

*These notes refer to the Human Trafficking and Exploitation
(Criminal Justice and Support for Victims) Act (Northern Ireland)
2015 (c.2) which received Royal Assent on 13 January 2015*

Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

EXPLANATORY NOTES

OVERVIEW

6. The Act has 28 sections and five Schedules and is divided into five Parts.

Part 1

Sections 1 to 4 establish new offences of human trafficking and slavery, servitude and forced or compulsory labour. The principle aim of these sections is to simplify the legislative framework to make it easier for investigators and prosecutors to bring cases against perpetrators. They replace the former offences of human trafficking (under sections 57 to 59 of the Sexual Offences Act 2003 and section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004) and of slavery, servitude and forced or compulsory labour (under section 71 of the Coroners and Justice Act 2009) which are subsequently repealed. Together these sections:

- introduce a new offence of slavery, servitude and forced or compulsory labour which is triable on indictment only;
- introduce a new consolidated offence of human trafficking which is also triable on indictment only;
- define what constitutes exploitation, for the purposes of an offence of human trafficking; and
- introduce a new preparatory offence, of committing an offence with intent to commit a human trafficking or slavery-like offence.

Sections 5 to 7 make provision in relation to the sentencing of offenders convicted of an offence under sections 1 and 2 and will enhance the range of sentencing options available to the courts. Section 5 specifies the new offences as serious offences under Schedule 1 to the Criminal Justice (Northern Ireland) Order 2008 and as violent or sexual offences under Schedule 2 to that Order (as appropriate). This will allow the courts to hand down life sentences, indeterminate custodial sentences and extended custodial offences. Section 6

sets out a range of aggravating factors which the courts must consider when passing a sentence for an offence of human trafficking or slavery, servitude and forced or compulsory labour. Section 7 sets out that the courts must sentence adult offenders, who have been convicted of an offence of human trafficking or of slavery, servitude and forced or compulsory labour, to a minimum of two years in prison, unless exceptional circumstances apply.

Sections 8 to 10 make provision for a range of orders that courts could impose upon conviction for a human trafficking or slavery-like offence. Section 8 amends the Proceeds of Crime Act 2002 insofar as it relates to Northern Ireland to specify human trafficking and slavery-like offences as “criminal lifestyle offences”. This will improve the court’s ability to order the confiscation of criminal assets and so help to undermine the economic motivation that fuels the exploitation of people. Section 9 introduces Schedule 1 to the Act and makes provision for the forfeiture of a vehicle, ship or aircraft used, or intended for use, in connection with a human trafficking or slavery-like offence. Section 10 introduces Schedule 2 to the Act and makes provision for courts in Northern Ireland to order perpetrators of human trafficking or slavery-like offences to pay compensation to their victims.

Sections 11 to 14 make provision in respect of prevention and enforcement relating to human trafficking and slavery-like offences. Section 11 makes provision for the introduction of Slavery and Trafficking Prevention Orders, under Schedule 3 to the Act, which would enable courts to restrict the behaviour of any individual convicted of a human trafficking or slavery like offence where it is considered necessary. Section 12 requires the Department of Justice to publish an annual strategy to tackle human trafficking and slavery, servitude and forced or compulsory labour. Section 13 is intended to enhance our understanding of the scale and nature of human trafficking and slavery-type practices in Northern Ireland by placing a duty on specified public authorities to notify the National Crime Agency of any suspected victims of these offences. Section 14 makes clear that the investigation and prosecution of relevant offences is not contingent upon a report by a victim or their co-operation in criminal proceedings.

Part 2

Section 15 creates a new offence of purchasing sexual services to reduce demand for trafficked individuals and combat exploitation. It amends various Articles of the Sexual Offences (Northern Ireland) Order 2008 and creates a duty in the Act to raise public awareness of the new offence and report to the Assembly on the operation and impact of the new offence.

Section 16 introduces a new offence of forced marriage.

Part 3

Sections 17 to 21 make provision in respect of the assistance and support that is to be made available to victims and potential victims of human trafficking. Section 17 sets out definitions for this part of the Act.

Section 18 places a statutory duty on the Department of Justice to provide assistance and support to adults who are potential victims of human trafficking, during a 45 day “recovery and reflection” period, pending determination of their status as victims by a competent authority. This is in line with the United Kingdom’s responsibilities under Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings (under which the United Kingdom has established a National Referral Mechanism for the identification of victims of human trafficking).

Section 19 requires the Department for Health, Social Services and Public Safety to prepare and publish a strategy, in conjunction with other Northern Ireland Departments, which will provide a programme of assistance and support made available to a person who wishes to leave prostitution. Each Department will be responsible for delivering the aspects of the programme which fall within their remit.

Section 20 requires the Department of Justice to produce guidance in respect of compensation for victims of human trafficking. Section 21 makes provision for an independent guardian to be appointed for a child who is a victim, or a potential victim, of human trafficking, or who is determined to be a separated child.

Part 4

Sections 22 to 24 are intended to protect victims of human trafficking and slavery-like offences in criminal investigations and proceedings.

Section 22 creates a statutory defence for victims of human trafficking and slavery-like offences who have been compelled to commit certain other offences as a direct consequence of their trafficking or slavery situation. The defence will not apply in cases where the offence in question would attract a maximum sentence of five years or more, with a limited number of exceptions. Section 23 places a duty on the Chief Constable to ensure that, during an investigation of a human trafficking or slavery-like offence, the complainant receives specific treatment aimed at preventing secondary victimisation. Section 24 amends the Criminal Evidence (Northern Ireland) Order 1999 to ensure that victims of human trafficking and slavery-like offences are automatically eligible for special measures in court when giving evidence.

Part 5

Sections 25 to 28 of the Act make supplementary provision covering interpretation; amendments, repeals and consequential provision; orders; short title and commencement.