

HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part 3 - Confiscation of Property

Detention and forfeiture

Section 13: Detention of vehicle, ship or aircraft

60. **Section 13** sets out the power of a constable to detain a vehicle, ship or aircraft if a person has been arrested for an offence of human trafficking.
61. Subsection (1) describes the circumstances where a police constable may detain a vehicle, ship or aircraft. Subsection (1)(a) provides that a constable may detain a vehicle, ship or aircraft if a person has been arrested for an offence of human trafficking and the constable has reasonable grounds to believe that a forfeiture order would be made if the person arrested were convicted of the offence (subsection (1)(b)).
62. Subsection (2) provides for the duration of the detention of the property. Subsection (2) (a) provides that the vehicle, ship or aircraft may be detained until a decision is taken as to whether or not to begin solemn proceedings against the person arrested for the offence. In circumstances where solemn proceedings have begun, the property may be detained until the person is acquitted (subsection (2)(b)(i)), the person is convicted and a decision is made whether or not to order forfeiture of the property under section 14 (subsection (2)(b)(ii)), or the proceedings are otherwise concluded (subsection (2)(b) (iii)).
63. Subsections (3) and (4) set out the circumstances in which solemn proceedings are to be taken to have commenced and concluded for the purposes of this section.
64. Subsection (5) lists the circumstances in which a person (including the accused) with a relevant interest in the detained property may apply to the sheriff for release of the vehicle, ship or aircraft. Subsection (6) sets out the sheriff's power to order release subject to satisfactory security being tendered.
65. Subsection (7) provides that the sheriff may impose such other conditions as to the release of the detained property as the sheriff thinks fit.

Section 14: Forfeiture of vehicle, ship or aircraft

66. **Section 14** sets out the power of the court to order forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with an offence of human trafficking.
67. Subsections (1) to (3) provides that forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence of human trafficking may be ordered if a person convicted on indictment of that offence, when the offence was committed—

These notes relate to the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) which received Royal Assent on 4 November 2015

- owned the vehicle, ship or aircraft,
 - was a director, secretary or manager of a company which owned it,
 - was in possession of it under a hire purchase agreement,
 - was a director, secretary or manager of a company which was in possession of it under a hire purchase agreement,
 - in relation to a vehicle, was driving it,
 - in relation to a ship or aircraft, was the charterer of it or was acting as captain of it.
68. Subsection (4) makes special provision about cases where a ship or aircraft is to be forfeited, but the offender does not own it and was not a director, secretary or manager of a company which owns it. It provides that, in those circumstances, forfeiture of a ship or aircraft may only be ordered if any one of the tests listed in this subsection is satisfied. Subsection (4)(a) provides that if a person who, at the time the offence was committed, owned the ship or aircraft, or was a director, secretary or manager of a company which owned it, knew, or ought to have known of the intention to use it in the course of the commission of the offence of human trafficking, then forfeiture of a ship or aircraft may be ordered. Subsection (4)(b) provides that, in the case of a ship (other than a hovercraft), if its gross tonnage is less than 500, then forfeiture of that ship may be ordered. Subsection (4)(c) provides that, in the case of an aircraft, if the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes, then forfeiture of that aircraft may be ordered under this section. Protection is provided for particular categories of owner who, due to the size of the ship or aircraft in question or the circumstances in which it is used for trafficking, do not know or reasonably suspect, or are unlikely to know or reasonably suspect, that the ship or aircraft is being used in that way. There is a greater likelihood that an owner of a vehicle or smaller types of ships or aircraft will have actual or constructive knowledge that their property is being or intended to be used for the purposes of trafficking.
69. Subsection (5) provides that forfeiture cannot be ordered without giving any person claiming an interest in the relevant property the chance to make representations

Proceeds of crime

Section 15: Proceeds of Crime Act 2002: lifestyle offences

70. **Section 15** amends Schedule 4 to the Proceeds of Crime Act 2002 (“2002 Act”) to categorise all trafficking and exploitation offences as lifestyle offences for the purposes of that Act. A conviction of a lifestyle offence triggers assumptions under the 2002 Act that the accused has a criminal lifestyle and that the accused’s property is recoverable as criminal proceeds.
71. **Section 11(a)** amends Schedule 4 to the 2002 Act, by substituting paragraph 4 thereof with a list of all offences related to trafficking and thus categorising all such offences as lifestyle offences for the purposes of the 2002 Act. Section 11(b) amends the same Schedule, by inserting a new paragraph 4A to provide that an offence under section 4 of the Act also constitutes a lifestyle offence.