

**EXPLANATORY MEMORANDUM TO**  
**THE TRAFFICKING PEOPLE FOR EXPLOITATION REGULATIONS 2013**  
**2013 No. 554**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 These Regulations are made as part of the implementation in England and Wales of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (the **Directive**).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 The UK applied to opt in to the Directive 2011/36/EU post adoption, in July 2011. In October 2011 the Government received confirmation from the European Commission that the application had been accepted.

4.2 A Transposition Note in respect of the Directive is set out in Annex A.

4.3 The scrutiny history of the Directive is set out in Annex B.

5. **Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

6. **European Convention on Human Rights**

6.1 The Immigration Minister, Mark Harper, has made the following statement regarding Human Rights:

In my view the provisions of the Trafficking People for Exploitation Regulations 2013 are compatible with the Convention rights.

7. **Policy background**

- What is being done and why

- 7.1 These Regulations implement measures in the Directive for the protection of adult and child victims of trafficking, where they interact with the criminal justice process, during the investigation and trial of trafficking offences.
- 7.2 Regulations 3 and 4 put in place measures intended to avoid the secondary victimisation of adult and child victims of trafficking respectively. Trafficking can be both physically and psychologically damaging to victims with an impact lasting long after the actual experience may have come to an end. The investigative process can involve victims revisiting their experience which could cause renewed anxiety. For children this could be particularly aggravated if frequent unfamiliar faces are present, questioning is repeated and conducted in a manner inappropriate for their age or the location is not supportive. Such secondary victimisation could cause further harm to victims and, if it damaged their ability to support a prosecution, could damage the ability to pursue criminal proceedings.
- 7.3 Regulation 5 and the Schedule make amendments to the Youth Justice and Criminal Evidence Act 1999. The effect of these amendments is to extend, to all victims of human trafficking who are witnesses in criminal proceedings “special measures” under the Act. (These “special measures” are at present are automatically available for victims of sexual offences who are witnesses in proceedings). Special measures include: allowing the use of video evidence, giving evidence via a live link, and giving evidence without the public present in the courtroom.
- 7.4 The Schedule also amends the 1999 Act to provide that, where the age of a trafficking victim is uncertain and there are reasons to believe they may be a child, they are presumed to be a child.

## **8. Consultation outcome**

- 8.1 No consultation has been considered necessary with respect to these Regulations.

## **9. Guidance**

- 9.1 The Crown Prosecution Service is updating guidance to reflect the implementation of the Directive from April 2013. The Ministry of Justice are considering what guidance may be necessary.

## **10. Impact**

- 10.1 These Regulations have no impact on the business or voluntary sector.
- 10.2 The impact on the public sector is low. Measures such as these already exist in respect of other offences (sexual offences) and their application in all trafficking cases is unlikely to create a significant further burden.
- 10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

11.1 The Legislation does not apply to small business.

**12. Monitoring & review**

12.1 The Regulations will be reviewed within 5 years of the date they came into force.

**13. Contact**

David Armour at the Home Office Tel: 020 7035 4179 or email:  
[david.armour@homeoffice.gsi.gov.uk](mailto:david.armour@homeoffice.gsi.gov.uk) can answer queries regarding the instrument.

### Transposition Note for the Trafficking People for Exploitation Regulations 2013

#### Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. (“the Directive”)

Article	Detail	Implementation	Responsibility
<b>12:</b> Protection of victims of trafficking in human beings in criminal investigations and proceedings.	Article 12 is concerned with the protection of victims and avoiding their secondary victimisation during investigations or court proceedings.	See below	
12(4)	<p>Paragraph (4)a-c requires member states to ensure victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation including avoiding:</p> <p>(a) unnecessary repetition of interviews during investigation, prosecution or trial;</p> <p>(b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;</p> <p>(c) the giving of evidence in open court.</p> <p>(d) unnecessary questioning concerning the victim’s private life</p>	<p>Regulation 3 establishes a duty on the relevant chief officer of police to ensure, on a case by case basis and as far as possible, that a victim receives the protections set out in Article 12(4)(a), (b) and (d) during the Investigation.</p> <p>Regulation 5 and the Schedule makes amendments to the Youth Justice and Criminal Evidence Act 1999 so that victims of trafficking are automatically eligible for “special measures” protections in court proceedings.</p>	Secretary of State

		Regulation 5 and the Schedule makes amendments to the Youth Justice and Criminal Evidence Act 1999 extending the special measures protection at section 25 (giving evidence in private) to victims of trafficking offences in court proceedings.	
<b>13:</b> General provisions on assistance, support and protection measures for child victims of trafficking in human beings	Article 13 is concerned with the identification and protection of child victims.	See below	
13(2)	Paragraph 13(2) requires that where a trafficking victim's age is uncertain, and there are reasons to believe they may be a child, they should be presumed to be a child in order to access relevant support and assistance,	Regulation 5 and the Schedule amends Section 33 of the Youth Justice and Criminal Evidence Act 1999 to provide that where the age of a trafficking victim is uncertain and there are reasons to believe they may be a child, they are presumed to be a child.	Secretary of State
<b>15:</b> Protection of child victims of trafficking in human beings in criminal investigations and proceedings	Article 15 is concerned with the protection of victims and avoiding their secondary victimisation during investigations or court proceedings.	See below	
15(3) Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure	Paragraph 15(3) requires Member States to put in place special measures to protect and support child victims involved in the Criminal Justice Process	Regulation 4 places a duty on the relevant chief officer of police	Secretary of State

<p>that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:</p> <p>(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;</p> <p>(b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose</p> <p>(c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;</p> <p>(d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;</p> <p>(e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;</p> <p>(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.</p>		<p>to ensure, on a case by case basis, that a child victim receives the specific protections set out in the Directive at Article 15(3).</p>	
<p>15(5) Member States shall take the necessary measures to ensure that in criminal court proceedings relating to</p>	<p>Paragraph 15(5) places requirements on Member States to protect child victims of trafficking in court proceedings, in particular, through the</p>	<p>Regulation 5 and the Schedule makes amendments to the Youth</p>	<p>Secretary of State</p>

<p>any of the offences referred to in Articles 2 and 3, it may be ordered that:</p> <p>(a) the hearing take place without the presence of the public; and</p> <p>(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.</p>	<p>removal of the public from the court and the giving of evidence using use video or television link.</p>	<p>Justice and Criminal Evidence Act 1999 extending the protections at section 25 (giving evidence in private) to victims of trafficking offences in court proceedings.</p>	
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## Scrutiny History

### Scrutiny History

**Directive 2011.36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. (“the Directive”)**

On 22 March 2011 the Immigration Minister (Damian Green) wrote to the parliamentary scrutiny committees in both Houses, seeking their views on the government’s intention to apply to opt in to the EU directive to combat human trafficking upon its adoption.

The text of the first version of the Directive was deposited on 30 March 2010 (COM (10) 95). An accompanying factual EM was deposited on 8 April. An unnumbered EM was deposited on 25 May, corresponding to the version of the Directive put to Council on 3-4 June 2010. On 26 July 2010 the Minister for Immigration wrote to Scrutiny Committees informing them of the Government’s decision not to opt in to the Directive at the outset, but to review the position once the text had been adopted. Council reached agreement on the final text of the draft Directive on 2-3 December 2010, and the European Parliament reached agreement on 14 December 2010.

On 22 March 2011 the Minister wrote to Parliamentary Scrutiny Committees seeking their views on the Government’s intention to apply to opt in to the Directive and asking Committees to respond by 17 May 2011. The House of Commons, European Scrutiny Committee, considered the Minister’s letter in a session on 30 March 2011 and in their report of 7 April 2011 recommended that the Directive be debated on the floor of the House of Commons. The House of Commons cleared the Government’s intention to opt, following debate on 9 May 2011 (Hansard 9 May 2011).