



# Human Trafficking and Exploitation (Scotland) Act 2015

2015 asp 12

## PART 4

### TRAFFICKING AND EXPLOITATION PREVENTION AND RISK ORDERS

#### *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),
  - [<sup>F1</sup>(fa) under section 62 of that Act (committing an offence with intent to commit a sexual offence) where the relevant sexual offence the person had the intention of committing was an offence under section 57, 58, 58A, 59 or 59A of that Act,]
  - (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),
  - [<sup>F2</sup>(ia) under section 1, 2 or 4 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour; human trafficking),

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- (ib) under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery, servitude and forced or compulsory labour; human trafficking),]
- (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.

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

#### **Textual Amendments**

- F1** S. 16(1)(fa) inserted (30.6.2017) by [The Human Trafficking and Exploitation \(Scotland\) Act 2015 \(Relevant Trafficking or Exploitation Offences and Relevant UK Orders\) Regulations 2017 \(S.S.I. 2017/220\)](#), regs. 1(1), **2(a)**
- F2** S. 16(1)(ia)(ib) inserted (30.6.2017) by [The Human Trafficking and Exploitation \(Scotland\) Act 2015 \(Relevant Trafficking or Exploitation Offences and Relevant UK Orders\) Regulations 2017 \(S.S.I. 2017/220\)](#), regs. 1(1), **2(b)**

#### **Commencement Information**

- I1** S. 16 in force at 29.6.2017 by [S.S.I. 2017/140](#), reg. 2, **sch.**

### *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

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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.

#### Commencement Information

**I2** S. 17 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

### 18 Prevention orders on application

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

#### Commencement Information

**I3** S. 18 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

### 19 Meaning of relevant offender

- (1) An adult is a “relevant offender” if subsection (2) or (3) applies to that adult.
- (2) This subsection applies to an adult if—
  - (a) the adult has been convicted of a relevant trafficking or exploitation offence,

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- (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,
    - (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.

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#### Commencement Information

**I4** S. 19 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

## 20 Contents of prevention orders

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

#### Commencement Information

**I5** S. 20 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

## 21 Prohibitions on foreign travel

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

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

#### **Commencement Information**

**I6** [S. 21](#) in force at 30.6.2017 by [S.S.I. 2017/140](#), reg. 2, [sch.](#)

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

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

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

#### **Commencement Information**

**I7** S. 22 in force at 30.6.2017 by [S.S.I. 2017/140](#), reg. 2, [sch.](#)

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

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

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



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#### Commencement Information

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

## 24 Interim prevention orders

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

#### Commencement Information

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

## 25 Appeals: prevention orders

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

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- (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.

**Commencement Information**

**I10** S. 25 in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, sch.

*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.

**Commencement Information**

**I11** S. 26 in force at 31.10.2017 by S.S.I. 2017/140, reg. 2, sch.

**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.

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- (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).
- (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.

#### Commencement Information

**I12** S. 27 in force at 31.10.2017 by S.S.I. 2017/140, reg. 2, sch.

## 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,

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- (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

**Commencement Information**

**I13** S. 28 in force at 31.10.2017 by S.S.I. 2017/140, reg. 2, sch.

**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,
  - (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—

*Status: Point in time view as at 31/10/2017.*

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- (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.

**Commencement Information**

**I14** S. 29 in force at 31.10.2017 by S.S.I. 2017/140, reg. 2, sch.

**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.

**Commencement Information**

**I15** S. 30 in force at 31.10.2017 by S.S.I. 2017/140, reg. 2, sch.

**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),

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- (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.

#### **Commencement Information**

**I16** S. 31 in force at 31.10.2017 by S.S.I. 2017/140, reg. 2, sch.

### *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—
  - (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<sup>F3</sup>,
  - (e) an order under section 14 or 15 of the Modern Slavery Act 2015 (slavery and trafficking prevention orders),
  - (f) an order under section 21 of that Act (interim slavery and trafficking prevention orders),
  - (g) an order under section 23 of that Act (slavery and trafficking risk orders),
  - (h) an order under section 28 of that Act (interim slavery and trafficking risk orders),
  - (i) an order under paragraph 1 or 2 of schedule 3 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery and trafficking prevention orders),
  - (j) an order under paragraph 7 of schedule 3 of that Act (interim slavery and trafficking prevention orders).]
- (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).

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#### Textual Amendments

- F3** S. 32(2)(e)-(j) inserted (30.6.2017) by [The Human Trafficking and Exploitation \(Scotland\) Act 2015 \(Relevant Trafficking or Exploitation Offences and Relevant UK Orders\) Regulations 2017 \(S.S.I. 2017/220\)](#), regs. 1(1), 3

#### Commencement Information

- I17** S. 32 in force at 31.5.2016 by [S.S.I. 2016/128](#), reg. 2, [Sch.](#)

### 33 Enforcement of other UK orders

- (1) The Scottish Ministers may by regulations amend section 32(2) so as to—
- add to the list of orders in that section a relevant UK order, or
  - 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 trafficking and exploitation prevention order,
  - an interim trafficking and exploitation prevention order,
  - a trafficking and exploitation risk order, or
  - an interim trafficking and exploitation risk order.

#### Commencement Information

- I18** S. 33 in force at 31.5.2016 by [S.S.I. 2016/128](#), reg. 2, [Sch.](#)

### 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 United Kingdom passport within the meaning of the Immigration Act 1971,
  - 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,
  - 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,

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

- (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.

#### **Commencement Information**

**I19** S. 34(1) in force at 31.5.2016 by S.S.I. 2016/128, reg. 2, **Sch.**

**I20** S. 34(2)-(6) in force at 30.6.2017 by S.S.I. 2017/140, reg. 2, **sch.** (with art. 3)



**Status:**

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**Changes to legislation:**

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