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## 2015 CHAPTER 2

### PART 1

#### SLAVERY AND HUMAN TRAFFICKING OFFENCES

##### *The offences*

##### **Slavery, servitude and forced or compulsory labour**

1.—(1) A person (“A”) commits an offence if—

- (a) A holds another person (“B”) in slavery or servitude and the circumstances are such that A knows or ought to know that B is held in slavery or servitude, or
- (b) A requires B to perform forced or compulsory labour and the circumstances are such that A knows or ought to know that B is being required to perform forced or compulsory labour.

(2) In subsection (1) the references to holding B in slavery or servitude or requiring B to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.

(3) In determining whether B is being held in slavery or servitude or required to perform forced or compulsory labour regard may be had to all the circumstances.

(4) In particular, regard may be had to any of B's personal circumstances which may make B more vulnerable than other persons such as, for example—

- (a) that B is a child or a vulnerable adult; or
- (b) that A is a member of B's family.

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(5) The consent of B to any act which forms part of an offence under this section is irrelevant.

(6) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

### **Human trafficking**

**2.—**(1) A person (“A”) commits an offence if A arranges or facilitates the travel of another person (“B”) with a view to B being exploited.

(2) A may in particular arrange or facilitate B's travel by recruiting B, transporting or transferring B, harbouring or receiving B, or transferring or exchanging control over B.

(3) A arranges or facilitates B's travel with a view to B being exploited only if—

- (a) A intends to exploit B (in any part of the world) during or after the travel, or
- (b) A knows or ought to know that another person is likely to exploit B (in any part of the world) during or after the travel.

(4) “Travel” means—

- (a) arriving in, or entering, any country,
- (b) departing from any country,
- (c) travelling within any country.

(5) The consent of B to any act which forms part of an offence under this section is irrelevant.

(6) A person to whom this subsection applies commits an offence under this section regardless of—

- (a) where the arranging or facilitating takes place, or
- (b) where the travel takes place.

(7) Any other person commits an offence under this section if—

- (a) any part of the arranging or facilitating takes place in the United Kingdom, or
- (b) the travel consists of arrival in or entry into, departure from, or travel within the United Kingdom.

(8) Subsection (6) applies to—

- (a) a UK national;
- (b) a person who at the time of the offence was habitually resident in Northern Ireland; and
- (c) a body incorporated under the law of a part of the United Kingdom.

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(9) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

### **Meaning of exploitation for purposes of section 2**

**3.—(1)** For the purposes of section 2, a person is exploited only if one or more of the following subsections apply in relation to the person.

#### *Slavery, servitude and forced or compulsory labour*

- (2) The person is the victim of behaviour—
- (a) which involves the commission of an offence under section 1, or
  - (b) which would involve the commission of an offence under that section if it took place in Northern Ireland.

#### *Sexual exploitation*

- (3) Something is done to or in respect of the person—
- (a) which involves the commission of an offence under—
    - (i) Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children), or
    - (ii) any provision of the Sexual Offences (Northern Ireland) Order 2008 (sexual offences), or
  - (b) which would involve the commission of such an offence if it were done in Northern Ireland.

#### *Removal of organs etc.*

- (4) The person is encouraged, required or expected to do anything—
- (a) which involves the commission, by him or her or another person, of an offence under section 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors) in Northern Ireland, or
  - (b) which would involve the commission of such an offence, by him or her or another person, if it were done in Northern Ireland.

#### *Securing services etc. by force, threats or deception*

- (5) The person is subjected to force, threats, abduction, coercion, fraud or deception designed to induce him or her—
- (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;

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and for the purposes of this subsection “benefits” includes the proceeds of forced begging or of criminal activities.

*Securing services etc. from children and vulnerable persons*

(6) Another person uses or attempts to use the person for a purpose within paragraph (a), (b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that—

- (a) he or she is a child or a vulnerable adult or is a member of the other person's family or the other person is in a position of trust in relation to him or her; and
- (b) a person who was not within paragraph (a) would be likely to refuse to be used for that purpose.

**Committing offence with intent to commit offence under section 1 or 2**

4.—(1) A person commits an offence under this section if the person commits any offence with the intention of committing an offence under section 1 or 2 (including an offence committed by aiding, abetting, counselling or procuring an offence under that section).

(2) A person guilty of an offence under this section is (unless subsection (3) applies) liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

(3) Where the offence under this section is committed by kidnapping or false imprisonment, a person guilty of that offence is liable, on conviction on indictment, to imprisonment for life.

*Sentencing for offences under section 1 or 2*

**Offences to be serious offences for purposes of sentencing**

5.—(1) The Criminal Justice (Northern Ireland) Order 2008 is amended as follows.

(2) In Schedule 1 (serious offences for purposes of sentencing dangerous offenders) after paragraph 31 insert—

**“The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015**

**31A** An offence under—

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section 1 (slavery, servitude and forced or compulsory labour);  
section 2 (human trafficking).”.

(3) In Part 1 of Schedule 2 (specified violent offences for purposes of sentencing dangerous offenders) after paragraph 31 insert—

**“The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015**

**31A** An offence under—

section 1 (slavery, servitude and forced or compulsory labour);  
section 2 (human trafficking) which is not within Part 2 of this Schedule.”.

(4) In Part 2 of Schedule 2 (specified sexual offences for purposes of sentencing dangerous offenders) after paragraph 14 insert—

**“The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015**

**14A** An offence under section 2 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation)..2 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation).”.

**Aggravating factors**

**6.—(1)** Where a court is considering for the purposes of sentencing the seriousness of an offence under section 1 or 2, the court must treat the following as aggravating factors—

- (a) the offence was committed by a public official in relation to the performance of her or his duties;
- (b) the offence was committed by a member of the family of the victim;
- (c) the offence was committed by a person in a position of trust;
- (d) the offence was committed against a child;
- (e) the offence was committed against a vulnerable adult;
- (f) the offence was committed by the use of threats against a member of the family of the victim;
- (g) the offender deliberately or by gross negligence endangered the life of the victim;
- (h) the offence caused serious harm to the victim; or
- (i) the offence was committed by a person who has previously been convicted—

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- (i) of an offence under section 1 or 2;
- (ii) of an offence under any provision repealed by this Act;
- (iii) in respect of anything done outside Northern Ireland which was not an offence mentioned in sub-paragraph (i) or (ii) but would have been such an offence if done in Northern Ireland.

(2) In this section—

“public official” means—

- (a) a member of the Northern Ireland civil service or the United Kingdom civil service;
- (b) a person employed by a body established by an Act of Parliament or by Northern Ireland legislation;
- (c) the holder of an office established by an Act of Parliament or by Northern Ireland legislation;
- (d) a police officer;

“serious harm” has the same meaning as in Article 3 of the Criminal Justice (Northern Ireland) Order 2008.

### **Minimum sentence for offence under section 1 or 2**

7.—(1) This section applies where an individual is convicted of an offence under section 1 or 2 and that individual was aged 18 or over when the offence was committed.

(2) The court shall impose a custodial sentence for a term of at least two years (with or without a fine) unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

(3) If there are exceptional circumstances which justify—

- (a) the imposition of a lesser sentence than that provided for under subsection (2), or
- (b) the exercise by the court of its powers under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968,

the court shall state in open court that it is of the opinion that such exceptional circumstances exist and the reasons for that opinion.

(4) Where subsection (3) applies the Chief Clerk shall record both the opinion of the court that exceptional circumstances exist and the reasons stated in open court which justify either the imposition of a lesser sentence or the exercise of its powers under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 as the case may be.

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(5) For the purposes of subsection (2) “custodial sentence” shall not include a sentence in relation to which the court has made an order under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968.

(6) In section 36 (review of sentencing) of the Criminal Justice Act 1988 in subsection (9)(b) omit the “and” at the end of the subsection and after subsection (9)(c) insert—

“and

(d) subsection (2)(b) shall be read as if it included a reference to a sentence required by section 7(2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.”.

(7) The Criminal Justice (Northern Ireland) Order 1996 is amended as follows—

(a) in Article 2(9) (interpretation of references to sentences falling to be imposed under various statutory provisions) after “2006” insert “ or section 7(2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 ” and for “that paragraph” substitute “ that provision ”;

(b) in each of —

(i) Article 4(1) (power to discharge defendant except in specified circumstances),

(ii) Article 10(1) (power to impose probation order except in specified cases),

(iii) Article 13(1) (power to impose community service order except in specified cases),

(iv) Article 15(1) (power to impose combination order except in specified circumstances),

after “2008” insert “ or section 7(2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 ”.

(8) In the Criminal Justice (Northern Ireland) Order 2008—

(a) in Article 4(2) (interpretation) omit the “and” at the end of sub-paragraph (c) and after sub-paragraph (d) add—

“(e) a sentence falls to be imposed under section 7(2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 if it is required by that provision and the court is not of the opinion there mentioned;”;

(b) in Article 5 (restrictions on imposing certain custodial sentences) in paragraph (1)(b) omit “or” at the end of paragraph (ii) and after paragraph (iii) add—

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“or

(iv) section 7(2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.”;

(c) in Article 7 (length of custodial sentence) in paragraph (3) at the end add—

“(c) section 7(2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.”.

*Orders that may be made on conviction of offence under section 1 or 2*

### **Confiscation of assets**

**8.**—(1) Schedule 5 to the Proceeds of Crime Act 2002 (criminal lifestyle offences in Northern Ireland) is amended as follows.

(2) After paragraph 3 insert—

“**Slavery, etc.**

**3A** An offence under section 1 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery, servitude and forced or compulsory labour).”.

(3) In paragraph 4 (people trafficking) at the end insert—

“(4) An offence under section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (human trafficking).”.

### **Detention and forfeiture of certain vehicles, ships and aircraft**

**9** Schedule 1 (which makes provision for, and in connection with, the detention and forfeiture of certain vehicles, ships and aircraft used or intended to be used in connection with offences under section 1 or 2) has effect.

### **Slavery and trafficking reparation orders**

**10** Schedule 2 (which makes provision for, and in connection with, slavery and trafficking reparation orders) has effect.



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*Prevention, enforcement, etc.*

VALID FROM 27/11/2015

**Slavery and trafficking prevention orders**

**11** Schedule 3 (which makes provision for, and in connection with, slavery and trafficking prevention orders) has effect.

VALID FROM 14/02/2015

**Strategy on offences under sections 1 and 2**

**12.**—(1) The Department shall, at least once in every year, publish a strategy on offences under section 1 and 2 (“relevant offences”).

(2) In drawing up the strategy the Department must—

- (a) consult with other relevant organisations; and
- (b) have regard to views expressed by such organisations.

(3) The purpose of the strategy is to—

- (a) raise awareness of relevant offences in Northern Ireland;
- (b) contribute to a reduction in the number of such offences.

(4) The strategy shall in particular—

- (a) set out arrangements for co-operation between relevant organisations in dealing with relevant offences or the victims of such offences;
- (b) include provision as to the training and equipment of those involved in investigating or prosecuting relevant offences or dealing with the victims of such offences;
- (c) include provisions aimed at raising awareness of the rights and entitlements of victims of such offences.

(5) In this section “relevant organisation” means any body, agency or other organisation with functions or activities relating to relevant offences or the victims of such offences.

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## PROSPECTIVE

### **Duty to notify National Crime Agency about suspected victims of offences under section 1 or 2**

**13.—(1)** A specified public authority must notify the National Crime Agency if it has reason to believe that a person may be a victim of an offence under section 1 or 2.

(2) The Department—

- (a) must issue guidance to specified public authorities about the sorts of things which indicate that a person may be a victim of an offence under section 1 or 2;
- (b) may from time to time revise the guidance; and
- (c) must arrange for any guidance issued or revised to be published in a way the Department considers appropriate.

(3) The Department may by regulations make provision about the information to be included in a notification under subsection (1).

(4) The regulations must provide that a notification relating to a person aged 18 or over may not include information that—

- (a) identifies the person, or
- (b) enables the person to be identified (either by itself or in combination with other information),

unless the person consents to the inclusion of the information.

(5) The regulations may not require information to be included if its inclusion would result in a disclosure which contravenes [F1the data protection legislation ] .

(6) The Department may by order substitute for the reference to the National Crime Agency in subsection (1) a reference to such other body or person as may be specified in the order.

(7) In this section “specified public authority” means a public authority specified in regulations made by the Department.

#### **Textual Amendments**

- F1** Words in s. 13(5) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\), s. 212\(1\), Sch. 19 para. 193](#) (with [ss. 117, 209, 210](#)); [S.I. 2018/625, reg. 2\(1\)\(g\)](#) (but this amendment cannot take effect until the commencement of 2015 c. 2 (N.I.), s. 13(5))

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## **Investigation and prosecution of offences under section 1 or 2**

**14.—**(1) The investigation or prosecution of an offence under section 1 or 2 is not dependent on the victim reporting the offence or accusing a person of committing the offence.

(2) Proceedings for an offence under section 1 or 2 may be commenced or continued even if the victim of the offence has withdrawn any statement made in relation to the offence.

## **PART 2**

### **OTHER EXPLOITATION OFFENCES**

#### *Paying for sexual services of a person*

#### **Paying for sexual services of a person**

**15.—**(1) The Sexual Offences (Northern Ireland) Order 2008 is amended as follows.

(2) In the heading to Part 5, after “PROSTITUTION” insert “ AND PAYING FOR SEXUAL SERVICES OF A PERSON ”.

(3) In Article 58 (interpretation of this Part) at the end of paragraph (3) insert “ other than in Article 64A ”.

(4) Article 59 (loitering or soliciting for purposes of prostitution) is repealed.

(5) For Article 64A (paying for sexual services of a prostitute subjected to force etc.) substitute—

#### **“Paying for sexual services of a person**

**64A.—**(1) A person (A) commits an offence if A obtains sexual services from a person (B) in exchange for payment—

- (a) if the payment is made or promised by A; or
- (b) if the payment is made or promised by a third party and A knows or believes that the payment is made or promised by a third party.

(2) A person guilty of an offence under this Article is liable—

- (a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment to imprisonment for a term not exceeding one year or a fine, or both.

(3) In paragraph (1), “payment” means any financial advantage to B, or any person other than B, including the discharge of an obligation to pay or

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the provision of goods or services (other than sexual services) gratuitously or at a discount.

(4) No offence is committed under this Article unless the sexual services that are provided or are to be provided by B to A involve—

- (a) B being physically in A's presence,
- (b) B touching A or A touching B, and
- (c) the touching being sexual; or
- (d) B touching B in a sexual manner for the sexual gratification of A, B being physically in A's presence.

(5) B does not commit an offence by doing anything which (apart from this paragraph) would amount to—

- (a) aiding, abetting, counselling or procuring the commission of an offence under this Article by A;
- (b) conspiring with A to commit an offence under this Article; or
- (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting offences) in relation to the commission of an offence under this Article by A.”.

(6) The Department must before the coming into operation of subsection (5) raise public awareness of the change in the law to be effected by that subsection.

(7) The Department must, at the end of the period of 3 years beginning with the coming into operation of subsection (5), review the operation of Article 64A of the Sexual Offences (Northern Ireland) Order 2008 and lay before the Assembly a report on that review; that report must in particular include—

- (a) information as to the number of arrests and convictions during that period in respect of offences under Article 64A;
- (b) the Department's assessment of the impact of Article 64A on the safety and well-being of persons providing for payment sexual services of the kind to which that Article applies;
- (c) information as to the number of arrests and convictions in the period covered by the report in respect of—
  - (i) offences under section 2 committed with a view to exploitation that consists of or includes behaviour within section 3(3) (sexual exploitation);
  - (ii) offences under section 4 committed with the intention of committing an offence mentioned in sub-paragraph (i); and
- (d) the Department's assessment of the extent to which Article 64A has operated to reduce human trafficking for the purposes of sexual exploitation.

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### Commencement Information

- II** S. 15 wholly in operation at 1.6.2015; s. 15(6) in operation at 14.1.2015 see s. 28(2); s. 15(1)-(5) and (7) in operation at 1.6.2015 see s. 28(5)

## *Offence of forced marriage*

### **Offence of forced marriage**

**16.—(1)** A person commits an offence if he or she—

- (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and
- (b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.

(2) It is irrelevant whether the conduct mentioned in paragraph (a) of subsection (1) is directed at the victim of the offence under that subsection or another person.

(3) In relation to a victim who is incapable of consenting by reason of mental disorder, the offence under subsection (1) is capable of being committed by any conduct carried out for the purpose of causing the victim to enter into a marriage (whether or not the conduct amounts to violence, threats or any other form of coercion).

(4) In this section—

“marriage” means any religious or civil ceremony of marriage (whether or not legally binding);

“mental disorder” has the meaning given by the Mental Health (Northern Ireland) Order 1986.

(5) A person commits an offence if he or she—

- (a) practises any form of deception with the intention of causing another person to leave the United Kingdom, and
- (b) intends the other person to be subjected to conduct outside the United Kingdom that is an offence under subsection (1) or would be an offence under that subsection if the victim were in Northern Ireland.

(6) A person commits an offence under subsection (1) or (5) only if, at the time of the conduct or deception—

- (a) the person or the victim or both of them are in Northern Ireland,
- (b) neither the person nor the victim is in Northern Ireland but at least one of them is habitually resident in Northern Ireland, or

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- (c) neither the person nor the victim is in the United Kingdom but at least one of them is a UK national.
- (7) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

## **PART 3**

### **ASSISTANCE AND SUPPORT**

#### **Interpretation of this Part**

**17.—**(1) For the purposes of this Part there is a conclusive determination that a person is, or is not, a victim of trafficking in human beings when, on completion of the identification process required by Article 10 of the Trafficking Convention, a competent authority concludes that the person is, or is not, such a victim.

(2) In this Part—

“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);

“trafficking in human beings” has the same meaning as in the Trafficking Convention.

#### **Assistance and support pending determination by competent authority**

**18.—**(1) The Department must ensure that a person to whom this section applies is provided with assistance and support in accordance with this section.

(2) This section applies to a person if—

- (a) that person is aged 18 or over or, in a case where the age of the person is uncertain, the Department reasonably believes that person is aged 18 or over; and
- (b) a reference relating to that person has been, or is about to be, made to the competent authority for a determination for the purposes of Article 10 of the Trafficking Convention as to whether there are reasonable grounds to believe that the person is a victim of trafficking in human beings.

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(3) Assistance and support is to be provided under this section until there is made in relation to that person—

- (a) a determination that there are not reasonable grounds to believe that the person is a victim of trafficking in human beings; or
- (b) a conclusive determination that the person is or is not a victim of trafficking in human beings;

but if a conclusive determination that a person is a victim of trafficking in human beings is made within the relevant period, assistance and support is to be provided until the end of that period.

(4) The relevant period is the period of 45 days from the date on which the determination mentioned in subsection (2)(b) is made by the competent authority.

(5) Assistance and support provided to a person under this section—

- (a) must not be conditional on the person's acting as a witness in any criminal proceedings;
- (b) must only be provided with the agreement of that person;
- (c) must be provided in a manner which takes due account of the needs of that person as regards safety and protection from harm;
- (d) must be provided to meet the assessed needs of that person, having regard in particular to any special needs or vulnerabilities of that person caused by gender, pregnancy, physical or mental illness, disability or being the victim of serious violence or serious abuse.

(6) Assistance and support under this section must be offered from a person who is of the same gender as the person receiving it.

(7) The assistance and support which may be provided under this section includes, but is not to be restricted to, the provision of—

- (a) appropriate and safe accommodation;
- (b) material assistance (including financial assistance);
- (c) assistance in obtaining healthcare services (including counselling);
- (d) appropriate information on any matter of relevance or potential relevance to the particular circumstances of the person;
- (e) translation and interpretation services;
- (f) assistance in obtaining legal advice or representation;
- (g) assistance with repatriation.

(8) Where assistance and support has been provided to any person under this section, it may continue to be provided even if that person leaves Northern Ireland.

(9) Where—

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- (a) assistance and support has been provided to a person under this section; and
- (b) that person ceases, by virtue of a conclusive determination that the person is a victim of trafficking in human beings or the ending of the relevant period, to be a person to whom assistance and support is to be provided under this section,

the Department may nevertheless ensure that assistance and support continues to be provided to that person under this section for such further period as the Department thinks necessary.

(10) Nothing in this section affects the entitlement of any person to assistance and support under any other statutory provision.

### **Assistance and support for exiting prostitution**

**19.—**(1) The Department of Health, Social Services and Public Safety must, in conjunction with the other Northern Ireland departments, prepare and publish a strategy in relation to actions to be taken by Northern Ireland departments in the exercise of their respective functions to ensure that a programme of assistance and support is made available to persons who wish to leave prostitution.

(2) The strategy must—

- (a) be published no later than 10 months after the coming into operation of this section; and
- (b) provide for a programme of support and assistance to be made available in accordance with the strategy no later than 1 April 2016.

(3) The strategy must ensure that assistance and support provided to a person—

- (a) is not conditional on the person acting as a witness in any criminal proceedings;
- (b) is provided only with the agreement of that person; and
- (c) is provided in a manner which takes due account of the needs of that person as regards safety and protection from harm.

(4) The strategy must ensure that assistance and support is offered from a person who is of the same gender as the person receiving it.

(5) The Department of Health, Social Services and Public Safety must, in conjunction with the other Northern Ireland departments—

- (a) review the strategy (or revised strategy) for the time being published under this section at intervals of not more than 3 years; and
- (b) if appropriate, revise the strategy and publish the revised strategy.

(6) Nothing in this section affects the entitlement of any person to assistance and support under any other statutory provision.



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(7) For the purposes of this section “prostitution” has the same meaning as in Article 58 of the Sexual Offences (Northern Ireland) Order 2008.

VALID FROM 14/02/2015

### **Guidance as to compensation for victims**

**20.**—(1) The Department shall issue guidance as to—

- (a) the procedures to be followed by a person to whom this section applies to apply for compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 2002;
- (b) the grounds on which compensation may be awarded under that Order; and
- (c) the arrangements available to assist and support such a person in applying for such compensation.

(2) This section applies to a person if (and only if) there has been a conclusive determination that the person is a victim of trafficking in human beings.

### **Independent guardian**

**21.**—(1) The Regional Health and Social Care Board must, in accordance with this section, make arrangements to enable a person (an “independent guardian”) to be appointed to assist, represent and support a child to whom this section applies.

(2) This section applies to a child if—

- (a) a reference relating to that child has been, or is about to be, made to a competent authority for a determination for the purposes of Article 10 of the Trafficking Convention as to whether there are reasonable grounds to believe that the child is a victim of trafficking in human beings; and
- (b) there has not been a conclusive determination that the child is not such a victim;

and for the purposes of this subsection a determination which has been challenged by way of proceedings for judicial review shall not be treated as conclusive until those proceedings are finally determined.

(3) This section also applies to a child who appears to the Regional Health and Social Care Board to be a separated child.

(4) Arrangements under this section must—

- (a) be made with a registered charity (within the meaning of the Charities Act (Northern Ireland) 2008);

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- (b) provide for the appointment of a person as the independent guardian for a child to whom this section applies to be made by that charity;
  - (c) ensure that a person is not so appointed by that charity unless that person—
    - (i) is an employee of the charity; and
    - (ii) is eligible to be so appointed in accordance with regulations under subsection (5);
  - (d) provide for the appointment of an independent guardian only where the person with parental responsibility for the child—
    - (i) is not in regular contact with the child or is outside the United Kingdom;
    - (ii) is suspected of having committed an offence under section 2 in relation to the child; or
    - (iii) for other reasons has interests which conflict with those of the child;
  - (e) include provision for the termination of the appointment of an independent guardian, including in particular provision for such termination—
    - (i) if the child ceases to be a child to whom this section applies;
    - (ii) on the child attaining the age of 18 (unless subsection (10) applies);
    - (iii) on paragraph (d) ceasing to apply in relation to the child;
    - (iv) where, after consulting the independent guardian, the Regional Health and Social Care Board is of the opinion that it is no longer necessary to continue the appointment because long-term arrangements have been made in relation to the child.
- (5) The Department of Health, Social Services and Public Safety shall by regulations make provision for—
- (a) the training and qualifications required for a person to be eligible for appointment as an independent guardian;
  - (b) the support to be provided for, and the supervision of, an independent guardian.
- (6) An independent guardian appointed in relation to a child must at all times act in the best interests of the child.
- (7) The functions of an independent guardian include (where appropriate)—
- (a) ascertaining and communicating the views of the child in relation to matters affecting the child;
  - (b) making representations to, and liaising with, bodies or persons responsible for—
    - (i) providing care, accommodation, health services, education or translation and interpretation services to or in respect of the child; or
    - (ii) otherwise taking decisions in relation to the child;

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- (c) assisting the child to obtain legal or other advice, assistance and representation, including (where necessary) the appointment and instructing of legal representatives to act on behalf of the child;
- (d) consulting regularly with the child and keeping the child informed of legal and other proceedings affecting the child and any other matters affecting the child;
- (e) contributing to a plan to safeguard and promote the future welfare of the child based on an individual assessment of that child's best interests;
- (f) providing a link between the child and any body or person who may provide services to the child;
- (g) assisting in establishing contact with members of the child's family, where the child so wishes and it is in the child's best interests;
- (h) accompanying the child to meetings or on other occasions.

(8) Any person or body providing services or taking administrative decisions in relation to a child for whom an independent guardian has been appointed under this section must recognise, and pay due regard to, the functions of the guardian and must (to the extent otherwise permitted by law) provide the guardian with access to such information relating to the child as will enable the guardian to carry out his or her functions effectively.

(9) The Department of Health, Social Services and Public Safety may by regulations confer additional functions on independent guardians.

(10) The arrangements under this section may provide for an independent guardian appointed in relation to a person under the age of 18 to continue (with the consent of that person) to act in relation to that person after that person attains the age of 18 but is under the age of 21.

(11) In this section—

“administrative decision” does not include a decision taken by a court or tribunal;

“parental responsibility” has the meaning given by Article 6 of the Children (Northern Ireland) Order 1995, except that it does not include parental responsibility conferred by a care order (within the meaning of Article 49(1) of that Order);

“separated child” means a child who—

- (a) is not ordinarily resident in Northern Ireland;
- (b) is separated from all persons who—
  - (i) have parental responsibility for the child; or
  - (ii) before the child's arrival in Northern Ireland, were responsible for the child whether by law or custom; and
- (c) because of that separation, may be at risk of harm.

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(12) A reference in any other statutory provision to the guardian of a child does not include a reference to an independent guardian appointed under this section.

#### Commencement Information

- I2** S. 21 wholly in operation at 14.11.2015; s. 21(5) in operation at 14.1.2015 see s. 28(2); s. 21(1)-(4) and (6)-(12) in operation at 14.11.2015 see s. 28(6)

## PART 4

### PROTECTION OF SLAVERY AND TRAFFICKING VICTIMS IN CRIMINAL INVESTIGATIONS AND PROCEEDINGS

#### Defence for slavery and trafficking victims in relation to certain offences

- 22.—**(1) Subject to subsection (9), a person is not guilty of an offence if—
- (a) the person is over the age of 18 when the act which constitutes the offence was done;
  - (b) the person does that act because the person is compelled to do that act,
  - (c) the compulsion is attributable to slavery or to relevant exploitation, and
  - (d) a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act.
- (2) “Relevant characteristics” means age, sex and any physical or mental illness or disability.
- (3) A person may be compelled to do something by another person or by the person's circumstances.
- (4) Compulsion is attributable to slavery or to relevant exploitation only if—
- (a) it is, or is part of, conduct which constitutes an offence under section 1 or conduct which constitutes relevant exploitation, or
  - (b) it is a direct consequence of a person being, or having been, a victim of an offence under section 1 or a victim of relevant exploitation.
- (5) For the purposes of subsection (4) “relevant exploitation” is exploitation (within the meaning of section 3) that is attributable to the exploited person being, or having been, a victim of an offence under section 2.
- (6) Subject to subsection (9), a person is not guilty of an offence if—
- (a) the person is a child at the time the act which constitutes the offence is done; and

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(b) that act was done as a direct consequence of the person being, or having been, a victim of an offence under section 1 or of relevant exploitation.

(7) For the purposes of subsection (6) “relevant exploitation” is exploitation which falls within one or more of subsections (2) to (5) of section 3 and is attributable to the exploited person being, or having been, a victim of an offence under section 2.

(8) In this section references to an act include an omission.

(9) This section does not apply to an offence which, in the case of a person over the age of 21, is punishable on indictment with imprisonment for life or for a term of at least 5 years, other than—

- (a) an offence under—
  - (i) section 4(2) of the Misuse of Drugs Act 1971 committed in respect of a Class B or Class C drug;
  - (ii) section 5(2) of that Act committed in respect of a Class B drug;
  - (iii) section 6(2) of that Act;
- (b) an offence under section 26A(3)(a), (b), (d), (e), (f) or (g) of the Immigration Act 1971;
- (c) an offence under section 1, 2, 3 or 4 of the Forgery and Counterfeiting Act 1981;
- (d) an offence under section 106 of the Asylum and Immigration Act 1999;
- (e) an offence under section 4 of the Identity Documents Act 2010.

(10) The Department may by order amend subsection (9).

### **Protection of slavery and trafficking victims in criminal investigations**

**23.—**(1) Without prejudice to the rights of the accused, and in accordance with an individualised assessment of the personal circumstances of the complainant, the Chief Constable shall ensure that during an investigation of an offence under section 1 or 2—

- (a) the complainant receives specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible—
  - (i) unnecessary repetition of interviews;
  - (ii) visual contact between the complainant and the accused, using appropriate means including communication technologies;
  - (iii) unnecessary questioning concerning the complainant's private life;
- (b) in addition if the complainant is under the age of 18—
  - (i) interviews with the complainant take place without unjustified delay after the facts have been reported;

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- (ii) interviews with the complainant take place, where necessary, in premises designed or adapted for the purpose;
- (iii) interviews with the complainant are carried out, where necessary, by or through persons trained for the purpose;
- (iv) if possible and where appropriate, the same persons conduct all the interviews with the complainant;
- (v) the number of interviews with the complainant is as limited as possible and interviews are carried out only where strictly necessary for the purposes of the investigation;
- (vi) the complainant may be accompanied by an adult of the complainant's choice, unless the police officer in charge of the investigation decides to the contrary and records the reasons for that decision in writing.

(2) In this section—

“the accused” means a person who is alleged to have committed, or has committed, an offence under section 1 or 2;

“complainant” means a person against or in relation to whom an offence under section 1 or 2 is alleged to have been committed, or has been committed.

### **Special measures: amendments to the Criminal Evidence (Northern Ireland) Order 1999**

**24.—**(1) The Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) In Article 3 after paragraph (1) insert—

“(1A) In this Order “a slavery or human trafficking offence” means an offence under—

- (a) section 57, 58, 58A or 59 of the Sexual Offences Act 2003 (trafficking for sexual exploitation);
- (b) section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking for exploitation);
- (c) section 71 of the Coroners and Justice Act 2009 (slavery, servitude and forced or compulsory labour); or
- (d) section 1 or 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery, servitude, forced or compulsory labour and human trafficking).”.

(3) In Article 5(4) (witnesses eligible for assistance on grounds of fear or distress about testifying) after “sexual offence” insert “ or a slavery or human trafficking offence ”.

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(4) In Article 13(4)(a) (evidence given in private) after “sexual offence” insert “ or a slavery or human trafficking offence ”.

(5) In Article 21 (interpretation etc. of Part 2) after paragraph (4) insert—

“(5) For the purposes of this Part as it applies in relation to a witness who is the complainant in respect of a slavery or human trafficking offence, where the age of the witness is uncertain and there are reasons to believe that the witness is under the age of 18, that witness is presumed to be under the age of 18.”.

(6) In Article 22 (complainants in proceedings for sexual offences) after “sexual offence” insert “ or a slavery or human trafficking offence ”.

(7) In Article 23 (child complainants and other child witnesses) in paragraph (3) for sub-paragraph (cc) substitute—

“(cc) a slavery or human trafficking offence;”.

(8) In Article 39 (general supplementary provisions) after paragraph (2) insert—

“(3) Paragraph (2) is subject to Article 21(5).”.

## PART 5

### SUPPLEMENTARY

#### Interpretation of this Act

**25.—**(1) In this Act—

“child” means a person under the age of 18;

“country” includes territory or other part of the world;

“the Department” means the Department of Justice;

“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 4th November 1950;

“public authority” means any public authority within the meaning of section 6 of the Human Rights Act 1998 (other than a court or tribunal) which exercises functions wholly or mainly in Northern Ireland;

“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

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

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or exploitation is significantly impaired through physical or mental disability or illness, old age, addiction to alcohol or drugs or for any other reason.

(2) For the purposes of this Act—

(a) a person is in a position of trust in relation to another person in the circumstances mentioned in Article 28 of the Sexual Offences (Northern Ireland) Order 2008;

(b) a person is a member of another person's family if the relation of that person to the other person is within Article 34 of that Order.

(3) For the purposes of the exercise of any function under this Act relating to a child, if—

(a) the age of a person (“P”) is uncertain; and

(b) the person exercising the function has reason to believe that P is a child, P is to be treated as a child.

### **Amendments, repeals and consequential provision**

**26.—**(1) The statutory provisions set out in Schedule 4 have effect subject to the amendments in that Schedule.

(2) The statutory provisions set out in Schedule 5 are repealed to the extent specified in the second column of that Schedule.

(3) The repeal of a provision by this Act does not affect the operation of that provision in relation to an offence committed before the coming into operation of that repeal.

(4) The Department may by order make whatever provision the Department thinks appropriate in consequence of this Act.

(5) The provision which may be made by order under subsection (4) includes provision amending, repealing or revoking any statutory provision.

### **Orders and regulations**

**27.—**(1) Subject to subsections (2) to (5), orders made by the Department under this Act and regulations under this Act are subject to negative resolution.

(2) Subsection (1) does not apply to an order under section 28 (commencement).

(3) Orders to which subsection (4) applies shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.



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- (4) This subsection applies to—
- (a) an order under section 13(6) (power to amend body to be notified about suspected victims);
  - (b) an order under section 22(10) (power to amend list of offences excluded from defence in section 22);
  - (c) an order under section 26(4) (consequential provision) which amends or repeals any provision of an Act or of Northern Ireland legislation;
  - (d) an order under paragraph 1(5) of Schedule 3 (power to amend definition of “slavery or human trafficking offence”);
  - (e) an order under paragraph 2(7) of Schedule 3 (provision as to additional applicants for slavery and trafficking prevention orders);
  - (f) an order under paragraph 17 of Schedule 3 (cross-border enforcement of certain court orders).

(5) Regulations under section 13 (duty to notify National Crime Agency) or 21(9) (additional functions for independent guardians) shall not be made unless a draft of the regulations has been laid before and approved by resolution of the Assembly.

(6) Regulations under this Act and orders made by the Department under this Act may include saving, transitional, transitory, supplementary or consequential provision.

#### **Short title and commencement**

**28.—**(1) This Act may be cited as the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

(2) Except as provided by the following subsections, this Act comes into operation on the day after Royal Assent.

(3) The following provisions come into operation on such day or days as the Department may by order appoint—

- (a) section 11 (with Schedule 3);
  - (b) section 13.
- (4) Sections 12 and 20 come into operation one month after Royal Assent.
- (5) Section 15(1) to (5) and (7) comes into operation on 1 June 2015.
- (6) Section 21(1) to (4) and (6) to (12) comes into operation 10 months after Royal Assent.

**Status:**

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**Changes to legislation:**

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