

POLICY NOTE

THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015 (COMMENCEMENT No. 3 AND TRANSITIONAL PROVISIONS) REGULATIONS 2017

SSI 2017/140 (C. 11)

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 Act”). It is not subject to any parliamentary procedure.

Policy Objectives

2. Part 4 of the Act introduces two new court Orders namely Trafficking and Exploitation Prevention Orders (TEPOs) and Trafficking and Exploitation Risk Orders (TEROs). These Orders will give Scotland’s law enforcement agencies, prosecutors and courts further tools to protect the public against those who are responsible for human trafficking and exploitation and to deter trafficking and exploitation behaviour and activity in Scotland.
3. The overall aims of Part 4 of the Act are the prevention of crime and the protection of others from harm. The power to make Orders is at the discretion of the courts and it is for the courts to assess the proportionality of Orders in each and every case.

Approach to Commencement

4. These Regulations bring the remainder of Part 4 (which is not already in force), into force in stages following the timetable below;

Date	Provision	Description
29 June 2017	Section 16	Relevant Trafficking and Exploitation Offences
30 June 2017	Section 17 to 25	Trafficking and Exploitation Prevention Orders
30 June 2017	Section 34(2)-(6)	Interpretation of Part 4
31 October 2017	Section 26 to 31	Trafficking and Exploitation Risk Orders

5. The provisions in Part 4 therefore are therefore commenced in two broad phases. Provisions on TEPOs (sections 17 to 25) are brought into force first – alongside the interpretative provisions in section 34 not already in force – to allow TEPOs to be applied for and made from 30 June 2017. Section 16 – which defines a “relevant trafficking or exploitation offence” also comes into force as part of that phase, though a day earlier (29 June 2017) in order to empower Scottish Ministers to use the enabling power in section 16(2) to make regulations adding specified offences to the list of relevant trafficking and exploitation offences in section 16(1). This will update that list in preparation for the commencement of those provisions (sections 17 to 25) which relate to TEPOs on 30 June.

6. The second phase see commencement of sections 26 to 31 which relate to TEROs. These commence on 31 October, allowing TEROs to be applied for and made from that date and completing the commencement of Part 4.
7. This timetable was chosen after consultation with Police Scotland, Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service; who will be involved in the operation of these orders. This phased approach will ensure operational readiness for both types of order.
8. Section 32 (Offences), 33 (Enforcement of other UK Orders) and 34(1) (Interpretation of Part 4) are already in force.

Transitional Provision

9. TEPOs can be made under section 18 of the Act following an application to the sheriff by the chief constable of the Police Service of Scotland where the person who is to be the subject of the TEPO is a “relevant offender”. In these circumstances the court has to be satisfied that, since the person first became a “relevant offender” the person has acted in a way which means there is a risk they might commit a “relevant trafficking or exploitation offence”. A “relevant offender” is a person convicted of a “relevant trafficking or exploitation offence” (defined in section 16 of the Act) or dealt with by a court in respect of such an offence in any of a variety of other ways, as specified in section 19 of the Act.
10. Section 19(8) of the Act provides that a person who was convicted of a relevant trafficking or exploitation offence before that section comes into force may be a “relevant offender”.
11. Section 34(2) provides that a reference to a “conviction” in Part 4, includes a conviction for an offence in respect of which an order for an absolute discharge or conditional discharge has been made, despite provision made elsewhere which for most purposes deems such disposals not to be convictions. Section 34(3) provides that subsection (2) applies only to a conviction after Part 4 has come into force. For practical purposes, this means that a conviction of an offence specified in section 19 of the Act resulting in an absolute discharge or conditional discharge does not constitute a conviction under Part 4 if it occurred before the commencement of Part 4.
12. With Part 4 now coming into force in two phases, it is necessary to make provision to deal with the treatment under section 34(2) of convictions occurring between the first and second phases of commencement. If no such provision were made, , a TEPO could not be made in respect of a conviction occurring between the provisions on TEPOs coming into force on 30 June 2017 and the full commencement of Part 4 on 31 October if the disposal in the case was an absolute or conditional discharge.
13. Article 3 makes provision to address this issue by providing that where a person is convicted between 30 June and 30 October of a relevant trafficking and exploitation offence and an absolute or conditional discharge is ordered, it should be treated as if it occurred after Part 4 came into force. .This ensures that a

conviction to which section 34(2) applies and which occurs on or after 30 June 2017, but before 31 October 2017, may be capable of being taken into account for the purposes of making a TEPO. Convictions after that latter date will be included as per the operation of section 34(3).

Consultation

14. No public consultation was carried out in relation to these Regulations. However, we have consulted with the Home Office and the Department for Justice in the Northern Ireland Executive with regard to the commencement of the provisions which include references to the offences and orders added to section 16 and 33 respectively, relating to those jurisdictions.
15. We have consulted with Police Scotland, Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service in relation to the effect of the Commencement Regulations as a whole.

Impact Assessments

16. An Equality Impact Assessment and a Child Impact Assessment were carried out in relation to the Human Trafficking and Exploitation (Scotland) Act Bill. It was not considered necessary to carry out further impact assessments in relation to these Regulations.

Scottish Government
Justice Directorate
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