

# HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015

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## EXPLANATORY NOTES

### THE STRUCTURE AND A SUMMARY OF THE ACT

#### **Part 4 – Trafficking and Exploitation Prevention and Risk Orders**

##### **Trafficking and exploitation offences**

###### *Section 16: Relevant trafficking or exploitation offences*

72. **Section 16** provides a list of the relevant trafficking and exploitation offences for the purposes of trafficking and exploitation prevention and risk orders made under the Act. The list includes repealed provisions as orders (other than orders on sentencing) may still be made with reference to convictions under such provisions.
73. Subsection (2) provides that the Scottish Ministers may modify by regulations the offences contained in the list. Under section 37(2) any such regulations are subject to the affirmative procedure.

##### **Trafficking and exploitation prevention orders**

###### *Section 17: Prevention orders on sentencing*

74. **Section 17** provides that a court may, instead of or in addition to dealing with the person in any other way, make a trafficking and exploitation prevention order (TEPO) on sentencing of an adult.
75. Subsection (1) sets out the three circumstances where the court may make a TEPO against a person on sentencing. The first is conviction of an adult of a relevant trafficking and exploitation offence. The second circumstance is acquittal of such an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (which provides a defence where a person is unable by reason of mental disorder to appreciate the nature or wrongfulness of their conduct). The third circumstance is a finding of unfitness for trial in relation to such an offence under section 53F of that Act (which provides that a person is unfit for trial if it is established on the balance of probabilities that the person is incapable, by reason of a mental or physical condition, of participating effectively in that trial). In relation to the third circumstance there must also be a finding that the adult has done the act constituting the offence.
76. Subsection (3) provides that the court may make a TEPO at its own instance or on the motion of the prosecutor.
77. Subsection (4) provides the test for making a TEPO on sentencing. The court must be satisfied that there is a risk that the person in respect of whom the order is to have effect may commit a relevant trafficking or exploitation offence and that it is necessary to make the prohibitions and requirements in the order for the purpose of protecting

persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the person committed such an offence.

78. Subsection (5) provides a definition of “the court” for the purposes of this section.

### ***Section 18: Prevention orders on application***

79. **Section 18** provides that the chief constable may apply to a sheriff for a TEPO against an adult.
80. Subsection (2) sets out the appropriate sheriff to whom such an application should be made.
81. Subsection (3) sets out the tests for making a TEPO on application. The sheriff must be satisfied that the person in respect of whom the order is sought is a “relevant offender” (subsection (3)(a)), that since the person first became a relevant offender, the person has acted in a way which means that there is a risk the person will commit a relevant trafficking or exploitation offence (subsection (3)(b)) and it is necessary to make the prohibitions or requirements in the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the person committed such an offence (subsection (3)(c)).
82. Subsection (4) provides that conduct which occurred before this section came into force may be considered when determining whether there is a risk that a person may commit a relevant trafficking offence.

### ***Section 19: Meaning of relevant offender***

83. **Section 19** defines what is meant by a “relevant offender” for the purposes of section 18.
84. Subsection (2) provides that a person is a relevant offender if any of the court disposals listed in the subsection have been made in the UK in relation to that person and in respect of a relevant trafficking or exploitation offence (as set out in section 16 of the Act).
85. Subsections (3) to (5) deal with findings of courts and tribunals outside the United Kingdom. Subsection (3) provides that a person is a relevant offender if, under the law of a country outside the United Kingdom, a listed disposal is made in respect of a person in relation to an offence which is equivalent to an offence listed in section 16. Subsections (4) and (5) set out tests for determining whether an offence is equivalent to a relevant offence. In particular, such offences are acts which constitute offences under the law of the country concerned and which would constitute a relevant trafficking or exploitation offence under the law of Scotland if done in the UK, by a UK national or person habitually resident in Scotland or as regards the UK (e.g. by virtue of the fact that travel was arranged into, out of or within the UK).
86. Subsection (6) establishes a mechanism for determining whether an act constituting an offence in a country outside the UK would constitute an offence under the law of Scotland.
87. Subsection (8) provides that, for the purposes of this section, convictions, acquittals, findings and cautions include those which took place before this section comes into force.

### ***Section 20: Contents of prevention orders***

88. **Section 20** makes provision about the prohibitions or requirements (or both) that may be contained in a TEPO. Each prohibition and requirement in a TEPO is for a fixed period and the order itself is for a fixed period. The order and the prohibitions and requirements may all be for the same period. However, the Act allows some requirements and prohibitions in the order to be set for a period shorter than that of the order, if that is appropriate.

89. Subsection (2) provides that both the order and any prohibition or requirement in the order must have a specified fixed period of at least five years. The only exception to that requirement relates to a prohibition on foreign travel and an order containing only a prohibition on foreign travel (which is dealt with in section 21) and relates to a period of not more than five years. Subsection (4) provides that a TEPO may prohibit the person in respect of whom the order is made from doing things or require that person to do things. Different prohibitions and requirements may have effect for different periods.
90. Subsection (5) provides that, if the court makes a TEPO in respect of a person already subject to such an order, the earlier order will cease to have effect.
91. Subsection (6) defines what is meant by “the court” for the purposes of the section.

### ***Section 21: Prohibitions on foreign travel***

92. **Section 21** makes provision about prohibitions on foreign travel in TEPOs.
93. Subsection (1) provides that a prohibition on foreign travel contained in a TEPO, and any TEPO which contains such a prohibition and no other prohibitions or requirements, must be for a fixed period of not more than five years.
94. Subsection (2) defines a prohibition on foreign travel as a prohibition on travelling to countries outside the UK (either by reference to particular countries or generally).
95. Subsection (3)(a) determines that a prohibition on foreign travel varied or renewed by application under section 22 or 23 may be varied or renewed for further fixed periods of no more than five years each time. Subsection (3)(b) requires that an order containing only a foreign travel restriction may be renewed for up to that fixed period.
96. Subsection (4) sets out the requirement on a person in respect of whom a TEPO containing a prohibition on foreign travel to all countries outwith the United Kingdom has been made to surrender at a police station each passport that the person has.
97. Subsection (5) provides that any passport surrendered must be returned as soon as is reasonably practicable after the person ceases to be subject to such a prohibition on foreign travel. Circumstances where this subsection would not apply are provided for at subsection (6); for example, where a passport has already been returned to the relevant authority.

### ***Section 22: Orders on sentencing: variation, renewal and discharge***

98. **Section 22** makes provision about varying, renewing and discharging TEPOs made on sentencing.
99. Subsections (2) to (4) set out general powers in this context. The person in respect of whom the TEPO is made or the prosecutor may apply for variation, renewal or discharge of such a TEPO. That application is to be made to the High Court where that court made the order and to the sheriff otherwise. Subsection (4)(b) makes provision about sheriff jurisdiction in this connection. Where the relevant court receives such an application, it may vary, renew or discharge individual prohibitions or requirements or add new prohibitions or requirements, it may renew the whole order or it may discharge the whole order.
100. Subsection (5) provides that the court must, before making an order under this section, give an opportunity to make representations to the person in respect of whom the order is made, the prosecutor and the chief constable. Subsection (6) provides that, after taking into account any such representations, the court may then make such order as it thinks appropriate.
101. Subsection (7) sets out the tests the court must consider when deciding whether to vary, renew or discharge TEPOs made on sentencing (including by adding new prohibitions or requirements) or any prohibitions or requirements within them. Subsection (7)(a)

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applies the tests for the making of a TEPO to any variation (including an increase or a relaxation of a requirement or prohibition), renewal or addition. Subsection (7)(b) applies those tests to any discharge of a prohibition or requirement or of an order.

102. Subsection (8) makes it clear that an order varying or renewing a TEPO is subject to the requirements and prohibitions established by sections 20 and 21 in the same way as the original order.
103. Subsection (9) defines “prosecutor” for the purposes of this section.

***Section 23: Orders on application: variation, renewal and discharge***

104. **Section 23** makes provision about the variation, renewal or discharge of TEPOs made on application.
105. Subsections (2) to (4) set out general powers in this context. The person in respect of whom the TEPO is made or the chief constable may apply to the sheriff for variation, renewal or discharge of a TEPO made on application. Subsection (4)(b) makes provision about shrieval jurisdiction in this connection. Where the sheriff receives such an application, the sheriff may vary, renew or discharge individual prohibitions or requirements or add new prohibitions or requirements, renew the order so that the period of the order itself is extended or discharge the whole order.
106. Subsection (5) provides that the sheriff must, before making an order under this section, give an opportunity to make representations to the person in respect of whom the order is made and the chief constable. Subsection (6) provides that after taking into account any such representations, the sheriff may then make such an order as the sheriff thinks appropriate.
107. Subsection (7) sets out the tests the sheriff must consider when deciding whether to vary, renew or discharge TEPOs on application (including by adding new prohibitions or requirements) or any prohibitions or requirements within them. Those tests reflect the tests for the making of a TEPO.
108. Subsection (8) provides that when determining an application under this section the sheriff may consider conduct which occurred before this section comes into force.
109. Subsection (9) makes it clear that an order varying or renewing a TEPO is subject to the requirements and prohibitions established by sections 20 and 21 in the same way as the original order.

***Section 24: Interim prevention orders***

110. **Section 24** gives power to a sheriff to make an interim TEPO while the main application under section 18 is being determined. The sheriff may make such an order if the sheriff considers it just to do so (subsection (1)) and such an order may contain prohibitions or requirements (or both) in relation to the person in respect of whom the order is to have effect (subsection (2)). Those prohibitions or requirements may relate to things to be done or not done in any part of Scotland or anywhere outwith Scotland (subsection (3)).
111. Subsection (4) provides that an interim TEPO will only have effect for a fixed period, specified in the order, and will cease to have effect on the determination of an application for a TEPO under section 18 if that fixed period has not expired.
112. Subsection (5) allows for an application to a sheriff in the sheriffdom of the sheriff who made the interim TEPO for variation or discharge of that order. Such an application may be made by the person in respect of whom the order was made or the chief constable.

***Section 25: Appeals: prevention orders***

113. **Section 25** provides for an appeals process in relation to TEPOs and interim TEPOs.

114. Subsection (1) makes provision about TEPOs made on sentencing and any variation or renewal of such a TEPO. These are to be treated as sentences for the purposes of any appeal.
115. Subsections (2), (3) and (4) make provision about appeals in relation to TEPOs made on application, any variation or renewal of such a TEPO and interim TEPOs. The person in respect of whom the order was made or the chief constable may appeal against any of these orders.

## **Trafficking and exploitation risk orders**

### ***Section 26: Risk orders***

116. **Section 26** provides that the chief constable may apply to a sheriff for a trafficking and exploitation risk order (TERO) against an adult. A TERO differs from a TEPO in that it may be made where a person has not previously been convicted of a trafficking or exploitation offence but the person's behaviour indicates a risk that others may be at harm as a result of that person committing such an offence and intervention at an early stage is necessary to prevent that harm. A TEPO can only be made where a relevant offence has already been committed.
117. Subsection (2) sets out the appropriate sheriff to whom an application for such an order may be made.
118. Subsection (3) sets out the tests for making a TERO. The sheriff may only make an order if satisfied that the person in respect of whom the order is sought has acted in a way which means that there is a risk the person may commit a relevant trafficking or exploitation offence (subsection (3)(a)) and it is necessary to make the prohibitions or requirements in the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the person committed such an offence (subsection (3)(b)).
119. Subsection (4) provides that in assessing those tests the sheriff may consider conduct which occurred before this section comes into force.

### ***Section 27: Contents of risk orders***

120. **Section 27** makes provision about the prohibitions or requirements (or both) that may be contained in a TERO. Each prohibition and requirement in a TERO is for a fixed period and the order itself is for a fixed period. The orders and the prohibitions or requirements may all be for the same period. However, the Act allows some requirements and prohibitions in the order to be set for a shorter period, if that is appropriate.
121. Subsection (2) provides that both the order and any prohibition or requirement in the order must have a specified fixed period of at least two years. However, this 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. Such a prohibition (or an order containing only such a prohibition) must be for a fixed period of no more than five years under section 28(1)).
122. Subsection (4) provides that a TERO may prohibit the person in respect of whom the order is made from doing things or require that person to do things. Different prohibitions and requirements may have effect for different periods.
123. Subsection (5) provides that if the sheriff makes a TERO in relation to a person already subject to such an order, the earlier order will cease to have effect.

### ***Section 28: Prohibitions on foreign travel***

124. **Section 28** makes provision about prohibitions on foreign travel contained in a TERO.

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125. As noted above, subsection (1) provides that a prohibition on foreign travel contained in a TERO, and any TERO which contains such a prohibition and no other prohibitions or requirements must be for a fixed period of not more than five years.
126. Subsection (2) defines a “prohibition on foreign travel” as a prohibition on travelling to countries outwith the UK (either by reference to particular countries or generally).
127. Subsection (3)(a) determines that a prohibition on foreign travel varied or renewed under section 29 may be varied or renewed for further fixed periods of no more than five years each time. Subsection (3)(b) requires that an order containing only a foreign travel restriction may be renewed for up to that fixed period.
128. Subsection (4) sets out the requirement on a person in respect of whom a TERO has been made containing a prohibition on foreign travel to all countries outwith the United Kingdom to surrender at a police station each passport that the person has. Subsection (5) provides that any passport surrendered must be returned as soon as is reasonably practicable after the person ceases to be subject to a prohibition on foreign travel to all countries outwith the United Kingdom. Circumstances where this subsection would not apply are provided for at subsection (6); for example, where a passport has already been returned to the relevant authority.

***Section 29: Variation, renewal and discharge of risk orders***

129. **Section 29** makes provision about the variation, renewal or discharge of TEROs
130. Subsections (1) to (3) set out general powers in this context. The person in respect of whom the TERO is made or the chief constable may apply to the sheriff for variation, renewal or discharge of a TERO. Subsection (3) makes provision about shrieval jurisdiction in this connection. Where the sheriff receives such an application, the sheriff may vary, renew or discharge individual prohibitions or requirements or add new prohibitions or requirements, renew the whole order or discharge the whole order.
131. Subsection (4) provides that the sheriff must, before making an order under this section, give an opportunity to make representations to the person in respect of whom the order is made and the chief constable. Subsection (5) provides that after taking into account any such representations, the sheriff may then make any order the sheriff considers appropriate.
132. Subsection (6) sets out the tests the sheriff must consider when deciding whether to vary, renew or discharge TEROs (including by adding new prohibitions or requirements) or any prohibitions or requirements within them. Subsection (6)(a) applies the tests for the making of a TERO to any variation (including an increase or a relaxation of a requirement or prohibition), renewal or addition. Subsection (6)(b) applies those tests to any discharge of a prohibition or requirement or of an order.

***Section 30: Interim risk orders***

133. **Section 30** provides that a sheriff may make an interim TERO while the main application under section 26 is being determined. The sheriff may make such an order if the sheriff considers it just to do so (subsection (1)) and such an order may contain prohibitions or requirements (or both) in relation to the person in respect of whom the order is to have effect (subsection (2)). Those prohibitions or requirements may relate to things to be done or not done in any part of Scotland or anywhere outwith Scotland (subsection (3)).
134. Subsection (4) provides that an interim TERO will only have effect for a fixed period, specified in the order, and will cease to have effect on the determination of the main application if that fixed period has not already expired.
135. Subsection (5) allows for an application for variation or discharge of an interim TERO (or a requirement or prohibition in the order) to be made to a sheriff in the sheriffdom

of the sheriff who made the interim order by the person in respect of whom the order was made or the chief constable (subsection (6)).

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

136. [Section 31](#) provides for an appeals process in relation to TEROs and interim TEROs and any order varying or renewing such a TERO or interim TERO. The person in respect of whom the order was made or the chief constable may appeal against any of these orders.

## **Offences and supplementary provision**

### ***Section 32: Offences***

137. [Section 32](#) makes provision about breach of TEPOs and TEROs.
138. Subsections (1) and (2) provide that a person commits an offence if that person does anything which the person is prohibited from doing by an order or fails to do anything which the person is required to do by a TEPO or a TERO or an interim TEPO or TERO.
139. Subsection (3) makes provision about penalties in relation to these offences. A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory minimum (or both). On conviction on indictment that person is liable to imprisonment for a term not exceeding five years or a fine (or both).

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

140. [Section 33](#) provides that the Scottish Ministers may modify, by regulations, the list of orders at section 32(2) so that a breach of those orders in Scotland constitutes an offence under section 32(1). The orders which may be added are “relevant UK orders”. Those are described in subsection (2) as orders under the law of England and Wales or Northern Ireland which appear to the Scottish Ministers to be equivalent or similar to TEPOs, TEROs or interim TEPOs or TEROs.

### ***Section 34: Interpretation of Part 4***

141. [Section 34](#) defines certain terms used in Part 4.