human trafficking offence. Where an indictment or complaint labels or specifies that an offence is aggravated by a connection with human trafficking activity and it is subsequently proved that the offence is aggravated in that way, the court must state on conviction that the offence is so aggravated, record the conviction in a way which shows that the offence is so aggravated, take the aggravation into account when determining the appropriate sentence and state the extent of any difference in the sentence in light of the aggravation (or, if there is no difference, the reasons for that) (subsections (1) and (5)).
32. Subsection (2) sets out the circumstances in which an offence can be regarded to have been aggravated by a connection with human trafficking. This relies on proof that the accused was motivated, in whole or in part, by the objective of committing or conspiring to commit the offence of human trafficking. In terms of subsection (3), it is not material to establishing the aggravation whether or not the offence of human trafficking was actually committed by the offender or another person.
33. Subsection (4) provides clarification that corroboration is not needed to prove that an offence is aggravated by a connection with human trafficking activity – evidence from a single source is sufficient. This is consistent with the existing law in relation to both corroboration and statutory aggravations. This position is under review pending further parliamentary scrutiny of the Criminal Justice (Scotland) Bill.

Section 6: Aggravation involving a child

34. **Section 6** provides that the offence of human trafficking may be aggravated by being committed against a child (being a person under 18). It must be labelled in an indictment or specified in a complaint that the offence is aggravated in that way and the aggravation must be proved using a single source of evidence. Where the aggravation is established, the court is required to state on conviction that the offence was aggravated by being committed against a child, take into account the aggravation when determining the appropriate sentence and record the conviction in a way that shows the offence is aggravated by being committed against a child. If the sentence imposed is different to the one which would have been imposed had the offence not been aggravated, the court must state the extent of and reasons for that difference or give the reasons for there being no difference.

Section 7: Aggravation involving public official

35. **Section 7** makes similar provision about a statutory aggravation which applies in cases where a public official, acting or purporting to act in the course of official duties, commits the offence of human trafficking.
36. Subsection (4) sets out the steps the court must take when it is libelled in an indictment or specified in a complaint that the offence of human trafficking is aggravated by an abuse of a public position and proved that the offence is so aggravated. These are similar to the steps which must be taken in relation to the general aggravation in section 5.
37. Subsection (5) defines those to be considered as a public official for the purposes of section 6, while subsection (6) defines the term “an international organisation” for the purposes of this section.
38. Subsection (7) enables the Scottish Ministers to modify by regulations the definition of who is a public official and the definition of an international organisation. Any such regulations will be subject to the affirmative procedure.