



Human Trafficking and Exploitation (Scotland) Act 2015

2015 asp 12

PART 2

PROTECTION OF VICTIMS

Prosecution of victims

8 Lord Advocate's instructions on prosecution of victims of offences

- (1) The Lord Advocate must issue and publish instructions about the prosecution of a person who is, or appears to be, the victim of an offence—
 - (a) of human trafficking,
 - (b) under section 4.
- (2) The instructions must in particular include factors to be taken into account or steps to be taken by the prosecutor when deciding whether to prosecute a person in the circumstances mentioned in subsections (3) and (4).
- (3) The circumstances are where—
 - (a) an adult does an act which constitutes an offence because the adult has been compelled to do so, and
 - (b) the compulsion appears to be directly attributable to the adult being a victim of an offence mentioned in subsection (1).
- (4) The circumstances are where—
 - (a) a child does an act which constitutes an offence, and
 - (b) the act appears to be done as a consequence of the child being a victim of an offence mentioned in subsection (1).
- (5) The Lord Advocate may from time to time revise the instructions.
- (6) In this section “prosecutor” means Lord Advocate, Crown Counsel or procurator fiscal (and any person duly authorised to represent or act for them).

Support and assistance for adult victims

9 Support and assistance: victims of offence of human trafficking

- (1) Where there are reasonable grounds to believe that an adult is a victim of an offence of human trafficking, the Scottish Ministers must, during the relevant period, secure for the adult the provision of such support and assistance as they consider necessary given the adult's needs.
- (2) The relevant period—
 - (a) begins on the date it is determined there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking, and
 - (b) ends on the earlier of the following—
 - (i) the end of the period specified in regulations made by the Scottish Ministers, or
 - (ii) the date on which there is a conclusive determination that the adult is or is not a victim of an offence of human trafficking.
- (3) The Scottish Ministers may also secure the provision of that support and assistance for an adult—
 - (a) during the period in which a competent authority is determining whether or not there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking,
 - (b) where the relevant period in relation to the adult ends by virtue of subsection (2)(b)(i), during the period until there is a conclusive determination that the adult is or is not a victim of an offence of human trafficking,
 - (c) for such period as they think appropriate after the conclusive determination.
- (4) Support and assistance may be provided under this section in connection with (but is not limited to) the following—
 - (a) accommodation,
 - (b) day to day living,
 - (c) medical advice and treatment (including psychological assessment and treatment),
 - (d) language translation and interpretation,
 - (e) counselling,
 - (f) legal advice,
 - (g) information about other services available to the adult,
 - (h) repatriation.
- (5) In securing the provision of support and assistance under this section to an adult, the Scottish Ministers must ensure that—
 - (a) support and assistance is only provided where the adult consents, and
 - (b) the provision of support and assistance is not made conditional on the adult assisting with a criminal investigation or prosecution.
- (6) For the purposes of this section—
 - (a) there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking if a competent authority has determined for the purposes of Article 10 of the Trafficking Convention (identification of victims) that there are such grounds,

- (b) there is a conclusive determination that an adult is or is not a victim of an offence of human trafficking when, on completion of the identification process required by that Article, a competent authority concludes that the adult is or is not such a victim.
- (7) In this section—
- “competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention,
 - “the Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005).
- (8) The Scottish Ministers may by regulations modify subsections (6) and (7) to make provision about the circumstances in which—
- (a) there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking,
 - (b) there is a conclusive determination that an adult is or is not a victim of an offence of human trafficking.
- (9) Regulations under subsection (8) may in particular make provision about—
- (a) the procedure to be followed by a person in making a determination,
 - (b) the criteria to be applied by a person in making a determination, and
 - (c) the persons who may make a determination or take any step in the procedure.

10 Support and assistance: victims of an offence under section 4

- (1) The Scottish Ministers may by regulations make provision about providing support and assistance to an adult who is, or appears to be, a victim of an offence under section 4.
- (2) Regulations under subsection (1) may in particular make provision about—
- (a) the method of determining whether an adult is, or appears to be, a victim of an offence under section 4,
 - (b) the period during which support and assistance must be provided,
 - (c) the period during which support and assistance may be provided,
 - (d) the types of support and assistance to be provided, and
 - (e) the manner in which the support and assistance is to be provided.

Support and assistance for child victims

11 Independent child trafficking guardians

- (1) The Scottish Ministers must make such arrangements as they consider reasonable to enable a person (an “independent child trafficking guardian”) to be appointed to assist, support and represent a child to whom subsection (2) applies.
- (2) This subsection applies to a child if a relevant authority determines that—
- (a) there are reasonable grounds to believe that the child—
 - (i) is, or may be, a victim of the offence of human trafficking, or
 - (ii) is vulnerable to becoming a victim of that offence, and
 - (b) no person in the United Kingdom is a person with parental rights or responsibilities in relation to the child.

Status: This is the original version (as it was originally enacted).

- (3) A relevant authority making a determination that subsection (2) applies in relation to a child must, as soon as reasonably practicable after doing so, take steps to bring that child to the attention of the person mentioned in subsection (4)(a).
- (4) The arrangements made under subsection (1) must—
- (a) provide for a person to appoint an independent child trafficking guardian for a child to whom subsection (2) applies,
 - (b) provide for an independent child trafficking guardian to be appointed as soon as reasonably practicable after a relevant authority brings the child to the attention of the person mentioned in paragraph (a), and
 - (c) ensure that the independent child trafficking guardian appointed is independent of any person who will be responsible for exercising functions under any enactment in relation to the child.
- (5) An independent child trafficking guardian appointed in relation to a child must at all times act in the best interests of the child.
- (6) A person responsible for exercising functions under any enactment in relation to a child for whom an independent child trafficking guardian has been appointed under this section must—
- (a) recognise, and pay due regard to the guardian’s functions, and
 - (b) provide the independent child trafficking guardian with access to such information relating to the child as will enable the guardian to carry out the guardian’s functions effectively.
- (7) The Scottish Ministers may by regulations make further provision about independent child trafficking guardians appointed under this section, including, in particular, provision about—
- (a) the appointment of an independent child trafficking guardian,
 - (b) the termination of that appointment,
 - (c) the conditions (including conditions as to training, qualifications and experience) to be satisfied for a person to be eligible for appointment as an independent child trafficking guardian,
 - (d) payments to be made to, or in respect of, an independent child trafficking guardian,
 - (e) the functions of an independent child trafficking guardian,
 - (f) the records that should be maintained by any person in relation to the appointment of an independent child trafficking guardian (including arrangements to maintain a register of independent child trafficking guardians),
 - (g) the circumstances in which—
 - (i) an independent child trafficking guardian appointed in relation to a person may continue to act after that person is no longer a child, and
 - (ii) the person who is no longer a child is to be treated as a child for the purposes of this section.
- (8) In this section—
- “person with parental rights or responsibilities”, in relation to a child, means—
- (a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the Children (Scotland) Act 1995,

- (b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the Children (Scotland) Act 1995,
 - (c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the Children (Scotland) Act 1995,
 - (d) a parent having parental responsibility for the child under Part 1 of the Children Act 1989,
 - (e) a person having parental responsibility for the child by virtue of—
 - (i) section 12(2) of the Children Act 1989,
 - (ii) section 14C of that Act, or
 - (iii) section 25(3) of the Adoption and Children Act 2002,
 - (f) a parent having parental responsibility for the child under Part 2 of the [Children \(Northern Ireland\) Order 1995 \(S.I. 1995/755\)](#),
 - (g) a person having parental responsibility for the child by virtue of Article 12(2) of the [Children \(Northern Ireland\) Order 1995 \(S.I. 1995/755\)](#),
 - (h) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007),
 - (i) any other person with rights or responsibilities anywhere in the world which are, in relation to a child, analogous to those described in paragraphs (a) to (h), and
 - (j) any other person specified by regulations made by the Scottish Ministers,
- “relevant authority” means—
- (a) a local authority, and
 - (b) any other person specified by regulations made by the Scottish Ministers.

12 Presumption of age

- (1) This section applies where—
 - (a) a relevant authority has reasonable grounds to believe that a person may be a victim of an offence of human trafficking, and
 - (b) the authority is not certain of the person’s age but has reasonable grounds to believe that the person may be a child.
- (2) Until an assessment of the person’s age is carried out by a local authority, or the person’s age is otherwise determined, the relevant authority must assume that the person is a child for the purposes of exercising its functions under the relevant enactments.
- (3) The “relevant enactments” are—
 - (a) an enactment which applies to a child who is looked after by a local authority within the meaning of section 17(6)(a) of the Children (Scotland) Act 1995 (child for whom a local authority is providing accommodation),
 - (b) section 22 of the Children (Scotland) Act 1995 (promotion by a local authority of welfare of children in need),
 - (c) section 25 of the Children (Scotland) Act 1995 (provision by a local authority of accommodation for children),
 - (d) Part 4 of the Children and Young People (Scotland) Act 2014 (provision of named persons),

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- (e) Part 5 of the Children and Young People (Scotland) Act 2014 (child’s plan),
and
 - (f) section 11.
- (4) In this section, “relevant authority” means—
- (a) a Health Board constituted under section 2(1) of the National Health Service (Scotland) Act 1978, and
 - (b) a local authority.
- (5) The Scottish Ministers may by regulations modify subsections (3) and (4).