

HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part One – Offences

Human trafficking

Section 1: Offence of human trafficking

13. [Section 1](#) provides for a single offence of human trafficking for the purpose of all forms of exploitation of adults and children. See paragraph 5 above for existing offence legislation.
14. Subsection (1) defines the conduct which constitutes the offence of human trafficking. A person commits an offence if the person takes a relevant action with a view to the other person being exploited. It is irrelevant whether that other person consents to any part of the relevant action (subsection (2)). Subsection (2) defines “relevant action” as meaning—
 - recruiting another person;
 - transporting or transferring another person;
 - harbouring or receiving another person
 - exchanging or transferring control of another person;
 - arranging or facilitating of any of those actions.
15. Subsection (4) provides that the person takes a relevant action with a view to the other person being exploited only if the person intends to exploit the other person or the person knows or ought to know the other person is likely to be exploited (in any part of the world) during or after the relevant action.
16. Subsection (6)(a) provides that on summary conviction of the offence, the maximum penalty is imprisonment for a term not exceeding 12 months, a fine not exceeding the statutory maximum or both. Subsection (6)(b) provides that on conviction of the offence on indictment, the maximum penalty is imprisonment for life, or a fine, or both.

Section 2: Application of offence to conduct in United Kingdom and elsewhere

17. [Section 2](#) provides for the application of the human trafficking offence to conduct in the United Kingdom and elsewhere, reflecting the fact that human trafficking activity may involve activity that is completely or partly outwith Scotland. This measure implements the terms of Article 10(2)(c) (jurisdiction) of the Directive of the European Parliament

and of the Council on preventing and combating trafficking in human beings, and protecting victims, replacing Framework Decision 2002/629/JHA (“EU Directive”).¹

18. Subsections (1) and (2) provide that a UK national, a person who at the time of the offence was habitually resident in Scotland or a body incorporated under the law of a part of the UK, commits an offence of human trafficking regardless of where the relevant action takes place. Whether or not a person is “habitually resident” in Scotland will be determined in the light of all the facts and circumstances of the case.
19. Subsection (3) provides that any other person commits the offence of human trafficking only if any part of the relevant action takes place in the UK, or the relevant action is taken with a view to a person arriving in or entering into, departing from, or travelling within, the UK.

Section 3: Exploitation for purposes of offence of human trafficking

20. **Section 3** describes what constitutes exploitation for the purposes of the offence of human trafficking. By virtue of subsection (1), only exploitation of a type mentioned in subsections (2) to (8) is to be regarded as exploitation in this context.
21. Subsection (2) provides that a person is exploited if the person is the victim of conduct which involves the commission of an offence under section 4 of the Act (slavery, servitude and forced or compulsory labour) or would be if the conduct occurred in Scotland.
22. Subsections (3) to (5) deal with prostitution and sexual exploitation and provide that a person is exploited if—
 - another person exercises control, direction or influence over the first person’s prostitution in a way which shows that the other person is aiding, abetting or compelling the prostitution;
 - another person involves the first person in the making or production of obscene or indecent material; or
 - the person is the victim of conduct constituting one of a number of listed sexual offences (or which would constitute such an offence if that conduct occurred in Scotland).
23. The categories of exploitation related to prostitution and the making of indecent material are drawn from the existing offence in section 22 of the 2003 Act. The category related to other forms of exploitation in connection with sexual offences is a new development in Scots law, though has some precedent under the Sexual Offences Act 2003 in England and Wales.
24. Subsection (6) deals with exploitation relating to the removal of organs etc. It provides that a person is exploited in that context if they are encouraged, required or expected to do anything which involves the commission by any person of an offence under Part 1 of the Human Tissue (Scotland) Act 2006 which deals principally with removal of organs for transplantation. It also provides that a person is exploited if they are encouraged, required or expected to do anything in connection with the removal of a part of the human body as a result of which an offence under the law of Scotland is committed by any person. This latter category ensures that actions in connection with the removal of organs or tissue for purposes other than transplantation is caught by the trafficking offences. This covers the removal of body parts for research, sacrificial rites, consumption, etc. For these purposes, a part of the body comprises all parts of the body, including blood. Finally, subsection (6)(c) provides that a person is exploited if they are encouraged, required or expected to do anything which would constitute an offence mentioned above if it were done in Scotland.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

25. Subsections (7) and (8) make more general provision. Subsection (7) establishes that a person is exploited if force, threats or deception are used to induce the person to provide services or benefits or to enable another person to acquire benefits. Subsection (8) provides that a person is exploited if another person takes advantage of the fact that the person is a child or of an adult's vulnerability to use or attempt to use the child or vulnerable adult to provide services or benefits (or to enable another person to acquire benefits). This will ensure the offence captures those cases where the role of the person being exploited is entirely passive, and where the person is being used as a tool by which others can gain a benefit of any kind.
26. The categories of exploitation in subsections (6) to (8) are derived from section 4 of the 2004 Act.

Slavery, servitude and forced or compulsory labour

Section 4: Slavery, servitude and forced or compulsory labour

27. **Section 4** provides for an offence of slavery, servitude and forced or compulsory labour. Subsections (1) and (2) provide that a person is guilty of an offence if that person holds another person in slavery or servitude or requires that other person to perform forced or compulsory labour in circumstances which show that the first person knows or ought to know that the person is being so held. The offence must be interpreted in accordance with Article 4 of the European Convention on Human Rights. That Article prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour. This is currently an offence under section 47 of the 2010 Act, which was created in response to the case of *Siliadin v France*² (where the European Court of Human Rights held that there had been a violation of Article 4 in relation to the holding of an individual in domestic servitude).
28. Subsection (3) provides that, in assessing whether a person has been the victim of the offence, the court is to have regard to any of the alleged victim's characteristics that make the person more vulnerable than other people. Examples of these characteristics include the person being a child, age, health or family relationships.
29. Subsection (4) provides that consent to any of the acts alleged to constitute holding the person in slavery or servitude or requiring the person to perform forced or compulsory labour does not preclude a prosecution. Consent or otherwise of a victim may still be relevant in establishing the offence however.
30. Subsection (5) sets out the maximum penalty available on conviction of the offence of slavery, servitude and forced or compulsory labour. This is an increase from the current maximum penalty for the offence under section 47 of the 2010 Act. Subsection (5)(a) provides that on summary conviction of the offence, the maximum penalty is imprisonment for a term not exceeding 12 months, a fine not exceeding the statutory maximum, or both. Subsection (5)(b) provides that on conviction of the offence on indictment, the maximum penalty is imprisonment for life, a fine, or both.

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 libels 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

² Application no. 73316/01 <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69891>

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 libelled 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.