

MODERN SLAVERY ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Offences

Section 1: Slavery, servitude and forced or compulsory labour

17. *Subsection (1)* provides for an offence of slavery, servitude and forced or compulsory labour. It replaces the existing such offence in section 71 of the Coroners and Justice Act 2009 which is accordingly repealed by Schedule 5 of the Act. The offence has been supplemented by provisions that clarify that regard may be had to all the circumstances of the case and that consent by the victim does not preclude the offence having taken place. This reflects the position in case law.
18. *Subsection (2)* requires *subsection (1)* to be interpreted in accordance with Article 4 of the ECHR. That Article states:
 - 1) No one shall be held in slavery or servitude.
 - 2) No one shall be required to perform forced or compulsory labour.
 - 3) For the purpose of this Article the term “forced or compulsory labour” shall not include:
 - a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - d) any work or service which forms part of normal civic obligations.
19. *Subsection (3)* provides that all the circumstances should be considered when determining whether someone has been held in slavery or servitude or required to perform forced or compulsory labour.
20. *Subsection (4)(a)* highlights personal circumstances, which may make the individual more vulnerable, and which may be relevant when determining whether a person has been held in slavery or servitude or required to perform forced or compulsory labour. The list of particular vulnerabilities which may be considered is non-exhaustive but explicitly includes the individual being a child, the person’s family relationships and any mental or physical illness. A child is defined in *section 56(3)* as a person under the age of 18.

21. *Subsection (4)(b)* makes clear that, in relation to the forced or compulsory labour offence, the court can consider any work or services provided by the person including any work or services provided in circumstances that amount to exploitation under section 3(3) to (6). This makes it clear that the forced and compulsory labour offence can cover a broad range of types of work and services including types, such as begging or pick-pocketing, which could amount to exploitation under section 3(5) or 3(6).
22. *Subsection (5)* clarifies that an individual's consent (whether an adult or a child) to the conduct alleged to amount to an offence under section 1 does not prevent the court from determining that person is being held in slavery or servitude or required to perform forced or compulsory labour.

Section 2: Human trafficking

23. This section provides for a single offence of human trafficking covering sexual and non-sexual exploitation. It replaces the two existing offences in sections 59A of the Sexual Offences Act 2003 (which relates to human trafficking for the purposes of sexual exploitation), as inserted by section 109 of the Protection of Freedoms Act 2012 (which replaced the previous offences in sections 57 to 59 of the Sexual Offences Act 2003), and section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (which relates to human trafficking for the purposes of labour or other exploitation); both these existing offences are repealed by Schedule 5. Introducing one offence for all types of trafficking will make it administratively simpler for investigators and prosecutors to bring forward human trafficking prosecutions.
24. *Subsection (1)* makes it a criminal offence to arrange or facilitate the travel of another person with a view to their being exploited. Travel is defined in *subsection (5)* as arriving in, entering, departing, or travelling within any country.
25. *Subsection (2)* provides that for the purpose of a human trafficking offence the victim's consent to their travel, whether they are an adult or a child, is irrelevant.
26. *Subsection (3)* gives examples of what may amount to arranging or facilitating another person's travel. This includes recruiting, transporting, transferring, harbouring, receiving or exchanging control of that person. The language reflects the definitions of trafficking set out in the Convention on Action against Trafficking and the associated Palermo Protocol.
27. *Subsection (4)* provides that the arranging or facilitating is done with a view to the exploitation of the victim (V) if the perpetrator either intends to exploit V, or knows or ought to know that any other person is likely to exploit V. It is irrelevant where in the world that exploitation might take place.
28. *Subsection (6)* makes the offence extra-territorial in its reach in relation to UK nationals. It provides that a UK national commits an offence regardless of where in the world the arranging or facilitating takes place or regardless of which country is the country of arrival, entry, travel or departure. For example, a UK national who trafficks a person from Spain to France could be prosecuted in England and Wales for this offence.
29. *Subsection (7)* provides for a more limited territorial reach in relation to a non-UK national. Such a person commits the offence if any part of the arranging or facilitating takes place in the UK or if the UK is the country of arrival, entry, travel or departure.

Section 3: Meaning of exploitation

30. The section 2 offence is arranging or facilitating travel with a view to the victim's exploitation. This section sets out the meaning of exploitation for the purposes of section 2.

*These notes refer to the Modern Slavery Act 2015
(c.30) which received Royal Assent on 26 March 2015*

31. *Subsection (2)* sets out that exploitation includes slavery, servitude and forced or compulsory labour by reference to the offence under section 1. Equivalent conduct outside England and Wales also comes within this definition.
32. *Subsection (3)* sets out that exploitation includes sexual exploitation by reference to conduct which would constitute the commission of an offence of taking, or permitting to take, indecent photographs of children or any of the sexual offences provided for in Part 1 of the Sexual Offences Act 2003 (these include offences relating to rape, sexual assault, prostitution and child pornography). *Section 3(3)(b)* ensures that equivalent conduct committed outside England and Wales also comes within the definition even though for jurisdictional reasons it would not be an offence under English law.
33. *Subsection (4)* sets out that exploitation includes exploitation in the context of trafficking for organ removal or for the sale of human tissue by references to offences in the Human Tissue Act 2004. Again, equivalent conduct outside England and Wales is within the definition.
34. *Subsection (5)* sets out that exploitation includes all other types of exploitation where a person is subject to force, threats or deception which is designed to induce him into providing a service of any kind, providing a person with benefits or enabling another to acquire benefits. This would include forcing a person to engage in activities such as begging or shop theft. It is not necessary for this conduct to be a criminal offence.
35. *Subsection (6)* broadens the type of exploitation described in *subsection (5)* so that it includes where a person is used (or there is an attempt to use the person) to do something for such a purpose, having been chosen on the grounds that he or she is a child, is ill, disabled, or related to a person, in circumstances where a person without the illness, disability, or family relationship would be likely to refuse.

Section 4: Committing offence with intent to commit offence under section 2

36. This section provides that it is an offence to commit another offence with a view to committing a trafficking offence under section 2. This separate offence ensures that preparatory criminal conduct which constitutes a lesser offence, for example theft of a vehicle with the intention of using that vehicle to traffick individuals, can attract the higher penalties provided for in section 5.

Section 5: Penalties

37. This section sets out the maximum penalties for the offences in sections 1, 2 and 4.
38. *Subsection (1)* provides that the maximum sentence for a section 1 or 2 offence is six months imprisonment (increasing to 12 months when the increase in magistrates' courts sentencing powers provided for in the Criminal Justice Act 2003 is brought into force) or an unlimited fine, or both in the case of a summary conviction and life imprisonment for conviction on indictment. This compares with a maximum of 14 years imprisonment for the slavery and human trafficking offences repealed by the Act.
39. *Subsections (2) and (3)* provide for the maximum penalties for the section 4 offence. In most instances the maximum is six months imprisonment (again increasing to 12 months when the increase in magistrates' courts sentencing powers is brought into force) or an unlimited fine, or both in the case of a summary conviction, and 10 years imprisonment for conviction on indictment. However, where the precursor offence committed under section 4 is one of kidnapping or false imprisonment, the maximum penalty is life imprisonment.
40. In the case of conviction on indictment, the availability of a fine will be determined by section 163 of the Criminal Justice Act 2003 (general power of Crown Court to fine offender convicted on indictment).

Section 6: Sentencing

41. This section adds the section 1 and 2 offences to the list of offences in Schedule 15 and Part 1 of Schedule 15B to the Criminal Justice Act 2003 (“the 2003 Act”). The effect is to engage the provisions in sections 224A, 226A(2) and 246A(2)(b) of the 2003 Act. By virtue of the provisions in section 224A of the 2003 Act, a court must impose a life sentence on a person aged 18 or over who is convicted of an offence listed in Part 1 of Schedule 15B to that Act which is serious enough to justify a sentence of imprisonment of 10 years or more, if that person has previously been convicted of an offence listed in any Part of Schedule 15B and was sentenced to imprisonment for life or for a period of 10 years or more in respect of that previous offence. However, the court is not obliged to impose a life sentence where it is of the opinion that there are particular circumstances which relate to the offence, the previous offence or the offender which would make it unjust to do so in all the circumstances.
42. Section 226A provides for extended sentences for adults. The sentence may be imposed in respect of the sexual and violent offences listed in Schedule 15 to the 2003 Act (which will now include the section 1 and 2 offences) where certain conditions are met. The court must consider that the offender presents a substantial risk of causing serious harm through re-offending. In addition the court must either consider that the current offence is serious enough to merit a determinate sentence of at least 4 years, or at the time the present offence was committed the offender must have previously been convicted of an offence listed in Schedule 15B of the 2003 Act (which will now include the slavery and human trafficking offences). Where these conditions are made out, the court may impose an extended period for which the offender is to be subject to a licence of up to five years for a violent offence and up to eight years for a sexual offence. Schedule 15 to the 2003 Act lists violent and sexual offences separately.
43. Section 246A of the 2003 Act deals with the release arrangements in respect of persons sentenced to an extended sentence under section 226A of that Act. Offenders who have committed an offence listed in Parts 1 to 3 of Schedule 15B to the 2003 Act (Part 1 will now include the slavery and human trafficking offences), or whose offending merits a custodial term of 10 years or more, will be considered for release on licence by the Parole Board once the offender has served two-thirds of the appropriate custodial term, and will be released automatically at the end of the appropriate custodial term (that is, the term imposed by the court as the custodial element of the extended sentence) if the Parole Board has not already directed release.

Section 7: Confiscation of assets

44. This section amends Schedule 2 to the Proceeds of Crime Act 2002 (Lifestyle offences: England and Wales). The amendments add the offence of slavery, servitude and forced or compulsory labour (section 1) to the list of offences set out in that Schedule, and substitutes the human trafficking offence (section 2) for predecessor offences.
45. Part 2 of the Proceeds of Crime Act 2002 (“the 2002 Act”) provides that confiscation orders are available to confiscate assets gained through criminal activity from offenders, after conviction. The purpose of confiscation proceedings is to recover the financial benefit that an offender has obtained from his criminal conduct. The court calculates the value of that benefit and orders the offender to pay an equivalent sum (or less where a lower sum is available for confiscation).
46. Section 6 of the 2002 Act makes provision for the making of confiscation orders by the Crown Court. In accordance with section 6, where the defendant is identified as having a “criminal lifestyle”, the proceeds of the defendant’s “general criminal conduct” are liable to confiscation. This means that an offender in relation to whom there are reasonable grounds to believe that he is living off crime will be required to account for his assets, and will have them confiscated to the extent that he is unable to account for their lawful origin. The criminal lifestyle tests are therefore designed to identify offenders who may be regarded as normally living off crime.

47. Under section 75 of the 2002 Act, a person has a criminal lifestyle if he satisfies one or more of the tests set out in that section. The first test is that he is convicted of an offence specified in Schedule 2 to the 2002 Act. Schedule 2 lists the offences which are so closely linked to a life of crime that a conviction for any of them will lead to the defendant being deemed to have a criminal lifestyle for the purposes of the confiscation regime in the 2002 Act. By including the slavery, servitude and forced or compulsory labour offence (section 1) and the human trafficking offence (section 2) in Schedule 2 to the 2002 Act, this section ensures that defendants convicted will be deemed to have a criminal lifestyle and will therefore be subject to the toughest regime in respect of calculating confiscation orders under the 2002 Act.

Section 8: Power to make slavery and trafficking reparation orders

48. This section enables the court, where a person is convicted of a slavery or trafficking offence, to order the defendant to provide reparation to the victim. Sections 130-134 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6 – “the 2000 Act”) already make provision for compensation orders to be made against convicted persons in favour of their victim(s). However, the number of compensation orders made in the last ten years in human trafficking and slavery cases is low. A specific reparation order for victims of slavery and trafficking will therefore enable courts to order a person convicted of a modern slavery offence to pay reparation to their victim or victims, in respect of the exploitation and degradation they have suffered. A reparation order will only be made where the court is satisfied that the defendant has the means to pay.
49. *Subsection (1)* sets out that a slavery or trafficking reparation order can be made where the defendant is convicted of a slavery offence (section 1) or trafficking offence (section 2) or offence relating to preparatory conduct in relation to trafficking (section 4), and the Court has made a confiscation order against the defendant.
50. *Subsection (2)* allows the Court to make a slavery and trafficking reparation order where a confiscation order is made against a defendant who absconds, but who is subsequently convicted of a section 1, 2 or 4 offence.
51. *Subsection (3)* provides for the Court to make a reparation order in addition to dealing with the person in any other way, for example, imposing a fine or a sentence, and *subsection (4)* allows the Court to vary a sentence already imposed to make a slavery and trafficking reparation order.
52. *Subsection (5)* requires the court to consider the defendant’s means, in determining whether to make a slavery and trafficking reparation order. This is to ensure that a reparation order is only made where the court is confident that the funds are available to pay the victim.
53. *Subsection (6)* provides that where a court considers that it would be appropriate to impose a fine and make a reparation order, but the defendant has insufficient means to pay both, priority is given to a reparation order.
54. *Subsection (7)* provides that the Court must consider making a slavery and trafficking reparation order in any case where it has power to make one, even where an application is not made. If the Court does not make an order it must give reasons for not doing so.
55. At the time of enactment confiscation orders may only be made in the Crown Court. However, section 97 of the Serious Organised Crime and Police Act 2005 makes provision for an order to extend the power to make confiscation orders to the magistrates’ court in certain circumstances.
56. *Subsection (8)(a)*, ensures that this section will give the power to make a slavery and trafficking reparation order to any magistrates’ court that has the power to make a confiscation order by virtue of an order under section 97 of the Serious Organised Crime and Police Act 2005.

Section 9: Effect of slavery and trafficking reparation orders

57. *Subsection (1)* provides that a slavery and trafficking reparation order is an order that requires the defendant to pay compensation to their victim, for the harm that the victim has suffered from a relevant offence. *Subsection (2)* defines relevant offence as a slavery or trafficking offence as set out in section 1, 2 or 4 that the defendant is convicted of or has taken into account for sentencing.
58. *Subsection (3)* provides for the court to determine the amount of compensation to be awarded to the victim taking into account any evidence and representations made by the defendant or the prosecutor.
59. *Subsection (4)* sets out that the total amount of compensation payable under one or more slavery and trafficking reparation orders made in proceedings for an offence must not exceed the amount the defendant is required to pay under the confiscation order made in relation to that offence.
60. *Subsection (5)* requires the court to consider the defendant's means, so far as they appear to be, or are known by the court, in determining the amount that the defendant must pay under the slavery and trafficking reparation order. These provisions ensure that reparation orders will be made for amounts that the defendant is capable of paying, so that the victim will not be the recipient of an order that is not likely to be paid in full.

Section 10: Slavery and trafficking reparation orders: supplementary provision

61. *Subsection (1)* prevents a slavery and trafficking reparation order and a compensation order under the 2000 Act from being made in relation to the same offence, so as to avoid having multiple separate orders made for the purpose of compensating the victim of a slavery or trafficking offence.
62. *Subsection (2)* states that where the court makes a slavery and trafficking reparation order against a person who has already been sentenced, the person's sentence is to be regarded as being imposed on the day on which the reparation order is made for the purpose of any relevant appeal time limits.
63. *Subsection (3)* modifies sections 132 to 134 of the 2000 Act, which provide for appeal of and review of compensation orders made under section 130 of that Act, so that they will apply to slavery and trafficking reparation orders.
64. *Subsection (4) to (9)* enable a court that varies, quashes or discharges a confiscation order in accordance with Part 2 of the 2002 Act to vary, quash or discharge any slavery and trafficking reparation order that has been made in relation to the convictions that gave rise to the confiscation order so varied, quashed or discharged.

Section 11: Forfeiture of land vehicle, ship or aircraft

65. This section enables the court, when a person is convicted on indictment of a human trafficking offence under section 2, to order the forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence of which the person is convicted. *Subsection (2)* lists the circumstances that would allow the forfeiture of a vehicle; *subsections (3) to (5)* do likewise for a ship or aircraft. *Subsection (6)* allows a person who claims to have an interest in a vehicle, ship or aircraft, and who makes an application to the court, to make representations on the question of forfeiture before the court may make an order for its forfeiture. Similar provisions are currently contained in section 60A of the Sexual Offences Act 2003 and supplement the more general provisions on forfeiture in section 143 of the Powers of the Criminal Courts (Sentencing) Act 2000.

Section 12: Detention of land vehicle, ship or aircraft

66. *Subsections (1) to (3)* enable a constable or immigration officer not below the rank of chief immigration officer to detain a vehicle, ship or aircraft of a person arrested for an offence under section 2 if it is one which the constable or officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 11. Detention is permitted until a decision is taken whether or not to charge the arrested person, until the arrested person is acquitted, the charge against him dismissed or the proceedings discontinued, or, where the person is subsequently convicted, until the court makes a decision on forfeiture.
67. *Subsection (4)* lists the circumstances in which a person other than the arrested person may apply to the court for the release of that vehicle, ship or aircraft. *Subsection (5)* provides that on such an application the court may release the vehicle, ship or aircraft subject to satisfactory security or surety and on condition that it is made available to the court if the arrested person is convicted and if an order under section 11 is made. Similar provisions are currently contained in section 60B of the Sexual Offences Act 2003.

Section 13: Interpretation of Part 1

68. This section defines terms used in Part 1.