



# Human Trafficking and Exploitation (Scotland) Act 2015

2015 asp 12

## PART 1

### OFFENCES

#### *Aggravation as to human trafficking*

#### **5 General aggravation of offence**

- (1) This subsection applies where it is—
  - (a) libelled in an indictment or specified in a complaint that an offence is aggravated by a connection with human trafficking activity, and
  - (b) proved that the offence is so aggravated.
- (2) An offence is aggravated by a connection with human trafficking activity if the offender is motivated (wholly or partly) by the objective of committing or conspiring to commit the offence of human trafficking.
- (3) It is immaterial whether or not in committing an offence the offender in fact enables the offender or another person to commit the offence of human trafficking.
- (4) Evidence from a single source is sufficient to prove that an offence is aggravated by a connection with human trafficking activity.
- (5) Where subsection (1) applies, the court must—
  - (a) state on conviction that the offence is aggravated by a connection with human trafficking activity,
  - (b) record the conviction in a way that shows that the offence is so aggravated,
  - (c) take the aggravation into account in determining the appropriate sentence, and
  - (d) state—
    - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
    - (ii) otherwise, the reasons for there being no such difference.

## **6 Aggravation involving a child**

- (1) This subsection applies where it is—
  - (a) libelled in an indictment or specified in a complaint that the offence of human trafficking is aggravated by being committed against a child, and
  - (b) proved that the offence is so aggravated.
- (2) Evidence from a single source is sufficient to prove that the offence is aggravated by being committed against a child.
- (3) Where subsection (1) applies, the court must—
  - (a) state on conviction that the offence is aggravated by being committed against a child,
  - (b) record the conviction in a way that shows that the offence is so aggravated,
  - (c) take the aggravation into account in determining the appropriate sentence, and
  - (d) state—
    - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reason for that difference, or
    - (ii) otherwise, the reasons for there being no difference.

## **7 Aggravation involving public official**

- (1) This subsection applies where it is—
  - (a) libelled in an indictment or specified in a complaint that the offence of human trafficking is aggravated by an abuse of a public position, and
  - (b) proved that the offence is so aggravated.
- (2) The offence of human trafficking is aggravated by an abuse of a public position if the offender is, at the time of committing the offence—
  - (a) a public official, and
  - (b) acting or purporting to act in the course of official duties.
- (3) Evidence from a single source is sufficient to prove that the offence is aggravated by an abuse of a public position.
- (4) Where subsection (1) applies, the court must—
  - (a) state on conviction that the offence is aggravated by an abuse of a public position,
  - (b) record the conviction in a way that shows that the offence is so aggravated,
  - (c) take the aggravation into account in determining the appropriate sentence, and
  - (d) state—
    - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
    - (ii) otherwise, the reasons for there being no such difference.
- (5) In this section “a public official” means an individual who (whether in Scotland or elsewhere)—
  - (a) holds a legislative or judicial position of any kind,
  - (b) exercises a public function in an administrative or other capacity, or

- (c) is an official or agent of an international organisation.
- (6) For the purpose of subsection (5)(c), “an international organisation” means an organisation whose members are—
- (a) countries or territories,
  - (b) governments of countries or territories,
  - (c) other international organisations, or
  - (d) a mixture of any of the above.
- (7) The Scottish Ministers may by regulations modify subsections (5) and (6).