



Human Trafficking and Exploitation (Scotland) Act 2015

2015 asp 12

PART 4

TRAFFICKING AND EXPLOITATION PREVENTION AND RISK ORDERS

Trafficking and exploitation prevention orders

17 Prevention orders on sentencing

- (1) This section applies where, in Scotland, an adult is—
 - (a) convicted of a relevant trafficking or exploitation offence,
 - (b) acquitted of a relevant trafficking or exploitation offence by reason of the special defence set out in section 51A of the 1995 Act (criminal responsibility of persons with mental disorder), or
 - (c) found to be unfit for trial under section 53F of the 1995 Act and the court determines that the adult has done the act constituting a relevant trafficking or exploitation offence.
- (2) The court may, instead of or in addition to dealing with the adult in any other way, make a trafficking and exploitation prevention order against the adult.
- (3) The court may make a trafficking and exploitation prevention order—
 - (a) at its own instance, or
 - (b) on the motion of the prosecutor.
- (4) The court may make a trafficking and exploitation prevention order under this section only if it is satisfied that—
 - (a) there is a risk that the adult in respect of whom the order is to have effect may commit a relevant trafficking or exploitation offence, and
 - (b) each prohibition or requirement in the order is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an offence.

Changes to legislation: There are currently no known outstanding effects for the Human Trafficking and Exploitation (Scotland) Act 2015, Cross Heading: Trafficking and exploitation prevention orders. (See end of Document for details)

- (5) In this section “the court” means—
- (a) where an indictment has been served on the adult in respect of the High Court, that court,
 - (b) in any other case, the sheriff.

Commencement Information

II S. 17 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

18 Prevention orders on application

- (1) The chief constable may apply to the sheriff for a trafficking and exploitation prevention order against an adult.
- (2) The chief constable must make an application under this section to the sheriff in whose sheriffdom—
 - (a) the adult in respect of whom the trafficking and exploitation prevention order is sought resides,
 - (b) the chief constable believes that adult to be,
 - (c) the chief constable believes that adult intends to come to, or
 - (d) lies any place where it is alleged that that adult acted in a way mentioned in subsection (3)(b).
- (3) The sheriff may make a trafficking and exploitation prevention order only if the sheriff is satisfied that—
 - (a) the adult in respect of whom the order is sought is a relevant offender,
 - (b) since the adult first became a relevant offender, the adult has acted in a way which means that there is a risk that the adult may commit a relevant trafficking or exploitation offence, and
 - (c) each prohibition or requirement in the order is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an offence.
- (4) The actions which the sheriff may consider for the purposes of subsection (3)(b) include those which took place before this section comes into force.

Commencement Information

I2 S. 18 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

19 Meaning of relevant offender

- (1) An adult is a “relevant offender” if subsection (2) or (3) applies to that adult.
- (2) This subsection applies to an adult if—
 - (a) the adult has been convicted of a relevant trafficking or exploitation offence,
 - (b) the adult has been acquitted of a relevant trafficking or exploitation offence by reason of the special defence set out in section 51A of the 1995 Act (criminal responsibility of persons with mental disorder),

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- (c) the adult has been acquitted of a trafficking or exploitation offence by reason of insanity,
 - (d) a court has made a finding that the adult is under a disability and has done the act constituting a relevant trafficking or exploitation offence, or
 - (e) the adult has, in England and Wales or Northern Ireland, been cautioned after admitting a relevant trafficking or exploitation offence.
- (3) This subsection applies to an adult if, under the law of a country outwith the United Kingdom—
 - (a) the adult has been convicted of an equivalent offence,
 - (b) a court has made, in relation to an equivalent offence, a finding equivalent to the special defence set out in section 51A of the 1995 Act,
 - (c) a court has made, in relation to an equivalent offence, a finding equivalent to a finding that the adult is under a disability and has done the act constituting a relevant trafficking or exploitation offence, or
 - (d) the adult has admitted an equivalent offence and received a caution or other type of warning equivalent to a caution in England and Wales or Northern Ireland.
- (4) An “equivalent offence” means an act which—
 - (a) constituted an offence under the law of the country concerned, and
 - (b) would have constituted a relevant trafficking or exploitation offence under the law of Scotland if it had been done—
 - (i) in the United Kingdom,
 - (ii) by a UK national or a person habitually resident in Scotland, or
 - (iii) as regards the United Kingdom.
- (5) For the purposes of subsection (4), an act punishable under the law of a country outwith the United Kingdom constitutes an offence under that law, however it is described in that law.
- (6) In relation to an application under section 18 where subsection (3) is alleged to apply to an adult, the condition in subsection (4)(b) is to be taken as met unless—
 - (a) not later than 3 working days before the hearing date for the application for the trafficking and exploitation prevention order, the adult in respect of whom the order is sought serves on the chief constable a notice which—
 - (i) states that in the adult's opinion the condition is not met,
 - (ii) shows the grounds for that opinion, and
 - (iii) requires the chief constable to prove that the condition is met, or
 - (b) the sheriff, if the sheriff thinks fit, permits the adult in respect of whom the order is sought to require the chief constable to prove that the condition is met without service of such notice.
- (7) In subsection (6)(a) “working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.
- (8) References in this section to convictions, acquittals, findings and cautions include those taking place before this section comes into force.

Changes to legislation: There are currently no known outstanding effects for the Human Trafficking and Exploitation (Scotland) Act 2015, Cross Heading: Trafficking and exploitation prevention orders. (See end of Document for details)

Commencement Information

I3 S. 19 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

20 Contents of prevention orders

- (1) A trafficking and exploitation prevention order may contain prohibitions or requirements (or both) in relation to the adult in respect of whom the order is to have effect.
- (2) Each of the following must have an effect for a fixed period, specified in the trafficking and exploitation prevention order, of at least 5 years—
 - (a) a prohibition or requirement in the order,
 - (b) the order.
- (3) Subsection (2) does not apply to a prohibition on foreign travel or to an order that contains a prohibition on foreign travel and no other prohibitions or requirements (see section 21).
- (4) A trafficking and exploitation prevention order may—
 - (a) prohibit the adult in respect of whom the order is to have effect from doing things, or require that adult to do things, in any part of Scotland and anywhere outwith Scotland,
 - (b) specify different periods for different prohibitions and requirements.
- (5) If the court makes a trafficking and exploitation prevention order in respect of an adult who is already subject to such an order (whether made by that court or another), the earlier order ceases to have effect.
- (6) In this section “the court” means the High Court, or as the case may be, the sheriff making the order.

Commencement Information

I4 S. 20 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

21 Prohibitions on foreign travel

- (1) A fixed period of not more than 5 years of effect must be applied to—
 - (a) a prohibition on foreign travel contained in a trafficking and exploitation prevention order, and
 - (b) an order that contains such a prohibition and no other prohibitions or requirements.
- (2) A “prohibition on foreign travel” means—
 - (a) a prohibition on travelling to any country outwith the United Kingdom named or described in the order,
 - (b) a prohibition on travelling to any country outwith the United Kingdom other than a country named or described in the order, or
 - (c) a prohibition on travelling to any country outwith the United Kingdom.

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- (3) A further period (of not more than 5 years each time) may be applied to—
 - (a) a prohibition mentioned in subsection (1)(a) by a variation or a renewal under section 22 or, as the case may be, section 23, and
 - (b) an order mentioned in subsection (1)(b) by a renewal under either of those sections.
- (4) A trafficking and exploitation prevention order that contains a prohibition mentioned in subsection (2)(c) must require the adult in respect of whom the order is made to surrender each passport that the adult has at a police station specified in the order—
 - (a) on or before the date when the prohibition takes effect, or
 - (b) within a period specified in the order.
- (5) Any passport surrendered must be returned as soon as reasonably practicable after the adult ceases to be subject to a prohibition mentioned in subsection (2)(c).
- (6) Subsection (5) does not apply in relation to—
 - (a) a passport issued by or on behalf of the authorities of a country outwith the United Kingdom if the passport has been returned to those authorities,
 - (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

Commencement Information

I5 S. 21 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

22 Orders on sentencing: variation, renewal and discharge

- (1) This section applies to a trafficking and exploitation prevention order—
 - (a) made under section 17, or
 - (b) varied or renewed following an application made under this section.
- (2) On the application of a person mentioned in subsection (3), the appropriate court may—
 - (a) vary, renew or discharge a prohibition or requirement in, or add a prohibition or requirement to, the order,
 - (b) renew the order,
 - (c) discharge the order.
- (3) The persons are—
 - (a) the adult in respect of whom the order was made,
 - (b) the prosecutor.
- (4) The “appropriate court” means—
 - (a) where the application relates to an order made by the High Court, that court,
 - (b) where the application relates to an order made by the sheriff—
 - (i) in a case where the adult in respect of whom the order was made is, at the time of the application, resident in a sheriffdom other than the sheriffdom of the sheriff who made the order, any sheriff exercising criminal jurisdiction in the sheriffdom in which the adult is resident, or

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- (ii) in any other case, any sheriff exercising criminal jurisdiction in the sheriff court district of the sheriff who made the order.
- (5) Before determining an application under this section, the court must give an opportunity to make representations to—
 - (a) the adult in respect of whom the order was made,
 - (b) the prosecutor, and
 - (c) the chief constable.
- (6) After taking into account any such representations, the court may make such order as the court thinks appropriate.
- (7) The court may—
 - (a) vary, renew or add a prohibition or requirement under subsection (2)(a) or renew an order under subsection (2)(b) only if it is satisfied that—
 - (i) there is a risk that the adult in respect of whom the order is to have effect may commit a relevant trafficking or exploitation offence, and
 - (ii) each prohibition or requirement in the order (as it is to have effect following the renewal, variation or addition) is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an offence,
 - (b) discharge a prohibition or requirement under subsection (2)(a) or discharge an order under subsection (2)(c) only if it is satisfied that—
 - (i) there is no longer a risk that the adult in respect of whom the order was made may commit a relevant trafficking or exploitation offence, or
 - (ii) the prohibition or requirement or, as the case may be, the order is no longer necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an offence.
- (8) Sections 20 and 21 apply to a trafficking and exploitation prevention order (and a prohibition or requirement in an order) as varied or renewed under this section as they apply to the making of a trafficking and exploitation prevention order.
- (9) In this section “prosecutor” means Lord Advocate, Crown Counsel or procurator fiscal (and any person duly authorised to represent or act for them).

Commencement Information

16 S. 22 in force at 30.6.2017 by [S.S.I. 2017/140](#), reg. 2, [sch.](#)

23 Orders on application: variation, renewal and discharge

- (1) This section applies to a trafficking and exploitation prevention order—
 - (a) made under section 18, or
 - (b) varied or renewed following an application made under this section.
- (2) On the application of a person mentioned in subsection (3), the appropriate sheriff may—
 - (a) vary, renew or discharge a prohibition or requirement in, or add a prohibition or requirement to, the order,

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- (b) renew the order,
 - (c) discharge the order.
- (3) The persons are—
 - (a) the adult in respect of whom the order was made,
 - (b) the chief constable.
- (4) The “appropriate sheriff” means—
 - (a) the sheriff who made the order,
 - (b) a sheriff in the sheriffdom of that sheriff, or
 - (c) a sheriff in the sheriffdom in which—
 - (i) the adult in respect of whom the order was made is resident at the time of the application,
 - (ii) the chief constable believes that adult to be, or
 - (iii) the chief constable believes that adult intends to come to.
- (5) Before determining an application under this section, the sheriff must give an opportunity to make representations to—
 - (a) the adult in respect of whom the order was made, and
 - (b) the chief constable.
- (6) After taking into account any such representations, the sheriff may make such order as the sheriff thinks appropriate.
- (7) The sheriff may—
 - (a) vary, renew or add a prohibition or requirement under subsection (2)(a) or renew an order under subsection (2)(b) only if the sheriff is satisfied that—
 - (i) since the adult in respect of whom the order was made first became a relevant offender, that adult has acted in a way which means that there is a risk that the adult may commit a relevant trafficking or exploitation offence, and
 - (ii) each prohibition or requirement in the order (as it is to have effect following the renewal, variation or addition) is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an offence,
 - (b) discharge a prohibition or requirement under subsection (2)(a) or discharge an order under subsection (2)(c) only if the sheriff is satisfied that—
 - (i) there is no longer a risk that the adult in respect of whom the order was made may commit a relevant trafficking or exploitation offence, or
 - (ii) the prohibition or requirement or, as the case may be, the order is no longer necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an offence.
- (8) The actions which the sheriff may consider for the purposes of subsection (7)(a)(i) include those which took place before this section comes into force.
- (9) Sections 20 and 21 apply to a trafficking and exploitation prevention order (and a prohibition or requirement in an order) as varied or renewed under this section as they apply to the making of a trafficking and exploitation prevention order.

Changes to legislation: There are currently no known outstanding effects for the Human Trafficking and Exploitation (Scotland) Act 2015, Cross Heading: Trafficking and exploitation prevention orders. (See end of Document for details)

Commencement Information

17 S. 23 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

24 Interim prevention orders

- (1) The sheriff may, after receiving an application under section 18, make an interim trafficking and exploitation prevention order if the sheriff considers it just to do so.
- (2) An interim trafficking and exploitation prevention order may contain prohibitions or requirements (or both) in relation to the adult in respect of whom the order is to have effect.
- (3) An interim trafficking and exploitation prevention order may prohibit the adult in respect of whom the order is to have effect from doing things, or require that adult to do things, in any part of Scotland and anywhere outwith Scotland.
- (4) An interim trafficking and exploitation prevention order—
 - (a) has effect only for a fixed period, specified in the order, and
 - (b) ceases to have effect, if it has not already done so, on the determination of the application under section 18.
- (5) A person mentioned in subsection (6) may apply to a sheriff in the sheriffdom of the sheriff who made the interim trafficking and exploitation prevention order to vary or discharge the order (or a requirement or prohibition in the order).
- (6) The persons are—
 - (a) the adult in respect of whom the order was made,
 - (b) the chief constable.

Commencement Information

18 S. 24 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

25 Appeals: prevention orders

- (1) A trafficking and exploitation prevention order is taken to be a sentence for the purposes of any appeal if it is—
 - (a) made under section 17, or
 - (b) varied or renewed in accordance with section 22.
- (2) A person mentioned in subsection (3) may appeal against—
 - (a) a trafficking and exploitation prevention order—
 - (i) made under section 18,
 - (ii) varied or renewed in accordance with section 23,
 - (b) the making, variation or discharge of an interim trafficking and exploitation prevention order.
- (3) The persons are—
 - (a) the adult in respect of whom the order was made,
 - (b) the chief constable.

Changes to legislation: *There are currently no known outstanding effects for the Human Trafficking and Exploitation (Scotland) Act 2015, Cross Heading: Trafficking and exploitation prevention orders. (See end of Document for details)*

- (4) Where an appeal mentioned in subsection (2) is made, the court may, in the appeal proceedings, suspend the decision appealed against pending the disposal of the appeal.

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Commencement Information

19 [S. 25](#) in force at 30.6.2017 by [S.S.I. 2017/140](#), reg. 2, [sch.](#)

Changes to legislation:

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