

POLICY NOTE

THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015 (COMMENCEMENT No. 1 AND TRANSITORY PROVISIONS) REGULATIONS 2016

SSI 2016/128 (C. 12)

1. The above instrument is made in exercise of the powers conferred by section 45(2) and (4) of the Human Trafficking and Exploitation (Scotland) Act 2015 (“the 2015 Act”). It is not subject to any parliamentary procedure.

Policy Objectives

2. These Regulations bring into force on 31st May 2016 the majority of provisions in the 2015 Act. These will form the basis of a clearer, stronger framework for combatting human trafficking, giving police and courts a greater range of tools to prevent, deter and punish human trafficking while enhancing protection for victims.
3. In particular, these Regulations will consolidate and strengthen existing criminal law by bringing into force a new single offence of human trafficking for all types of exploitation (section 1 of the 2015 Act) and an offence of slavery, servitude and forced or compulsory labour (section 4 of the 2015 Act).
4. The Regulations also bring into force statutory aggravations of human trafficking where there is evidence that another crime has been carried out against a background of human trafficking, and aggravations where a human trafficking offence has been committed by a public official or, separately, where a victim is a child.
5. The Regulations will commence powers for police and courts to confiscate and seize property used in connection with human trafficking offences.
6. To enhance protection for victims, the Regulations also bring into force the requirement for the Lord Advocate to issue instructions to prosecutors about the factors they must take into account when considering prosecuting someone who has committed a crime they may have been compelled to carry out by virtue of their being a victim of human trafficking or of slavery, servitude or forced or compulsory labour.
7. The Regulations make transitory provisions at regulation 3. Part 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) allows for the making of closure notices and closure orders in respect of premises in cases where it appears that an “exploitation offence” is being or has recently been committed on those premises. In the case of closure notices in particular, the notice may be made where it appears that an exploitation offence has been committed at any time in the immediately preceding 3 months.
8. Section 40A of the 2004 Act lists the exploitation offences for these purposes. Those include existing trafficking and exploitation offences which are to be repealed by the Act. Section 40A of the 2004 Act is in turn to be amended by paragraph 3 of the schedule to the Act. Those amendments are being commenced by these Regulations. However, since

the existing trafficking and exploitation offences are not being repealed in these Regulations (by commencing paragraphs 2, 4 and 5 of the schedule to the Act), regulation 3 makes transitory provision which ensures that the existing trafficking and exploitation offences continue to be “exploitation offences” for the purposes of the making of closure notices and closure orders. This provision has effect until 3 months have elapsed from the date that the existing trafficking and exploitation offences are repealed, to ensure that closure notices can continue to be made in respect of those repealed offences for a period of 3 months after they may have occurred (as provided in section 26(3) of the 2004 Act). This will also allow closure orders can be made in respect of repealed trafficking and exploitation offences committed during the period of 3 months from their repeal.

9. The Bill for the 2015 Act received Royal Assent on 4th November 2015. Sections 40, 41, 42, 44, 45 and 46 of the 2015 Act came into force on the following day. The policy objectives relating to the 2015 Act are fully set out in the Policy Memorandum which accompanied the Bill. The link below records the passage of the Bill through Parliament and includes the Policy Memorandum:
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/84356.aspx>
10. These Regulations form part of an implementation package for the 2015 Act. These are the first commencement Regulations.
11. A summary of the various provisions of the 2015 Act being commenced by these Regulations is provided below.
 - **Part 1** – contains the offence of human trafficking (section 1); the offence of slavery, servitude and forced or compulsory labour (section 4); a general aggravation for a crime where there is a background of human trafficking (section 5); an aggravation for the offence of human trafficking where the victim is a child (section 6) or the offence involves a public official (section 7).
 - **Section 8** – contains a requirement that the Lord Advocate issue instructions that set out the factors that prosecutors must take into account when considering whether to prosecute a person who appears to be a victim of human trafficking or exploitation and may have committed a crime because (in the case of an adult) they appear to have been compelled to do so because of their victim status or (in the case of a child) did so as a consequence of their victim status.
 - **Section 9** - contains regulation-making powers under section 9(2)(b)(i) and (8) to define the ‘relevant period’ during which Scottish Ministers will secure provision of support and assistance to adult victims of human trafficking, once that duty is commenced (and is commenced for the purpose of making those Regulations only).
 - **Section 10** – contains regulation-making powers about providing support to a victim of the new offence of slavery, servitude and forced or compulsory labour.
 - **Section 11** – contains regulation-making powers in section 11(7) and (8) that (a) enable provision to be made about the appointment and functions of independent child trafficking guardians as provided for in section 11; and (b) allow the Scottish Ministers to add to the definition of a “person with parental rights or responsibilities”, and to specify further bodies which are required to refer eligible children to a guardian service (and is commenced for the purpose of making those Regulations only).
 - **Section 12** – contains the regulation-making power in section 12(5) that enables the Scottish Ministers to make modifications to (a) the list of legislative provisions in respect

of which an age presumption is to operate; and (b) the list of bodies that are required to operate the age presumption (and is commenced for the purpose of making those Regulations only).

- **Part 3** – contains powers for constables and courts to detain or order forfeiture of a vehicle, ship or aircraft when there has been an arrest or conviction of human trafficking; defines the new offences of human trafficking and slavery, servitude and forced or compulsory labour as lifestyle offences making perpetrators subject to the Proceeds of Crime Act 2002.
- **Section 32** – contains the offence of breaching a trafficking and exploitation risk or prevention order or interim order.
- **Section 33** – provides for enforcement of other UK trafficking and exploitation risk or prevention orders or interim orders and commences regulation-making powers to list these.
- **Section 34(1)** – sets out definitions relating to Part 4.
- **Section 35** – contains a duty for Scottish Ministers to prepare and publish a trafficking and exploitation strategy that sets out those actions and arrangements they consider should be put in place to combat human trafficking and the outcomes they want to achieve by doing so.
- **Section 36** – sets out that the strategy must be published and laid before the Scottish Parliament within a year of the offence of human trafficking coming into force and that Scottish Ministers must regularly review the strategy at least three years since last publication of a strategy or report on the strategy.
- **Section 37** – contains the duty on named Scottish public authorities to cooperate on the development and review of that strategy and commences the regulation-making powers to specify which public authorities will have that duty.
- **Section 38** – contains the duty of named Scottish public authorities to notify the chief constable of Police Scotland about victims or suspected victims of human trafficking and exploitation as well as powers in section 38(3) and (4) to make regulations about who the named authorities are and what information should be included in a notification, some of which is subject to an adult victim's consent (and is commenced for the purpose of making those Regulations only).
- **Section 39** – provides that a body corporate, Scottish partnership or other incorporated association can, under specified circumstances, be charged with an offence under this Act
- **Section 43** – provides for minor and consequential amendments

Consultation

12. No formal consultation was carried out in relation to these Regulations. However, the issue of human trafficking was the subject of numerous reports, inquiries and consultations prior to the government Bill. These are listed in the Policy Memorandum that accompanied the Bill (link in paragraph 9 above). In view of this, the Scottish Government drew on the analysis and recommendations within those reports to inform the Bill and have taken the same approach to these Regulations, particularly given ongoing engagement with stakeholders in the development of the Trafficking and Exploitation Strategy.
13. We have consulted informally with stakeholders, including Police Scotland and Crown Office and Procurator Fiscal Service, during the preparation of these Regulations.

Impact Assessments and Financial Effects

14. An Equality Impact Assessment and a Child Impact Assessment were carried out in relation to the Bill as a whole. It was not considered necessary to carry out further Equality or Child Impact Assessments in relation to these Regulations. The link below will take you to the relevant documentation:

Equality Impact Assessment: <http://www.gov.scot/Publications/2014/12/4565>

Child Impact Assessment: <http://www.gov.scot/Publications/2014/12/6256>

15. Carrying out a Business and Regulatory Impact Assessment in relation to the 2015 Act was considered disproportionate because of the minimal impact it was expected to have on business and limited impact on local authorities; for the same reason, the Cabinet Secretary has agreed that no BRIA was required for these Regulations.

Scottish Government
Justice Directorate
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