



# Human Trafficking and Exploitation (Scotland) Act 2015

2015 asp 12

## PART 1

### OFFENCES

#### *Human trafficking*

#### **1 Offence of human trafficking**

- (1) A person commits an offence if the person—
  - (a) takes a relevant action, and
  - (b) does so with a view to another person being exploited.
- (2) In this Part, “relevant action” means an action which is any of the following—
  - (a) the recruitment of another person,
  - (b) the transportation or transfer of another person,
  - (c) the harbouring or receiving of another person,
  - (d) the exchange or transfer of control over another person, or
  - (e) the arrangement or facilitation of any of the actions mentioned in paragraphs (a) to (d).
- (3) It is irrelevant whether the other person consents to any part of the relevant action.
- (4) For the purposes of subsection (1), a person takes a relevant action with a view to another person being exploited only if—
  - (a) the person intends to exploit the other person (in any part of the world) during or after the relevant action, or
  - (b) the person knows or ought to know the other person is likely to be exploited (in any part of the world) during or after the relevant action.
- (5) An offence under this section is to be known as the offence of human trafficking.
- (6) A person who commits an offence of human trafficking is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for life or a fine (or both).

## **2 Application of offence to conduct in United Kingdom and elsewhere**

- (1) A person mentioned in subsection (2) commits an offence of human trafficking regardless of where the relevant action takes place.
- (2) The persons are—
  - (a) a person who is a UK national,
  - (b) a person who at the time of the offence was habitually resident in Scotland,
  - (c) a body incorporated under the law of a part of the United Kingdom.
- (3) A person not mentioned in subsection (2) commits an offence of human trafficking if—
  - (a) any part of the relevant action takes place in the United Kingdom, or
  - (b) the relevant action is taken with a view to a person arriving in or entering into, departing from, or travelling within, the United Kingdom.

## **3 Exploitation for purposes of offence of human trafficking**

- (1) For the purposes of section 1, a person is exploited only if one or more of the following subsections apply in relation to that person.

### *Slavery, servitude and forced or compulsory labour*

- (2) The person is the victim of conduct which—
  - (a) involves the commission of an offence under section 4, or
  - (b) would constitute such an offence were it done in Scotland.

### *Prostitution and sexual exploitation*

- (3) Another person exercises control, direction or influence over prostitution by the person in a way which shows that the other person is aiding, abetting or compelling the prostitution.
- (4) Another person involves the person in the making or production of obscene or indecent material (material is to be construed in accordance with section 52(1)(a) of the Civic Government (Scotland) Act 1982 and includes images within the meaning of section 51A of that Act).
- (5) The person is the victim of conduct which—
  - (a) involves the commission of an offence under—
    - (i) sections 1, 2 or 7 to 10 of the Criminal Law (Consolidation) (Scotland) Act 1995 (sexual offences),
    - (ii) sections 9 to 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (sexual services of children and child pornography),
    - (iii) Part 1 of the Sexual Offences (Scotland) Act 2009 (rape etc.),
    - (iv) Part 4 of the Sexual Offences (Scotland) Act 2009 (children), or

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- (v) Part 5 of the Sexual Offences (Scotland) Act 2009 (abuse of a position of trust), or
- (b) would constitute such an offence were it done in Scotland.

*Removal of organs etc.*

- (6) The person is encouraged, required or expected to do anything—
  - (a) which involves the commission, by the person or another person, of an offence under Part 1 of the Human Tissue (Scotland) Act 2006 (transplantation etc.),
  - (b) in connection with the removal of any part of a human body as a result of which the person or another person would commit an offence under the law of Scotland (other than an offence mentioned in paragraph (a)), or
  - (c) which would constitute an offence mentioned in paragraph (a) or (b) were it done in Scotland.

*Securing services and benefits*

- (7) The person is subjected to force, threats or deception designed to induce the person—
  - (a) to provide services of any kind,
  - (b) to provide another person with benefits of any kind, or
  - (c) to enable another person to acquire benefits of any kind.
- (8) Another person uses or attempts to use the person for any purpose within subsection (7) (a), (b) or (c), where—
  - (a) the person is—
    - (i) a child, or
    - (ii) an adult whose ability to refuse to be used for a purpose within subsection (7)(a), (b) or (c) is impaired through mental or physical illness, disability, old age or any other reason (a “vulnerable adult”), and
  - (b) a person who is not a child or a vulnerable adult would be likely to refuse to be used for that purpose.

*Slavery, servitude and forced or compulsory labour*

#### **4 Slavery, servitude and forced or compulsory labour**

- (1) A person commits an offence if—
  - (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is so held, or
  - (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform such labour.
- (2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).

- (3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard is to be had in particular to any personal circumstances of the person (for example the person being a child, or the person's age, or the person's family relationships or health) that may make the person more vulnerable than other persons.
- (4) The consent of a person to any of the acts alleged to constitute holding the person in slavery or servitude or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude or required to perform forced or compulsory labour.
- (5) A person who commits an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for life or a fine (or both).
- (6) In this section “the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950.

*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

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- (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).