



Modern Slavery Act 2015

2015 CHAPTER 30

PART 5

PROTECTION OF VICTIMS

45 Defence for slavery or trafficking victims who commit an offence

- (1) A person is not guilty of an offence if—
 - (a) the person is aged 18 or over when the person does the act which constitutes the offence,
 - (b) the person does that act because the person is compelled to do it,
 - (c) the compulsion is attributable to slavery or to relevant exploitation, and
 - (d) a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act.
- (2) A person may be compelled to do something by another person or by the person's circumstances.
- (3) Compulsion is attributable to slavery or to relevant exploitation only if—
 - (a) it is, or is part of, conduct which constitutes an offence under section 1 or conduct which constitutes relevant exploitation, or
 - (b) it is a direct consequence of a person being, or having been, a victim of slavery or a victim of relevant exploitation.
- (4) A person is not guilty of an offence if—
 - (a) the person is under the age of 18 when the person does the act which constitutes the offence,
 - (b) the person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and
 - (c) a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act.
- (5) For the purposes of this section—

Status: This is the original version (as it was originally enacted).

“relevant characteristics” means age, sex and any physical or mental illness or disability;

“relevant exploitation” is exploitation (within the meaning of section 3) that is attributable to the exploited person being, or having been, a victim of human trafficking.

- (6) In this section references to an act include an omission.
- (7) Subsections (1) and (4) do not apply to an offence listed in Schedule 4.
- (8) The Secretary of State may by regulations amend Schedule 4.

46 Special measures for witnesses in criminal proceedings

- (1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.
- (2) In section 17(4) (witnesses eligible for assistance on grounds of fear or distress about testifying) for “section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004” substitute “section 1 or 2 of the Modern Slavery Act 2015”.
- (3) In section 25(4)(a) (offences where court may direct evidence to be given in private) for “section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004” substitute “section 1 or 2 of the Modern Slavery Act 2015”.
- (4) In section 33(6)(d) (offences where certain witnesses presumed to be under 18) for “section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004” substitute “section 1 or 2 of the Modern Slavery Act 2015”.

47 Civil legal aid for victims of slavery

- (1) Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (availability of civil legal services) is amended as follows.
- (2) In Part 1 (services), after paragraph 32 insert—

“Victims of slavery, servitude or forced or compulsory labour

- 32A (1) Civil legal services provided to an individual in relation to an application by the individual for leave to enter, or to remain in, the United Kingdom where—
- (a) there has been a conclusive determination that the individual is a victim of slavery, servitude or forced or compulsory labour, or
 - (b) there are reasonable grounds to believe that the individual is such a victim and there has not been a conclusive determination that the individual is not such a victim.
- (2) Civil legal services provided in relation to a claim under employment law arising in connection with the conduct by virtue of which an individual who is a victim of slavery, servitude or forced or compulsory labour is such a victim, but only where—
- (a) the services are provided to the individual, or
 - (b) the individual has died and the services are provided to the individual’s personal representative.

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- (3) Civil legal services provided in relation to a claim for damages arising in connection with the conduct by virtue of which an individual who is a victim of slavery, servitude or forced or compulsory labour is such a victim, but only where—
- (a) the services are provided to the individual, or
 - (b) the individual has died and the services are provided to the individual’s personal representative.

Exclusions

- (4) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.
- (5) Sub-paragraphs (2) and (3) are subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1, 2, 3, 4, 5, 6 and 8 of that Part, and
 - (b) the exclusion in Part 3 of this Schedule.

Definitions

- (6) For the purposes of sub-paragraph (1)(b) there are reasonable grounds to believe that an individual is a victim of slavery, servitude or forced or compulsory labour if a competent authority has determined that there are such grounds.
- (7) For the purposes of sub-paragraph (1) there is a conclusive determination that an individual is or is not a victim of slavery, servitude or forced or compulsory labour when a competent authority concludes that the individual is or is not such a victim.
- (8) For the purposes of this paragraph “slavery”, “servitude” and “forced or compulsory labour” have the same meaning as they have for the purposes of article 4 of the Human Rights Convention.
- (9) The “Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4 November 1950, as it has effect for the time being in relation to the United Kingdom.
- (10) The definitions of “competent authority”, “employment”, “employment law” and “personal representative” in paragraph 32(8) also apply for the purposes of this paragraph.”
- (3) In Part 3 (advocacy: exclusion and exceptions), in paragraph 13 for “or 32(1)” substitute “, 32(1) or 32A(1)”.

48 Independent child trafficking advocates

- (1) The Secretary of State must make such arrangements as the Secretary of State considers reasonable to enable persons (“independent child trafficking advocates”) to be available to represent and support children who there are reasonable grounds to believe may be victims of human trafficking.

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- (2) In making arrangements under subsection (1) the Secretary of State must have regard to the principle that, so far as practicable, a child should be represented and supported by someone who is independent of any person who will be responsible for making decisions about the child.
- (3) The arrangements may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.
- (4) A person appointed as an independent child trafficking advocate for a child must promote the child's well-being and act in the child's best interests.
- (5) The advocate may (where appropriate) assist the child to obtain legal or other advice, assistance and representation, including (where necessary) by appointing and instructing legal representatives to act on the child's behalf.
- (6) The Secretary of State must make regulations about independent child trafficking advocates, and the regulations must in particular make provision—
 - (a) about the circumstances in which, and any conditions subject to which, a person may act as an independent child trafficking advocate;
 - (b) for the appointment of a person as an independent child trafficking advocate to be subject to approval in accordance with the regulations;
 - (c) requiring an independent child trafficking advocate to be appointed for a child as soon as reasonably practicable, where there are reasonable grounds to believe a child may be a victim of human trafficking;
 - (d) about the functions of independent child trafficking advocates;
 - (e) requiring public authorities which provide services or take decisions in relation to a child for whom an independent child trafficking advocate has been appointed to—
 - (i) recognise, and pay due regard to, the advocate's functions, and
 - (ii) provide the advocate with access to such information relating to the child as will enable the advocate to carry out those functions effectively (so far as the authority may do so without contravening a restriction on disclosure of the information).
- (7) The Secretary of State must, no later than 9 months after the day on which this Act is passed, lay before Parliament a report on the steps the Secretary of State proposes to take in relation to the powers conferred by this section.

49 Guidance about identifying and supporting victims

- (1) The Secretary of State must issue guidance to such public authorities and other persons as the Secretary of State considers appropriate about—
 - (a) the sorts of things which indicate that a person may be a victim of slavery or human trafficking;
 - (b) arrangements for providing assistance and support to persons who there are reasonable grounds to believe may be victims of slavery or human trafficking;
 - (c) arrangements for determining whether there are reasonable grounds to believe that a person may be a victim of slavery or human trafficking.
- (2) The Secretary of State may, from time to time, revise the guidance issued under subsection (1).

- (3) The Secretary of State must arrange for any guidance issued or revised under this section to be published in a way the Secretary of State considers appropriate.
- (4) If the Secretary of State makes regulations under section 50, the references in subsection (1) to “arrangements” include arrangements under the regulations.

50 Regulations about identifying and supporting victims

- (1) The Secretary of State may make regulations providing for assistance and support to be provided to persons—
 - (a) who there are reasonable grounds to believe may be victims of slavery or human trafficking;
 - (b) who are victims of slavery or human trafficking.
- (2) The Secretary of State may make regulations providing for public authorities to determine (for the purposes of regulations under subsection (1) or other purposes specified in the regulations) whether—
 - (a) there are reasonable grounds to believe that a person may be a victim of slavery or human trafficking;
 - (b) a person is a victim of slavery or human trafficking.
- (3) Regulations under subsection (2) may in particular make provision about the public authorities who may make such determinations, and the criteria and procedure for doing so.

51 Presumption about age

- (1) This section applies where—
 - (a) a public authority with functions under relevant arrangements has reasonable grounds to believe that a person may be a victim 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 under 18.
- (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 public authority must assume for the purposes of its functions under relevant arrangements that the person is under 18.
- (3) “Relevant arrangements” means arrangements for providing assistance and support to persons who are, or who there are reasonable grounds to believe may be, victims of human trafficking, as set out in—
 - (a) guidance issued under section 49(1)(b);
 - (b) any regulations made under section 50(1).
- (4) “Local authority” has the same meaning as in the Children Act 1989 (see section 105 of that Act).

52 Duty to notify Secretary of State about suspected victims of slavery or human trafficking

- (1) If a public authority to which this section applies has reasonable grounds to believe that a person may be a victim of slavery or human trafficking it must notify—
 - (a) the Secretary of State, or

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- (b) if regulations made by the Secretary of State require it to notify a public authority other than the Secretary of State, that public authority.
- (2) The Secretary of State may by regulations make provision about the information to be included in a notification.
- (3) Regulations under subsection (2) must provide that a notification relating to a person aged 18 or over may not include information that—
 - (a) identifies the person, or
 - (b) enables the person to be identified (either by itself or in combination with other information),
 unless the person consents to the inclusion of the information.
- (4) Regulations under subsection (2)—
 - (a) may provide that a public authority which includes information in a notification in accordance with the regulations does not breach any obligation of confidence owed by the public authority in relation to that information;
 - (b) may not require or authorise the inclusion of information which contravenes any other restriction on the disclosure of information (however imposed).
- (5) This section applies to—
 - (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.
- (6) 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.

53 Overseas domestic workers

- (1) Immigration rules must make provision for leave to remain in the United Kingdom to be granted to an overseas domestic worker—
 - (a) who has been determined to be a victim of slavery or human trafficking, and
 - (b) in relation to whom such other requirements are met as may be provided for by the rules.
- (2) Immigration rules must make provision as to the conditions on which such leave is to be granted, and must in particular provide—
 - (a) that the leave is to be for the purpose of working as a domestic worker in a private household;
 - (b) for a person who has such leave to be able to change employer (subject to paragraph (a)).

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

- (3) Immigration rules may specify a maximum period for which a person may have leave to remain in the United Kingdom by virtue of subsection (1).

If they do so, the specified maximum period must not be less than 6 months.

- (4) For the purposes of this section an overseas domestic worker has been determined to be a victim of slavery or human trafficking if a public authority has determined that he or she is such a victim—

- (a) under regulations made under section 50(2)(b), or
- (b) where no such regulations apply, under arrangements identified in the immigration rules.

- (5) The Secretary of State must issue guidance to persons having functions under the Immigration Acts about the exercise of those functions in relation to an overseas domestic worker who may be a victim of slavery or human trafficking.

- (6) The guidance must provide for a period during which no enforcement action should be taken against such an overseas domestic worker in respect of his or her—

- (a) remaining in the United Kingdom beyond the time limited by his or her leave to enter or remain, or
- (b) breaching a condition of that leave relating to his or her employment, if he or she did so because of the matters relied on as slavery or human trafficking.

- (7) In this section—

“enforcement action” has the meaning given by section 24A of the Immigration Act 1971;

“immigration rules” has the same meaning as in that Act;

“overseas domestic worker” means a person who, under the immigration rules, has (or last had) leave to enter or remain in the United Kingdom as—

- (a) a domestic worker in a private household, or
- (b) a private servant in a diplomatic household.