



# Human Trafficking and Exploitation (Scotland) Act 2015

2015 asp 12

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 1st October 2015 and received Royal Assent on 4th November 2015**

An Act of the Scottish Parliament to make provision about human trafficking and slavery, servitude and forced or compulsory labour, including provision about offences and sentencing, provision for victim support and provision to reduce activity related to offences.

VALID FROM 31/05/2016

## 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.

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- (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—

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- (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
  - (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

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- (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,

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- (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

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- (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).

VALID FROM 31/05/2016

## PART 2

### PROTECTION OF VICTIMS

#### *Prosecution of victims*

#### **8 Lord Advocate's instructions on prosecution of victims of offences**

- (1) The Lord Advocate must issue and publish instructions about the prosecution of a person who is, or appears to be, the victim of an offence—
  - (a) of human trafficking,
  - (b) under section 4.
- (2) The instructions must in particular include factors to be taken into account or steps to be taken by the prosecutor when deciding whether to prosecute a person in the circumstances mentioned in subsections (3) and (4).
- (3) The circumstances are where—
  - (a) an adult does an act which constitutes an offence because the adult has been compelled to do so, and
  - (b) the compulsion appears to be directly attributable to the adult being a victim of an offence mentioned in subsection (1).
- (4) The circumstances are where—
  - (a) a child does an act which constitutes an offence, and

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(b) the act appears to be done as a consequence of the child being a victim of an offence mentioned in subsection (1).

(5) The Lord Advocate may from time to time revise the instructions.

(6) In this section “prosecutor” means Lord Advocate, Crown Counsel or procurator fiscal (and any person duly authorised to represent or act for them).

### *Support and assistance for adult victims*

## **9 Support and assistance: victims of offence of human trafficking**

(1) Where there are reasonable grounds to believe that an adult is a victim of an offence of human trafficking, the Scottish Ministers must, during the relevant period, secure for the adult the provision of such support and assistance as they consider necessary given the adult's needs.

(2) The relevant period—

(a) begins on the date it is determined there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking, and

(b) ends on the earlier of the following—

(i) the end of the period specified in regulations made by the Scottish Ministers, or

(ii) the date on which there is a conclusive determination that the adult is or is not a victim of an offence of human trafficking.

(3) The Scottish Ministers may also secure the provision of that support and assistance for an adult—

(a) during the period in which a competent authority is determining whether or not there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking,

(b) where the relevant period in relation to the adult ends by virtue of subsection (2)(b)(i), during the period until there is a conclusive determination that the adult is or is not a victim of an offence of human trafficking,

(c) for such period as they think appropriate after the conclusive determination.

(4) Support and assistance may be provided under this section in connection with (but is not limited to) the following—

(a) accommodation,

(b) day to day living,

(c) medical advice and treatment (including psychological assessment and treatment),

(d) language translation and interpretation,

(e) counselling,

(f) legal advice,

(g) information about other services available to the adult,

(h) repatriation.

(5) In securing the provision of support and assistance under this section to an adult, the Scottish Ministers must ensure that—

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- (a) support and assistance is only provided where the adult consents, and
  - (b) the provision of support and assistance is not made conditional on the adult assisting with a criminal investigation or prosecution.
- (6) For the purposes of this section—
- (a) there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking if a competent authority has determined for the purposes of Article 10 of the Trafficking Convention (identification of victims) that there are such grounds,
  - (b) there is a conclusive determination that an adult is or is not a victim of an offence of human trafficking when, on completion of the identification process required by that Article, a competent authority concludes that the adult is or is not such a victim.
- (7) In this section—
- “competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention,
  - “the Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005).
- (8) The Scottish Ministers may by regulations modify subsections (6) and (7) to make provision about the circumstances in which—
- (a) there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking,
  - (b) there is a conclusive determination that an adult is or is not a victim of an offence of human trafficking.
- (9) Regulations under subsection (8) may in particular make provision about—
- (a) the procedure to be followed by a person in making a determination,
  - (b) the criteria to be applied by a person in making a determination, and
  - (c) the persons who may make a determination or take any step in the procedure.

## **10 Support and assistance: victims of an offence under section 4**

- (1) The Scottish Ministers may by regulations make provision about providing support and assistance to an adult who is, or appears to be, a victim of an offence under section 4.
- (2) Regulations under subsection (1) may in particular make provision about—
- (a) the method of determining whether an adult is, or appears to be, a victim of an offence under section 4,
  - (b) the period during which support and assistance must be provided,
  - (c) the period during which support and assistance may be provided,
  - (d) the types of support and assistance to be provided, and
  - (e) the manner in which the support and assistance is to be provided.



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### *Support and assistance for child victims*

#### **11 Independent child trafficking guardians**

- (1) The Scottish Ministers must make such arrangements as they consider reasonable to enable a person (an “independent child trafficking guardian”) to be appointed to assist, support and represent a child to whom subsection (2) applies.
- (2) This subsection applies to a child if a relevant authority determines that—
  - (a) there are reasonable grounds to believe that the child—
    - (i) is, or may be, a victim of the offence of human trafficking, or
    - (ii) is vulnerable to becoming a victim of that offence, and
  - (b) no person in the United Kingdom is a person with parental rights or responsibilities in relation to the child.
- (3) A relevant authority making a determination that subsection (2) applies in relation to a child must, as soon as reasonably practicable after doing so, take steps to bring that child to the attention of the person mentioned in subsection (4)(a).
- (4) The arrangements made under subsection (1) must—
  - (a) provide for a person to appoint an independent child trafficking guardian for a child to whom subsection (2) applies,
  - (b) provide for an independent child trafficking guardian to be appointed as soon as reasonably practicable after a relevant authority brings the child to the attention of the person mentioned in paragraph (a), and
  - (c) ensure that the independent child trafficking guardian appointed is independent of any person who will be responsible for exercising functions under any enactment in relation to the child.
- (5) An independent child trafficking guardian appointed in relation to a child must at all times act in the best interests of the child.
- (6) A person responsible for exercising functions under any enactment in relation to a child for whom an independent child trafficking guardian has been appointed under this section must—
  - (a) recognise, and pay due regard to the guardian's functions, and
  - (b) provide the independent child trafficking guardian with access to such information relating to the child as will enable the guardian to carry out the guardian's functions effectively.
- (7) The Scottish Ministers may by regulations make further provision about independent child trafficking guardians appointed under this section, including, in particular, provision about—
  - (a) the appointment of an independent child trafficking guardian,
  - (b) the termination of that appointment,
  - (c) the conditions (including conditions as to training, qualifications and experience) to be satisfied for a person to be eligible for appointment as an independent child trafficking guardian,
  - (d) payments to be made to, or in respect of, an independent child trafficking guardian,
  - (e) the functions of an independent child trafficking guardian,

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- (f) the records that should be maintained by any person in relation to the appointment of an independent child trafficking guardian (including arrangements to maintain a register of independent child trafficking guardians),
- (g) the circumstances in which—
  - (i) an independent child trafficking guardian appointed in relation to a person may continue to act after that person is no longer a child, and
  - (ii) the person who is no longer a child is to be treated as a child for the purposes of this section.

(8) In this section—

“person with parental rights or responsibilities”, in relation to a child, means—

- (a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the Children (Scotland) Act 1995,
- (b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the Children (Scotland) Act 1995,
- (c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the Children (Scotland) Act 1995,
- (d) a parent having parental responsibility for the child under Part 1 of the Children Act 1989,
- (e) a person having parental responsibility for the child by virtue of—
  - (i) section 12(2) of the Children Act 1989,
  - (ii) section 14C of that Act, or
  - (iii) section 25(3) of the Adoption and Children Act 2002,
- (f) a parent having parental responsibility for the child under Part 2 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755),
- (g) a person having parental responsibility for the child by virtue of Article 12(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755),
- (h) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007),
- (i) any other person with rights or responsibilities anywhere in the world which are, in relation to a child, analogous to those described in paragraphs (a) to (h), and
- (j) any other person specified by regulations made by the Scottish Ministers,

“relevant authority” means—

- (a) a local authority, and
- (b) any other person specified by regulations made by the Scottish Ministers.

## 12 Presumption of age

(1) This section applies where—

- (a) a relevant authority has reasonable grounds to believe that a person may be a victim of an offence of human trafficking, and
- (b) the authority is not certain of the person's age but has reasonable grounds to believe that the person may be a child.

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- (2) Until an assessment of the person's age is carried out by a local authority, or the person's age is otherwise determined, the relevant authority must assume that the person is a child for the purposes of exercising its functions under the relevant enactments.
- (3) The “relevant enactments” are—
- (a) an enactment which applies to a child who is looked after by a local authority within the meaning of section 17(6)(a) of the Children (Scotland) Act 1995 (child for whom a local authority is providing accommodation),
  - (b) section 22 of the Children (Scotland) Act 1995 (promotion by a local authority of welfare of children in need),
  - (c) section 25 of the Children (Scotland) Act 1995 (provision by a local authority of accommodation for children),
  - (d) Part 4 of the Children and Young People (Scotland) Act 2014 (provision of named persons),
  - (e) Part 5 of the Children and Young People (Scotland) Act 2014 (child's plan), and
  - (f) section 11.
- (4) In this section, “relevant authority” means—
- (a) a Health Board constituted under section 2(1) of the National Health Service (Scotland) Act 1978, and
  - (b) a local authority.
- (5) The Scottish Ministers may by regulations modify subsections (3) and (4).

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## PART 3

### CONFISCATION OF PROPERTY

#### *Detention and forfeiture*

#### **13 Detention of vehicle, ship or aircraft**

- (1) A constable may detain a vehicle, ship or aircraft if—
- (a) a person has been arrested for an offence of human trafficking, and
  - (b) the constable has reasonable grounds to believe that an order for its forfeiture could be made under section 14 if the person arrested were convicted of the offence.
- (2) The vehicle, ship or aircraft may be detained—
- (a) until a decision is taken as to whether or not to begin solemn proceedings against the person arrested for the offence, or
  - (b) if solemn proceedings are begun against the person arrested for the offence, until—
    - (i) the person is acquitted,

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- (ii) the person is convicted and the High Court or, as the case may be, the sheriff decides whether or not to order forfeiture of the vehicle, ship or aircraft under section 14, or
  - (iii) the proceedings are otherwise concluded.
- (3) For the purposes of subsection (2)—
  - (a) solemn proceedings begin against a person at the earlier of—
    - (i) the person's first appearance before the sheriff on petition, or
    - (ii) the service on that person of an indictment, and
  - (b) proceedings are taken to be otherwise concluded if—
    - (i) the proceedings are deserted simpliciter,
    - (ii) the proceedings are deserted pro loco et tempore for any reason and no further trial diet is appointed, or
    - (iii) subsection (4) applies.
- (4) This subsection applies if—
  - (a) the indictment falls or is for any other reason not brought to trial,
  - (b) the diet is not continued, adjourned or postponed, and
  - (c) no further proceedings are in contemplation.
- (5) A person may apply to the sheriff for the release of a vehicle, ship or aircraft if that person—
  - (a) owns the vehicle, ship or aircraft,
  - (b) was, immediately before the detention of the vehicle, ship or aircraft, in possession of it under a hire-purchase agreement, or
  - (c) is a charterer of the ship or aircraft.
- (6) The sheriff may, if satisfactory security is tendered, release the vehicle, ship or aircraft on condition that it is made available if—
  - (a) the person arrested for the offence is convicted, and
  - (b) an order for forfeiture is made under section 14.
- (7) The sheriff may impose such other conditions as to the release as the sheriff thinks fit.

#### **14 Forfeiture of vehicle, ship or aircraft**

- (1) This section applies if a person is convicted on indictment of the offence of human trafficking.
- (2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the person convicted—
  - (a) owned the vehicle at the time the offence was committed,
  - (b) was at that time a director, secretary or manager of a company which owned the vehicle,
  - (c) was at that time in possession of the vehicle under a hire-purchase agreement,
  - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
  - (e) was driving the vehicle in the course of the commission of the offence.
- (3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the person convicted—

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- (a) owned the ship or aircraft at the time the offence was committed,
  - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
  - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,
  - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
  - (e) was at that time a charterer of the ship or aircraft, or
  - (f) committed the offence while acting as captain of the ship or aircraft.
- (4) If subsection (3)(a) or (b) does not apply to the person convicted, forfeiture of a ship or aircraft may be ordered only if any of the following applies—
- (a) 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—
    - (i) knew, or
    - (ii) ought to have known,of the intention to use it in the course of the commission of the offence of human trafficking,
  - (b) in the case of a ship other than a hovercraft, its gross tonnage is less than 500, or
  - (c) in the case of an aircraft, the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.
- (5) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to the court to make representations about its forfeiture, the court may not order its forfeiture unless the person has been given an opportunity to make representations.
- (6) In this section “the court” means the High Court, or as the case may be, the sheriff.

#### *Proceeds of crime*

### **15 Proceeds of Crime Act 2002: lifestyle offences**

In Schedule 4 to the Proceeds of Crime Act 2002 (lifestyle offences: Scotland)—

- (a) for paragraph 4, substitute—

“4

- (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (assisting unlawful immigration etc.).
- (2) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation).
- (3) An offence of human trafficking (see section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015).
- (4) An offence to which section 5 of the Human Trafficking and Exploitation (Scotland) Act 2015 (offences aggravated by connection with human trafficking activity) applies.”, and

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(b) after paragraph 4, insert—

**4A “Slavery, servitude and forced or compulsory labour**

An offence under section 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (slavery, servitude and forced or compulsory labour).”.

VALID FROM 31/05/2016

**PART 4**

**TRAFFICKING AND EXPLOITATION PREVENTION AND RISK ORDERS**

VALID FROM 29/06/2017

*Trafficking and exploitation offences*

**16 Relevant trafficking or exploitation offence**

- (1) A relevant trafficking or exploitation offence is an offence—
- (a) of human trafficking,
  - (b) under section 4,
  - (c) aggravated by a connection with human trafficking activity in accordance with section 5,
  - (d) under section 145 of the Nationality, Immigration and Asylum Act 2002 (trafficking for prostitution),
  - (e) under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.),
  - (f) under section 57, 58, 58A, 59 or 59A of the Sexual Offences Act 2003 (trafficking for sexual exploitation),
  - (g) under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation),
  - (h) under section 71 of the Coroners and Justice Act 2009 (slavery, servitude and forced or compulsory labour),
  - (i) under section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 (slavery, servitude and forced or compulsory labour),
  - (j) of attempting or conspiring to commit an offence mentioned in this subsection,
  - (k) committed by aiding, abetting, counselling, procuring or inciting the commission of an offence mentioned in this subsection, or
  - (l) under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) where the offence (or one of the offences) which the person in question intends or believes would be committed is an offence mentioned in this subsection.

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(2) The Scottish Ministers may by regulations amend subsection (1).

VALID FROM 30/06/2017

*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.
- (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.

**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

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- (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.

## **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),
  - (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,



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- (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.

## **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.

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## **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.
- (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.

## **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,

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- (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
    - (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).

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## **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,
  - (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

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(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.

## **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.

## **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—

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- (a) the adult in respect of whom the order was made,
  - (b) the chief constable.
- (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.

VALID FROM 31/10/2017

### *Trafficking and exploitation risk orders*

#### **26 Risk orders**

- (1) The chief constable may apply to the sheriff for a trafficking and exploitation risk order against an adult.
- (2) The chief constable may make an application under this section to the sheriff in whose sheriffdom—
  - (a) the adult in respect of whom the order is sought resides,
  - (b) the chief constable believes that adult to be,
  - (c) the chief constable believes that adult intends to come to,
  - (d) lies any place where it is alleged that that adult acted in a way mentioned in subsection (3).
- (3) The sheriff may make a trafficking and exploitation risk order only if the sheriff is satisfied that the adult in respect of whom the order is sought has acted in a way which means that—
  - (a) there is a risk that the adult 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.
- (4) The actions which the sheriff may consider for the purposes of subsection (3) include those which took place before this section comes into force.

#### **27 Contents of risk orders**

- (1) A trafficking and exploitation risk 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 risk order, of at least 2 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 28).

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- (4) A trafficking and exploitation risk 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 sheriff makes a trafficking and exploitation risk order in respect of an adult who is already subject to such an order (whether made by that sheriff or not), the earlier order ceases to have effect.

## **28 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 risk 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.
- (3) A further period (of no 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 29, and
  - (b) an order mentioned in subsection (1)(b) by a renewal under that section.
- (4) A trafficking and exploitation risk 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.

## **29 Variation, renewal and discharge of risk orders**

- (1) On the application of a person mentioned in subsection (2), the appropriate sheriff may—
- (a) vary, renew or discharge a prohibition or requirement in, or add a prohibition or requirement to, a trafficking and exploitation risk order,

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- (b) renew a trafficking and exploitation risk order,
  - (c) discharge a trafficking and exploitation risk order.
- (2) The persons are—
- (a) the adult in respect of whom the order was made,
  - (b) the chief constable.
- (3) The “appropriate sheriff” means—
- (a) the sheriff who made the trafficking and exploitation risk order,
  - (b) a sheriff in the sheriffdom of that sheriff,
  - (c) a sheriff in the sheriffdom in which—
    - (i) the adult in respect of whom the trafficking and exploitation risk order was made is resident at the time of the application,
    - (ii) the chief constable believes that adult to be,
    - (iii) the chief constable believes that adult intends to come to.
- (4) 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 is made, and
  - (b) the chief constable.
- (5) After taking into account any such representations, the sheriff may make such order as the sheriff thinks appropriate.
- (6) The sheriff may—
- (a) vary, renew or add a prohibition or requirement under subsection (1)(a) or renew an order under subsection (1)(b) only if the sheriff 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 (1)(a) or discharge an order under subsection (1)(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.
- (7) Sections 27 and 28 apply to a trafficking and exploitation risk 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 risk order.



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### **30 Interim risk orders**

- (1) The sheriff may, after receiving an application under section 26, make an interim trafficking and exploitation risk order if the sheriff considers it just to do so.
- (2) An interim trafficking and exploitation risk 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 risk 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 risk 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 26.
- (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 risk 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.

### **31 Appeals: risk orders**

- (1) A person mentioned in subsection (2) may appeal against—
  - (a) a trafficking and exploitation risk order—
    - (i) made under section 26, or
    - (ii) varied or renewed in accordance with section 29(1)(a) or (b),
  - (b) the making, variation or discharge of an interim trafficking and exploitation risk order.
- (2) The persons are—
  - (a) the adult in respect of whom the order was made,
  - (b) the chief constable.
- (3) Where such an appeal is made, the court may, in the appeal proceedings, suspend the decision appealed against pending the disposal of the appeal.

### *Offences and supplementary provision*

### **32 Offences**

- (1) A person commits an offence if, without reasonable excuse, the person—
  - (a) does anything which the person is prohibited from doing by an order mentioned in subsection (2),
  - (b) fails to do anything which the person is required to do by such an order.
- (2) The orders are—

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- (a) a trafficking and exploitation prevention order,
- (b) an interim trafficking and exploitation prevention order,
- (c) a trafficking and exploitation risk order,
- (d) an interim trafficking and exploitation risk order.

(3) A person who commits an offence under section (1) 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 a term not exceeding 5 years or a fine (or both).

### **33 Enforcement of other UK orders**

(1) The Scottish Ministers may by regulations amend section 32(2) so as to—

- (a) add to the list of orders in that section a relevant UK order, or
- (b) remove from that list an order so added.

(2) A relevant UK order is an order under the law of England and Wales or Northern Ireland which appears to the Scottish Ministers to be equivalent or similar to—

- (a) a trafficking and exploitation prevention order,
- (b) an interim trafficking and exploitation prevention order,
- (c) a trafficking and exploitation risk order, or
- (d) an interim trafficking and exploitation risk order.

### **34 Interpretation of Part 4**

(1) In this Part—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995,

“chief constable” means chief constable of the Police Service of Scotland,

“interim trafficking and exploitation prevention order” means an order made under section 24,

“interim trafficking and exploitation risk order” means an order made under section 30,

“passport” means—

- (a) a United Kingdom passport within the meaning of the Immigration Act 1971,
- (b) a passport issued by or on behalf of the authorities of a country outwith the United Kingdom, or by or on behalf of an international organisation,
- (c) a document that can be used (in some or all circumstances) instead of a passport,

“relevant offender” has the meaning given by section 19,

“relevant trafficking or exploitation offence” means an offence listed in section 16(1),

“trafficking and exploitation prevention order” means an order made under section 17 or 18 or varied or renewed under section 22 or 23,

“trafficking and exploitation risk order” means an order made under section 26 or varied or renewed under section 29.

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- (2) In this Part, a reference to a conviction includes a conviction for an offence in respect of which an order for—
- (a) absolute discharge is made under section 246(2) of the 1995 Act, despite section 247(1) of the 1995 Act,
  - (b) conditional discharge is made, despite—
    - (i) section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (conviction with conditional discharge deemed not to be a conviction),
    - (ii) article 6(1) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160) (effect of discharge).
- (3) Subsection (2) applies only to convictions after this Part comes into force.
- (4) In this Part, a reference to a conviction includes a finding of a court in summary proceedings that the accused did the act charged, where the court makes an order under—
- (a) section 37(3) of the Mental Health Act 1983 (hospital or guardianship),
  - (b) section 58(3) of the 1995 Act (hospital or guardianship), or
  - (c) article 44(4) of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595) (hospital admission or guardianship).
- (5) In relation to an offence under the law of England and Wales or Northern Ireland, a reference in this Part to a person being acquitted by reason of the special defence in section 51A of the 1995 Act is to be treated as a reference to a person being found not guilty by reason of insanity.
- (6) In this Part, a reference to a finding that a person is under a disability and has done the act charged against the person in respect of an offence includes a finding (under section 53F of the 1995 Act or otherwise) that a person is insane or unfit to be tried and has done the act charged against the person in respect of an offence.

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## PART 5

### STRATEGY AND REPORTING

#### 35 Trafficking and exploitation strategy

- (1) The Scottish Ministers must prepare a trafficking and exploitation strategy.
- (2) A trafficking and exploitation strategy is a strategy which sets out such actions, arrangements and outcomes as the Scottish Ministers consider appropriate in relation to the conduct which constitutes an offence under this Act.
- (3) The strategy may in particular set out—
  - (a) actions to raise awareness of the conduct which constitutes an offence under this Act,
  - (b) arrangements to facilitate the detection and prevention of that conduct, and

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- (c) support and assistance which is, or is to be, available (whether under section 9, 10 or otherwise) to adults or children who are, or appear to be, victims of an offence under this Act.

### **36 Review and publication of strategy**

- (1) The Scottish Ministers must review the strategy prepared under section 35 before the end of the period of 3 years beginning with—
  - (a) the date on which the strategy was last published, or
  - (b) if subsequent to that date a report was prepared under subsection (2)(a) but the strategy was not revised under subsection (2)(b), the date of the most recent report.
- (2) Following a review under subsection (1), the Scottish Ministers—
  - (a) must prepare a report on the review, including in particular Ministers' assessment of the extent to which the strategy has been complied with, and
  - (b) may revise the strategy.
- (3) If, following a review, the Scottish Ministers decide not to revise the strategy under subsection (2)(b), the report prepared under subsection (2)(a) must set out their reasons for not doing so.
- (4) Before preparing or reviewing the strategy, the Scottish Ministers must consult such persons as they consider likely to have an interest in the strategy.
- (5) The Scottish Ministers must—
  - (a) publish the strategy within 1 year of section 1 coming into force,
  - (b) publish each revision of the strategy,
  - (c) publish each report prepared under subsection (2)(a), and
  - (d) lay before the Scottish Parliament—
    - (i) a copy of the strategy and each revision of the strategy, and
    - (ii) each report prepared under subsection (2)(a).

### **37 Duty to co-operate on strategy**

- (1) A specified Scottish public authority must—
  - (a) provide such information and assistance to the Scottish Ministers as they may reasonably require, and
  - (b) otherwise co-operate with the Scottish Ministers,
 in the preparation of the strategy under section 35 and the review of the strategy under section 36.
- (2) The Scottish Ministers may by regulations specify a Scottish public authority for the purposes of subsection (1).

### **38 Duty to notify and provide information about victims**

- (1) A specified Scottish public authority must notify the chief constable of the Police Service of Scotland about a person who is, or appears to be, a victim of an offence of human trafficking or an offence under section 4.

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- (2) A notification under subsection (1) relating to an adult must not include information that—
- (a) identifies the adult, or
  - (b) enables the adult to be identified (either by itself or in combination with other information),
- unless the adult consents to the inclusion of that information.
- (3) The Scottish Ministers may by regulations—
- (a) specify a Scottish public authority for the purposes of subsection (1),
  - (b) make provision about information to be included in a notification.
- (4) After receiving a notification under subsection (1), the chief constable of the Police Service of Scotland must notify a person who may be specified by regulations made by the Scottish Ministers about the person who is, or appears to be, a victim of an offence of human trafficking or an offence under section 4.
- (5) A notification under subsection (4) relating to an adult must not include information that—
- (a) identifies the adult, or
  - (b) enables the adult to be identified (either by itself or in combination with other information),
- unless the adult consents to the inclusion of that information.
- (6) Regulations under subsection (4) may make provision about information to be included in a notification.

## PART 6

### FINAL PROVISIONS

VALID FROM 31/05/2016

#### 39 Offences by bodies corporate etc.

- (1) Where—
- (a) an offence under this Act has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual, or
    - (ii) an individual purporting to act in the capacity of a relevant individual,
- the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate—

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- (i) a director, manager, secretary or other similar officer of the body,
- (ii) where the affairs of the body are managed by its members, the members,
- (b) in relation to a Scottish partnership, a partner,
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

## 40 Interpretation

In this Act—

“adult” means an individual aged 18 or over,

“captain” means master of a ship or commander of an aircraft,

“child” means a person under 18 years of age,

“ship” includes every description of vessel (including a hovercraft) used in navigation,

“UK national” means—

(a) a British citizen,

(b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has a right of abode in the United Kingdom, or

(c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar,

“vehicle” means any vehicle other than a ship or an aircraft.

## 41 Regulations

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—

(a) different provision for different purposes,

(b) incidental, supplementary, consequential, transitional, transitory or saving provision.

(2) Regulations under—

(a) section 7(7),

(b) section 9(2)(b)(i),

(c) section 9(8),

(d) section 10,

(e) section 12(5),

(f) section 16(2),

(g) section 33(1),

(h) section 42(1) which contain provisions that add to, replace or omit any part of the text of an Act,

are subject to the affirmative procedure.

(3) All other regulations under this Act are subject to the negative procedure.

(4) This section does not apply to regulations under section 45.

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#### **42 Ancillary provision**

- (1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).

VALID FROM 31/05/2016

#### **43 Minor and consequential amendments**

The schedule contains minor amendments and amendments consequential on the provisions of this Act.

#### **44 Crown application**

- (1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (2) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (1), any provision made by or under the provisions of this Act applies to persons in the public service of the Crown as it applies to other persons.

#### **45 Commencement**

- (1) This section and sections 40, 41, 42, 44 and 46 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Different days may be appointed for different purposes.
- (4) Regulations under subsection (2) may contain transitional, transitory or saving provision.

#### **46 Short title**

The short title of this Act is the Human Trafficking and Exploitation (Scotland) Act 2015.

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VALID FROM 31/05/2016

SCHEDULE

(introduced by section 43)

MINOR AND CONSEQUENTIAL MODIFICATIONS

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