

# **HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015**

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## **EXPLANATORY NOTES**

### **THE STRUCTURE AND A SUMMARY OF THE ACT**

#### **Part One – Offences**

##### **Human trafficking**

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

20. **Section 3** describes what constitutes exploitation for the purposes of the offence of human trafficking. By virtue of subsection (1), only exploitation of a type mentioned in subsections (2) to (8) is to be regarded as exploitation in this context.
21. Subsection (2) provides that a person is exploited if the person is the victim of conduct which involves the commission of an offence under section 4 of the Act (slavery, servitude and forced or compulsory labour) or would be if the conduct occurred in Scotland.
22. Subsections (3) to (5) deal with prostitution and sexual exploitation and provide that a person is exploited if—
  - another person exercises control, direction or influence over the first person's prostitution in a way which shows that the other person is aiding, abetting or compelling the prostitution;
  - another person involves the first person in the making or production of obscene or indecent material; or
  - the person is the victim of conduct constituting one of a number of listed sexual offences (or which would constitute such an offence if that conduct occurred in Scotland).
23. The categories of exploitation related to prostitution and the making of indecent material are drawn from the existing offence in section 22 of the 2003 Act. The category related to other forms of exploitation in connection with sexual offences is a new development in Scots law, though has some precedent under the Sexual Offences Act 2003 in England and Wales.
24. Subsection (6) deals with exploitation relating to the removal of organs etc. It provides that a person is exploited in that context if they are encouraged, required or expected to do anything which involves the commission by any person of an offence under Part 1 of the Human Tissue (Scotland) Act 2006 which deals principally with removal of organs for transplantation. It also provides that a person is exploited if they are encouraged, required or expected to do anything in connection with the removal of a part of the human body as a result of which an offence under the law of Scotland is committed by any person. This latter category ensures that actions in connection with

the removal of organs or tissue for purposes other than transplantation is caught by the trafficking offences. This covers the removal of body parts for research, sacrificial rites, consumption, etc. For these purposes, a part of the body comprises all parts of the body, including blood. Finally, subsection (6)(c) provides that a person is exploited if they are encouraged, required or expected to do anything which would constitute an offence mentioned above if it were done in Scotland.

25. Subsections (7) and (8) make more general provision. Subsection (7) establishes that a person is exploited if force, threats or deception are used to induce the person to provide services or benefits or to enable another person to acquire benefits. Subsection (8) provides that a person is exploited if another person takes advantage of the fact that the person is a child or of an adult's vulnerability to use or attempt to use the child or vulnerable adult to provide services or benefits (or to enable another person to acquire benefits). This will ensure the offence captures those cases where the role of the person being exploited is entirely passive, and where the person is being used as a tool by which others can gain a benefit of any kind.
26. The categories of exploitation in subsections (6) to (8) are derived from section 4 of the 2004 Act.