

Draft Regulations laid before the Scottish Parliament under section 41(2) of the Human Trafficking and Exploitation (Scotland) Act 2015, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

CRIMINAL LAW

**The Human Trafficking and Exploitation (Scotland) Act 2015
(Relevant Trafficking or Exploitation Offences and Relevant UK
Orders) Regulations 2017**

Made - - - - 2017

Coming into force - - 30th June 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(2) and 33(1) of the Human Trafficking and Exploitation (Scotland) Act 2015(a) and all other powers enabling them to do so.

In accordance with section 41(2) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Human Trafficking and Exploitation (Scotland) Act 2015 (Relevant Trafficking or Exploitation Offences and Relevant UK Orders) Regulations 2017 and come into force on 30th June 2017.

(2) In these Regulations “the Act” means the Human Trafficking and Exploitation (Scotland) Act 2015.

Relevant trafficking or exploitation offences

2. In section 16(1) of the Act (relevant trafficking or exploitation offence)—

(a) after paragraph (f), insert—

“(fa)under section 62 of that Act(b) (committing an offence with intent to commit a sexual offence) where the relevant sexual offence the person had the intention of committing was an offence under section 57, 58, 58A, 59 or 59A of that Act(c),”;
and

(a) 2015 asp 12.

(b) The Sexual Offences Act 2003 (c.42).

(c) Section 59A was substituted for sections 57, 58 and 59, in so far as they applied in England and Wales, by section 109(2) of the Protection of Freedoms Act 2012 (c.9). Section 59A was repealed by paragraph 5(2) of schedule 5 of the Modern Slavery Act 2015 (c.30). Section 58A was inserted by section 6(1) of the Criminal Justice Act (Northern Ireland) 2013 (c.1) (N.I.). Sections, 57, 58, 58A and 59, in so far as they applied in Northern Ireland, were repealed by schedule 5 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2) (N.I.).

(b) after paragraph (i), insert—

- “(ia) under section 1, 2 or 4 of the Modern Slavery Act 2015^(a) (slavery, servitude and forced or compulsory labour; human trafficking),
- (ib) under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015^(b) (slavery, servitude and forced or compulsory labour; human trafficking),”.

Relevant UK orders

3. In section 32(2) of the Act (offences), after “order” in paragraph (d) insert—

- “,
- (e) an order under section 14 or 15 of the Modern Slavery Act 2015^(c) (slavery and trafficking prevention orders),
- (f) an order under section 21 of that Act (interim slavery and trafficking prevention orders),
- (g) an order under section 23 of that Act^(d) (slavery and trafficking risk orders),
- (h) an order under section 28 of that Act (interim slavery and trafficking risk orders),
- (i) an order under paragraph 1 or 2 of schedule 3 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015^(e) (slavery and trafficking prevention orders),
- (j) an order under paragraph 7 of schedule 3 of that Act (interim slavery and trafficking prevention orders)”.

Name

A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date

(a) 2015 c.30.
(b) 2015 c.2 (N.I.).
(c) Section 15 was amended by paragraph 10 of schedule 2 of the Immigration Act 2016 (c.19) (“the 2016 Act”).
(d) Section 23 was amended by paragraph 13 of schedule 2 of the 2016 Act.
(e) Paragraph 1 of schedule 3 was amended by S.R. (NI) 2016 No 102.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Human Trafficking and Exploitation (Scotland) Act 2015 (“the Act”) in respect of trafficking and exploitation prevention orders (“TEPOs”) and trafficking and exploitation risk orders (“TEROs”).

Part 4 of the Act creates TEPOs and TEROs. TEPOs may be made where an individual aged 18 or over is or has been convicted of a relevant trafficking or exploitation offence (whether as part of the sentencing process for the conviction or on a separate application made by the chief constable of the Police Service of Scotland) and may impose specified prohibitions or requirements on that individual. TEROs may be made absent a conviction where the court is satisfied (on an application made by the chief constable) that there is a risk that an individual aged 18 or over may commit a relevant trafficking or exploitation offence. TEROs may provide for similar prohibitions or requirements.

The relevant trafficking or exploitation offences for these purposes are specified in section 16(1) of the Act and regulation 2 amends that list, specifying offences of human trafficking and slavery, servitude and forced or compulsory labour under both the Modern Slavery Act 2015 and the Human Trafficking (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, as well as the offence under section 62 of the Sexual Offences Act 2003 of committing an offence with intent to commit a sexual offence under that Act (but only where the sexual offence the individual intended to commit was one of trafficking for sexual exploitation under section 57, 58, 58A, 59 or 59A of that Act).

Section 32(1) of the Act provides that it is an offence to breach an order listed in section 32(2). The orders listed include TEPOs and TEROs, as well as interim TEPOs and TEROs. Section 33(1) of the Act allows the Scottish Ministers to add to that list of orders any “relevant UK order”, those being orders which appear to the Scottish Ministers to be equivalent or similar to TEPOs or TEROs or interim TEPOs or TEROs, so that breach of such a relevant UK order would be an offence under section 32(1). Accordingly, regulation 3 amends section 32(2) of the Act to add to the list of orders there slavery and trafficking prevention orders, interim slavery and trafficking prevention orders, slavery and trafficking risk orders and interim slavery and trafficking risk orders under the Modern Slavery Act 2015 and slavery and trafficking prevention orders and interim slavery and trafficking prevention orders under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. Breach of any of these orders is therefore an offence under section 32(1) of the Act.

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