



# Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

## JCC Circular 1 of 2015

Ref: CS/LS

14 January 2015

Dear Colleague

### **Human Trafficking & Exploitation (S) Bill – Consultation**

I refer to the above and attach herewith the relevant consultation documents for your consideration.

Please submit any comments you may have to [Lesley.stevenson@spf.org.uk](mailto:Lesley.stevenson@spf.org.uk) by **Tuesday 10 February 2015**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Steele'.

**Calum Steele**  
**General Secretary**

# **HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) BILL**

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## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

### **CONTENTS**

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Human Trafficking and Exploitation (Scotland) Bill introduced in the Scottish Parliament on 11 December 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer's statement on legislative competence.

A Policy Memorandum is published separately as SP Bill 57–PM.



## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE BILL**

3. The Bill's overarching objective is to consolidate and strengthen the existing criminal law against human trafficking and exploitation and enhance the status of and support for its victims. The Bill will also give Ministers power, by regulations, to specify relevant authorities to work with the Scottish Government to develop and implement a Scottish trafficking and exploitation strategy.
4. The Bill will consolidate and clarify existing trafficking offences into one single offence. Current domestic criminal law against human trafficking in Scotland sits in a number of different Acts—
  - Section 22 of the Criminal Justice (Scotland) Act 2003<sup>1</sup> ("2003 Act") criminalises arranging or facilitating a person's travel for the purposes of prostitution and involvement in the making or production of indecent materials;
  - Section 4 and 5 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004<sup>2</sup> ("2004 Act") criminalises arranging or facilitating a person's travel for the purposes of other forms of exploitation;
  - Section 46 of the Criminal Justice and Licensing (Scotland) Act 2010<sup>3</sup> ("2010 Act") amends the provisions in the 2003 and 2004 Acts, for example to create an offence under both for someone who arranges or facilitates travel into, within or out of a country other than the UK.
5. A more detailed explanation of the Bill's purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

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

6. The Bill is in six parts.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2003/7>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2004/19>

<sup>3</sup> <http://www.legislation.gov.uk/asp/2010/13>

7. Part 1 (Offences) includes provision on the creation of a single offence of human trafficking for all types of exploitation of both adults and children; establishes statutory aggravators of human trafficking for use with other crimes; and reframes the current standalone offence of slavery, servitude and forced or compulsory labour.

8. Part 2 (Protection of victims) includes provision on prosecutorial guidelines for the prosecution of victims and provision about the support and assistance to which adult victims are entitled.

9. Part 3 (Confiscation of property) includes provision on detention and forfeiture of property and proceeds of crime.

10. Part 4 (Trafficking and exploitation prevention and risk orders) includes provision on two new preventive orders, the trafficking and exploitation prevention order and the trafficking and exploitation risk order.

11. Part 5 (Strategy and reporting) includes provision on the trafficking and exploitation strategy and the duty on specified Scottish public authorities to notify and provide information about victims.

12. Part 6 contains general and ancillary provisions.

## **PART ONE – OFFENCES**

### *Human trafficking*

#### **Section 1: Human trafficking**

13. Section 1 provides for a single offence of human trafficking for the purpose of all forms of exploitation of adults and children. See paragraph 4 above for existing offence legislation.

14. Subsection (1) defines the conduct which constitutes the offence of human trafficking. A person commits an offence if the person arranges or facilitates another person's travel with a view to the other person being exploited. It is irrelevant whether that other person consents to the arrangement or facilitation of travel (subsection (2)). Examples of what constitutes arranging or facilitating another person's travel for these purposes include (but are not limited to)—

- recruiting the person with a view to transporting or transferring the person;
- transporting or transferring the person;
- transferring or exchanging control of the person;
- harbouring or receiving the person.

15. Subsection (3) provides that the person arranges or facilitates another person's travel with a view to the other person being exploited only if the person intends to exploit the other person or the person knows or ought to know the other person is likely to be exploited (in any part of the world) during or after the travel.

16. Subsection (5)(a) provides that on summary conviction of the offence, the maximum penalty is imprisonment for a term not exceeding 12 months, a fine not exceeding the statutory maximum or both. Subsection (5)(b) provides that on conviction of the offence on indictment, the maximum penalty is imprisonment for life, or a fine, or both.

## **Section 2: Application of offence to conduct in United Kingdom and elsewhere**

17. Section 2 provides for the application of the human trafficking offence to conduct in the United Kingdom and elsewhere, reflecting the fact that human trafficking activity may involve activity that is completely or partly outwith Scotland. This measure implements the terms of Article 10(2)(c) (jurisdiction) of the Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, replacing Framework Decision 2002/629/JHA (“EU Directive”).<sup>4</sup> It should be read with the definition of travel in section 36.

18. Subsections (1) and (2) provide that a UK national, a person who at the time of the offence was habitually resident in Scotland or a body incorporated under the law of a part of the UK, commits an offence of human trafficking regardless of where the arranging or facilitating of travel takes place, or where the travel itself takes place. Whether or not a person is “habitually resident” in Scotland will be determined in the light of all the facts and circumstances of the case.

19. Subsection (3) provides that any other person commits the offence of human trafficking only if any part of the arranging or facilitating of travel takes place in the UK, or the travel consists of arrival in or entry into, departure from, or travel within, the UK.

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

20. Section 3 describes what constitutes exploitation for the purposes of the offence of human trafficking. By virtue of subsection (1), only exploitation of a type mentioned in subsections (2) to (8) is to be regarded as exploitation in this context.

21. Subsection (2) provides that a person is exploited if the person is the victim of conduct which involves the commission of an offence under section 4 of the Bill (slavery, servitude and forced or compulsory labour) or would be if the conduct occurred in Scotland.

22. Subsections (3) to (5) deal with prostitution and sexual exploitation and provide that a person is exploited if—

- another person exercises control, direction or influence over the first person’s prostitution in a way which shows that the other person is aiding, abetting or compelling the prostitution;
- another person involves the first person in the making or production of obscene or indecent material; or

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<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

- the person is the victim of conduct constituting one of a number of listed sexual offences (or which would constitute such an offence if that conduct occurred in Scotland).

23. The categories of exploitation related to prostitution and the making of indecent material are drawn from the existing offence in section 22 of the 2003 Act. The category related to other forms of exploitation in connection with sexual offences is a new development in Scots law, though has some precedent under the Sexual Offences Act 2003 in England and Wales.

24. Subsection (6) deals with exploitation relating to the removal of organs etc. It provides that a person is exploited in that context if they are encouraged, required or expected to do anything constituting either an offence under Part 1 of the Human Tissue (Scotland) Act 2006 which deals principally with removal of organs for transplantation, or any other offence under the law of Scotland involving removal of a part of the human body (or anything which would constitute such an offence were it done in Scotland). This latter category ensures that the removal of organs or tissue for purposes other than transplantation is caught by the trafficking offences. This covers the removal of body parts for research, sacrificial rites, consumption, etc. For these purposes, a part of the body comprises all parts of the body, including blood.

25. Subsections (7) and (8) make more general provision. Subsection (7) establishes that a person is exploited if force, threats or deception are used to induce the person to provide services or benefits or to enable another person to acquire benefits. Subsection (8) provides that a person is exploited if another person takes advantage of the person's vulnerability to use or attempt to use the person to provide services or benefits (or to enable another person to acquire benefits). This will ensure the offence captures those cases where the role of the person being exploited is entirely passive, and where the person is being used as a tool by which others can gain a benefit of any kind.

26. The categories of exploitation in subsections (6) to (8) are derived from section 4 of the 2004 Act.

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

#### **Section 4: Slavery, servitude and forced or compulsory labour**

27. Section 4 provides for an offence of slavery, servitude and forced or compulsory labour. Subsections (1) and (2) provide that a person is guilty of an offence if that person holds another person in slavery or servitude or requires that other person to perform forced or compulsory labour in circumstances which show that the first person knows or ought to know that the person is being so held. The offence must be interpreted in accordance with Article 4 of the European Convention on Human Rights. That Article prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour. This is currently an offence under section 47 of the 2010 Act, which was created in response to the case of *Siliadin v France*<sup>5</sup> (where the European Court of Human Rights held that there had been a violation of Article 4 in relation to the holding of an individual in domestic servitude).

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<sup>5</sup> Application no. [73316/01](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69891) <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69891>

28. Subsection (3) provides that, in assessing whether a person has been the victim of the offence, the court is to have regard to any of the alleged victim's characteristics that make the person more vulnerable than other people. Examples of these characteristics include age, health or family relationships.

29. Subsection (4) sets out the maximum penalty available on conviction of the offence of slavery, servitude and forced or compulsory labour. This is an increase from the current maximum penalty for the offence under section 47 of the 2010 Act. Subsection (4)(a) provides that on summary conviction of the offence, the maximum penalty is imprisonment for a term not exceeding 12 months, a fine not exceeding the statutory maximum, or both. Subsection (4)(b) provides that on conviction of the offence on indictment, the maximum penalty is imprisonment for life, a fine, or both.

#### *Aggravation as to human trafficking*

### **Section 5: General aggravation of offence**

30. Section 5 makes provision for a statutory aggravation which applies in cases where an accused commits any other offence and that offence has a connection with a human trafficking offence. Where an indictment or complaint libels or specifies that an offence is aggravated by a connection with human trafficking activity and it is subsequently proved that the offence is aggravated in that way, the court must state on conviction that the offence is so aggravated, record the conviction in a way which shows that the offence is so aggravated, take the aggravation into account when determining the appropriate sentence and state the extent of any difference in the sentence in light of the aggravation (or, if there is no difference, the reasons for that) (subsections (1) and (5)).

31. Subsection (2) sets out the circumstances in which an offence can be regarded to have been aggravated by a connection with human trafficking. This relies on proof that the accused was motivated, in whole or in part, by the objective of committing or conspiring to commit the offence of human trafficking. In terms of subsection (3), it is not material to establishing the aggravation whether or not the offence of human trafficking was actually committed by the offender or another person.

32. Subsection (4) provides clarification that corroboration is not needed to prove that an offence is aggravated by a connection with human trafficking activity – evidence from a single source is sufficient. This is consistent with the existing law in relation to both corroboration and statutory aggravations. This position is under review pending further parliamentary scrutiny of the Criminal Justice (Scotland) Bill.

### **Section 6: Aggravation involving public official**

33. Section 6 makes similar provision about a statutory aggravation which applies in cases where a public official, acting or purporting to act in the course of official duties, commits the offence of human trafficking.

34. Subsection (4) sets out the steps the court must take when it is libelled in an indictment or specified in a complaint that the offence of human trafficking is aggravated by an abuse of a



public position and proved that the offence is so aggravated. These are similar to the steps which must be taken in relation to the general aggravation in section 5.

35. Subsection (5) defines those to be considered as a public official for the purposes of section 6, while subsection (6) defines the term “an international organisation” for the purposes of this section.

36. Subsection (7) enables the Scottish Ministers to modify by regulations the definition of who is a public official and the definition of an international organisation. Any such regulations will be subject to the affirmative procedure.

## **PART 2 – PROTECTION OF VICTIMS**

### *Prosecution of victims*

#### **Section 7: Lord Advocate’s guidelines on prosecution of victims of offences**

37. Section 7 places a duty on the Lord Advocate to prepare and publish guidelines for prosecutors about the prosecution of suspected or confirmed victims of the offence of human trafficking and the offence under section 4 of the Bill.

38. Subsection (2) sets out that the guidelines must include factors to be taken into account or steps to be taken when deciding whether to prosecute a person who does an act which constitutes an offence having been compelled to do so and that the compulsion is directly attributable to the person being, or appearing to be, a victim of an offence of human trafficking or, as the case may be, under section 4 of the Bill.

39. Subsection (3) provides that the Lord Advocate may, from time to time, revise the guidelines.

### *Support and assistance for adult victims of human trafficking*

#### **Section 8: Duty to secure support and assistance**

40. Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings<sup>6</sup> (“COE Convention”) sets out the support and assistance which must be provided for trafficked victims. The UK Government ratified the COE Convention in December 2008 and Scotland became bound by its terms in April 2009. Currently there is no statutory basis for potential victims of trafficking to access support and information on the type of support that they are entitled to. Support is currently provided through support agencies with grant funding from the Scottish Ministers.

41. Section 8 places a duty on the Scottish Ministers to secure the provision of support and assistance for adult victims of human trafficking, on an assessment of needs, during a defined period. It also sets out a discretionary power for the Scottish Ministers to arrange the provision of support and assistance outwith the mandatory period.

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<sup>6</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

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

43. Subsection (2) defines the relevant period. It begins on the day it is determined there are reasonable grounds to believe that the adult is a victim of human trafficking (paragraph (a)) and ends on the earlier of either the end of a period specified in regulations made by the Scottish Ministers (paragraph (b)(i)) or the date on which there is a conclusive determination that the adult is or is not a victim of a human trafficking offence (paragraph (b)(ii)).

44. Subsection (3) gives the Scottish Ministers discretion to provide support and assistance outwith the mandatory period under subsection (2). The support and assistance may be provided to the adult during the period when a competent authority is determining whether there are reasonable grounds to believe that the person is a victim of human trafficking (paragraph (a)). It may also be provided before the date on which there is a conclusive determination in relation to the adult, if the mandatory period has ended by then (paragraph (b)) or after that conclusive determination, for such period as Ministers think appropriate (paragraph (c)).

45. Subsection (4) provides a non-exhaustive list of the kind of support and assistance that may be provided under section 8. The list provides that support and assistance may be provided in connection with (but not limited to) the following—

- accommodation;
- day to day living;
- medical advice and treatment;
- language translation and interpretation;
- counselling;
- legal advice;
- information about other services available to the adult; and
- repatriation.

46. Subsection (5) provides that the Scottish Ministers must ensure that, in securing the provision of support and assistance, assistance is only provided where the adult consents (subsection (5)(a)) and that the provision of assistance is not made conditional on the adult assisting with a criminal prosecution or investigation (subsection (5)(b)).

47. Subsection (6)(a) describes when there are reasonable grounds to believe that an adult is a victim of a trafficking offence for the purposes of securing support and assistance. Subsection (6)(b) describes what is meant by a “conclusive determination that an adult is or is not a victim of an offence of human trafficking” for these purposes.

48. Subsection (7) defines what is meant by the terms “competent authority” and “the Trafficking Convention” for the purposes of this section.

### **PART 3 - CONFISCATION OF PROPERTY**

#### *Detention and forfeiture*

#### **Section 9: Detention of vehicle, ship or aircraft**

49. Section 9 sets out the power of a constable to detain a vehicle, ship or aircraft if a person has been arrested for an offence of human trafficking.

50. Subsection (1) describes the circumstances where a police constable may detain a vehicle, ship or aircraft. Subsection (1)(a) provides that a constable may detain a vehicle, ship or aircraft if a person has been arrested for an offence of human trafficking and the constable has reasonable grounds to believe that a forfeiture order would be made if the person arrested were convicted of the offence (subsection (1)(b)).

51. Subsection (2) provides for the duration of the detention of the property. Subsection (2)(a) provides that the vehicle, ship or aircraft may be detained until a decision is taken as to whether or not to begin solemn proceedings against the person arrested for the offence. In circumstances where solemn proceedings have begun, the property may be detained until the person is acquitted (subsection (2)(b)(i)), the person is convicted and a decision is made whether or not to order forfeiture of the property under section 10 (subsection (2)(b)(ii)), or the proceedings are otherwise concluded (subsection (2)(b)(iii)).

52. Subsections (3) and (4) set out the circumstances in which solemn proceedings are to be taken to have commenced and concluded for the purposes of this section.

53. Subsection (5) lists the circumstances in which a person (including the accused) with a relevant interest in the detained property may apply to the sheriff for release of the vehicle, ship or aircraft. Subsection (6) sets out the sheriff's power to order release subject to satisfactory security being tendered.

54. Subsection (7) provides that the sheriff may impose such other conditions as to the release of the detained property as the sheriff thinks fit.

#### **Section 10: Forfeiture of vehicle, ship or aircraft**

55. Section 10 sets out the power of the court to order forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with an offence of human trafficking.

56. Subsections (1) to (3) provides that forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence of human trafficking may be ordered if a person convicted on indictment of that offence, when the offence was committed—

- owned the vehicle, ship or aircraft,
- was a director, secretary or manager of a company which owned it,
- was in possession of it under a hire purchase agreement,

- was a director, secretary or manager of a company which was in possession of it under a hire purchase agreement,
- in relation to a vehicle, was driving it,
- in relation to a ship or aircraft, was the charterer of it or was acting as captain of it.

57. Subsection (4) makes special provision about cases where a ship or aircraft is to be forfeited, but the offender does not own it and was not a director, secretary or manager of a company which owns it. It provides that, in those circumstances, forfeiture of a ship or aircraft may only be ordered if any one of the tests listed in this subsection is satisfied. Subsection (4)(a) provides that if a person who, at the time the offence was committed, owned the ship or aircraft, or was a director, secretary or manager of a company which owned it, knew, or ought to have known of the intention to use it in the course of the commission of the offence of human trafficking, then forfeiture of a ship or aircraft may be ordered. Subsection (4)(b) provides that, in the case of a ship (other than a hovercraft), if its gross tonnage is less than 500, then forfeiture of that ship may be ordered. Subsection (4)(c) provides that, in the case of an aircraft, if the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes, then forfeiture of that aircraft may be ordered under this section. Protection is provided for particular categories of owner who, due to the size of the ship or aircraft in question or the circumstances in which it is used for trafficking, do not know or reasonably suspect, or are unlikely to know or reasonably suspect, that the ship or aircraft is being used in that way. There is a greater likelihood that an owner of a vehicle or smaller types of ships or aircraft will have actual or constructive knowledge that their property is being or intended to be used for the purposes of trafficking.

58. Subsection (5) provides that forfeiture cannot be ordered without giving any person claiming an interest in the relevant property the chance to make representations.

### *Proceeds of crime*

#### **Section 11: Proceeds of Crime Act 2002: lifestyle offences**

59. Section 11 amends Schedule 4 to the Proceeds of Crime Act 2002 (“2002 Act”) to categorise all trafficking and exploitation offences as lifestyle offences for the purposes of that Act. A conviction of a lifestyle offence triggers assumptions under the 2002 Act that the accused has a criminal lifestyle and that the accused’s property is recoverable as criminal proceeds.

60. Section 11(a) amends Schedule 4 to the 2002 Act, by substituting paragraph 4 thereof with a list of all offences related to trafficking and thus categorising all such offences as lifestyle offences for the purposes of the 2002 Act. Section 11(b) amends the same Schedule, by inserting a new paragraph 4A to provide that an offence under section 4 of the Bill also constitutes a lifestyle offence.

## **PART 4 – TRAFFICKING AND EXPLOITATION PREVENTION AND RISK ORDERS**

### *Trafficking and exploitation offences*

#### **Section 12: Relevant trafficking or exploitation offences**

61. Section 12 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.

62. 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 13: Prevention orders on sentencing**

63. Section 13 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.

64. 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.

65. Subsection (3) provides that the court may make a TEPO at its own instance or on the motion of the prosecutor.

66. 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 another offence mentioned in section 12 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.

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

## **Section 14: Prevention orders on application**

68. Section 14 provides that the chief constable may apply to a sheriff for a TEPO against an adult.

69. Subsection (2) sets out the appropriate sheriff to whom such an application should be made.

70. 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)).

71. 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 15: Meaning of relevant offender**

72. Section 15 defines what is meant by a “relevant offender” for the purposes of section 14.

73. 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 12 of the Bill).

74. 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 12. 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).

75. 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.

76. 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 16: Contents of prevention orders**

77. Section 16 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 Bill allows some requirements and prohibitions in the order to be set for a period shorter than that of the order, if that is appropriate.

78. 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 17) 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.

79. 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.

80. Subsection (6) defines what is meant by “the court” for the purposes of the section.

## **Section 17: Prohibitions on foreign travel**

81. Section 17 makes provision about prohibitions on foreign travel in TEPOs.

82. 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.

83. 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).

84. Subsection (3)(a) determines that a prohibition on foreign travel varied or renewed by application under section 18 or 19 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.

85. 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.

86. 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 18: Orders on sentencing: variation, renewal and discharge**

87. Section 18 makes provision about varying, renewing and discharging TEPOs made on sentencing.

88. 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 shrieval 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.

89. 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.

90. 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) 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.

91. Subsection (8) makes it clear that an order varying or renewing a TEPO is subject to the requirements and prohibitions established by sections 16 and 17 in the same way as the original order.

92. Subsection (9) defines “prosecutor” for the purposes of this section.

## **Section 19: Orders on application: variation, renewal and discharge**

93. Section 19 makes provision about the variation, renewal or discharge of TEPOs made on application.

94. 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.

95. 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.

96. 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.

97. Subsection (8) provides that when determining an application under this section the sheriff may consider conduct which occurred before this section comes into force.

98. Subsection (9) makes it clear that an order varying or renewing a TEPO is subject to the requirements and prohibitions established by sections 16 and 17 in the same way as the original order.

## **Section 20: Interim prevention orders**

99. Section 20 gives power to a sheriff to make an interim TEPO while the main application under section 14 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)).

100. 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 14 if that fixed period has not expired.

101. 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 21: Appeals: prevention orders**

102. Section 21 provides for an appeals process in relation to TEPOs and interim TEPOs.

103. 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.

104. 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 22: Risk orders**

105. Section 22 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.

106. Subsection (2) sets out the appropriate sheriff to whom an application for such an order may be made.

107. 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)).

108. Subsection (4) provides that in assessing those tests the sheriff may consider conduct which occurred before this section comes into force.

**Section 23: Contents of risk orders**

109. Section 23 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 Bill allows some requirements and prohibitions in the order to be set for a shorter period, if that is appropriate.

110. 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 24(1)).

111. 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.

112. 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 24: Prohibitions on foreign travel**

113. Section 24 makes provision about prohibitions on foreign travel contained in a TERO.

114. 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.

115. 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).

116. Subsection (3)(a) determines that a prohibition on foreign travel varied or renewed under section 25 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.

117. 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 25: Variation, renewal and discharge of risk orders**

118. Section 25 makes provision about the variation, renewal or discharge of TEROs

119. 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.

120. 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.

121. 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 26: Interim risk orders**

122. Section 26 provides that a sheriff may make an interim TERO while the main application under section 22 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)).

123. 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.

124. 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 27: Appeals: risk orders**

125. Section 27 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 28: Offences**

126. Section 28 makes provision about breach of TEPOs and TEROs.

127. 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.

128. 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 29: Enforcement of other UK orders**

129. Section 29 provides that the Scottish Ministers may modify, by regulations, the list of orders at section 28(2) so that a breach of those orders in Scotland constitutes an offence under section 28(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 30: Interpretation of Part 4**

130. Section 30 defines certain terms used in Part 4.

## **PART 5 - STRATEGY AND REPORTING**

### **Section 31: Trafficking and exploitation strategy**

131. Section 31 places a duty on the Scottish Ministers to prepare a trafficking and exploitation strategy. The strategy under this section is a strategy which sets out such actions, arrangements and outcomes as the Scottish Ministers consider appropriate in relation to the conduct which constitutes an offence under this Act.

132. Subsection (3) lists some of the matters which may be set out in the strategy, though that list is not exhaustive. Those matters include, for example, training and awareness raising in relation to the detection and prevention of the conduct which constitutes an offence of human trafficking or an offence under section 4.

### **Section 32: Review and publication of strategy**

133. Subsection (1) of section 32 provides that the strategy prepared under section 31 must be reviewed by the Scottish Ministers every three years. Following a review, the Scottish Ministers are required by subsection (2) to prepare a report on the review, including an assessment of the extent to which the strategy has been complied with, and may prepare a revised strategy. If a decision is taken following such a review not to prepare a revised strategy, the Scottish Ministers must set out their reasons for that decision.

134. Subsection (4) places a duty on the Scottish Ministers to consult with those likely to have an interest in the strategy before preparing or reviewing the strategy. Those likely to have an interest include, but are not limited to, businesses, support agencies, faith based groups etc..

135. Subsection (5) requires the Scottish Ministers to publish and lay before the Scottish Parliament each strategy and report prepared under this section.

### **Section 33: Duty to co-operate on strategy**

136. Section 33 provides that Scottish public authorities, as specified in regulations that may be made by the Scottish Ministers, must provide such information and assistance as the Scottish Ministers may reasonably require and otherwise co-operate with the Scottish Ministers in the preparation or review of the strategy. A specified public authority could include, for example, Police Scotland and local authorities.

### **Section 34: Duty to notify and provide information about victims**

137. Section 34 places a duty on specified Scottish public authorities to notify the chief constable of the Police Service of Scotland about a person who is, or appears to be, a victim of

an offence under section 1 or section 4. This duty would not affect any other general right to report information relating to crime.

138. Subsection (2) requires that a notification relating to an adult is anonymised and does not include any information that identifies the adult or enables the adult to be identified, unless the adult consents to that data being provided.

139. Subsection (3) provides that the Scottish Ministers may by regulations specify the Scottish public authorities who are to be subject to this duty and may make provision about the information to be included in the notification. The regulations will be subject to the negative procedure.

## **PART 6 – FINAL PROVISIONS**

### **Section 35: Offences by bodies corporate etc.**

140. Section 35 provides that where an offence under the Bill was committed by a body corporate or a Scottish partnership or other unincorporated association and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a relevant individual or someone purporting to be acting in the capacity of a relevant individual, that individual, as well as the body corporate, partnership or unincorporated association, commits the offence and is liable to be proceeded against and punished accordingly.

141. Subsection (2) defines what is meant by a “relevant individual” for the purpose of this section.

### **Section 36: Interpretation**

142. Section 36 defines certain terms for the purposes of the Bill; for example, the definition of “travel”.

### **Section 37: Regulations**

143. The Scottish Ministers are given various powers under this Bill to make regulations. Section 37 provides for the parliamentary procedure which is to be applicable in relation to each of those powers.

### **Section 38: Ancillary provision**

144. Section 38 provides that the Scottish Ministers may make regulations containing such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, the provisions of the Bill.

### **Section 39: Minor and consequential amendments**

145. Section 39 introduces the schedule, which makes minor amendments and amendments consequential on the provisions of the Bill. Given their replacement in Part 1 of the Bill, the schedule repeals the current offences in relation to human trafficking (section 22 of the 2003 Act and section 4 of the 2004 Act) and slavery, servitude and forced or compulsory labour (section 47 of the 2010 Act).

### **Section 40: Crown application**

146. Section 40(1) provides that none of the provisions made by or under the Act are capable of making the Crown criminally liable. In accordance with subsection (2), enforcement of offences against the Crown is to be done by the Scottish Ministers or any other public body or office-holder with responsibility for enforcing the provision applying to the Court of Session for a civil declarator of non-compliance. This provision does not apply to persons in the public service of the Crown.

### **Section 41: Commencement**

147. Section 41 provides that sections 36, 37, 38, 40, 41 and 42 of the Bill come into force on the day after Royal Assent. All other provisions are to come into force on a day appointed by regulations made by the Scottish Ministers.

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Human Trafficking and Exploitation (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 11 December 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The purpose of the Bill is to consolidate and strengthen the existing criminal law against human trafficking and exploitation and enhance the status and support provided to victims. Bill provisions are in the following Parts—

**Part 1 (Offences)** includes provision on the creation of a single offence of human trafficking for all types of exploitation of both adults and children; establishes statutory aggravators of human trafficking for use with other crimes; and reframes the current standalone offence of slavery, servitude and forced or compulsory labour.

**Part 2 (Protection of victims)** includes provision on prosecutorial guidelines for the prosecution of victims and provision about the support and assistance to which adult victims are entitled.

**Part 3 (Confiscation of property)** includes provision on detention and forfeiture of property and proceeds of crime.

**Part 4 (Trafficking and exploitation prevention and risk orders)** includes provision on two new preventive orders, the trafficking and exploitation prevention order and the trafficking and exploitation risk order.

**Part 5 (Strategy and reporting)** includes provision on the trafficking and exploitation strategy and the duty on specified Scottish public authorities to notify and provide information about victims.

**Part 6** contains general and ancillary provisions.

3. This Financial Memorandum considers the financial implications of each of the elements of the Bill, where relevant.

### **BACKGROUND**

4. Before considering the financial implications associated with the specific provisions within the Bill, it is important to consider both the current estimated extent of human trafficking in Scotland and existing activity by public bodies and others in response to this issue.



## **Extent of human trafficking in Scotland**

5. Human trafficking is, by its nature, a hidden crime. The National Referral Mechanism (NRM) is the process set up by the UK Government to identify and support victims of trafficking in the UK. The NRM is also the mechanism by which the UK Human Trafficking Centre collects data about potential victims of trafficking. Information about suspected child and adult victims of human trafficking is referred by relevant “first responder” organisations, such as the police and third sector bodies, for example, Migrant Help and the Trafficking Awareness Raising Alliance (TARA). Referrals relate to victims trafficked from outside and within the UK. The table below summarises the most recent available information on NRM referrals from first responder organisations in Scotland.

**Table 1: Recent referrals from first responders in Scotland of potential child and adult human trafficking victims to the National Referral Mechanism**

	<b>2012</b>	<b>2013</b>
<b>Adults</b>	67	77
<b>Children</b>	29	22
<b>Total</b>	96	99
<b>% of all UK Referrals</b>	8%	6%

*Source: National Crime Agency National Referral Mechanism Statistics 2012 and 2013<sup>1</sup>*

6. Various reports confirm that the number of victims referred through the NRM is likely to be a significant underestimate of the actual number of potential victims of trafficking. For example, the Equality and Human Rights Commission Inquiry into Human Trafficking in Scotland (2011), noted “*estimates of identified potential victims do not reflect what is likely to be a much greater number of unidentified victims.*”<sup>2</sup>

7. The UK National Crime Agency (NCA) *Strategic Assessment of the Nature and Scale of Human Trafficking in the UK*<sup>3</sup> aims to provide an indication of the nature and scale of human trafficking beyond the number of referrals to the NRM. The assessment is produced using intelligence held by the NCA, the NRM and intelligence information collected from agencies such as Police Scotland, the Home Office, Gangmasters’ Licensing Authority and non-government organisations. The assessment removes information of potential victims referred to the NRM who have received a negative “reasonable grounds” or “conclusive decision” (i.e. it has been confirmed that they are not victims of trafficking) or duplicate information about individuals (i.e. the same person has been referred more than once or by more than one agency), to show a total number of “unique potential victims of trafficking”. The NCA Assessment for 2013 indicated that there were significantly more unique potential victims of human trafficking identified across the UK than the numbers referred to the NRM, even excluding those that received a negative decision, and that the number of unique victims was increasing.

<sup>1</sup> <http://www.nationalcrimeagency.gov.uk/publications/399-nca-strategic-assessment-the-nature-and-scale-of-human-trafficking-in-2013/file>

<sup>2</sup> [http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human\\_Trafficking\\_in\\_Scotland/\\_inquiry\\_into\\_human\\_trafficking\\_in\\_scotland-full-report\\_pdf.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human_Trafficking_in_Scotland/_inquiry_into_human_trafficking_in_scotland-full-report_pdf.pdf)

<sup>3</sup> <http://www.nationalcrimeagency.gov.uk/publications/399-nca-strategic-assessment-the-nature-and-scale-of-human-trafficking-in-2013/file>

**Table 2: Comparison of recent UK referrals to the National Referral Mechanism and the National Crime Agency Strategic Assessment of the Scale of Human Trafficking**

	<b>2012</b>	<b>2013</b>	<b>% Change</b>
<b>Referred to NRM</b>	778	1,095	+41%
<b>NCA Assessment: No. of Unique Potential Victims Identified</b>	2,255	2,744	+22%

*Source: National Crime Agency Strategic Assessment of the Nature and Scale of Human Trafficking in the UK<sup>4</sup>*

8. For Scotland, the NCA Assessment for 2013 identified **55** unique potential victims of human trafficking compared with 99 referrals to the NRM. It is not known why, in contrast to the position in England and Wales, the NCA Assessment for Scotland is lower than the NRM referrals, although it will exclude potential victims who received a negative conclusive decision and duplicate referrals. However, these numbers must be treated with significant caution. There remains strong conviction amongst law enforcement bodies and victims organisations that there are more victims of trafficking than are identified and that, even once identified, victims are often unwilling to engage with authorities or identify themselves as having been trafficked. For the purpose of this Financial Memorandum, the Scottish Government has accepted the NCA assessment that there are likely to be between two and three times as many potential victims of trafficking as are currently identified through the NRM. This assessment is based on the Scottish Government's best understanding of the hidden nature of this crime and the known reluctance of some victims to identify their trafficked status or to engage with public authorities.

### **Criminal justice response to human trafficking and exploitation**

9. There have been relatively few prosecutions and convictions for human trafficking offences under existing criminal justice legislation—

- The Criminal Justice (Scotland) Act 2003<sup>5</sup> (“the 2003 Act”) provides for offences of trafficking for the purposes of exploitation by way of prostitution.
- The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004<sup>6</sup> (“the 2004 Act”) provides for offences of trafficking for labour and other forms of exploitation.
- The Criminal Justice and Licensing (Scotland) Act 2010<sup>7</sup> (“the 2010 Act”) amended and extended the 2003 and 2004 Acts and created a standalone offence of holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour.

10. The first successful convictions for human trafficking in Scotland were in 2011, under section 22 of the 2003 Act for trafficking for the purposes of prostitution. During 2013, a total of four people were convicted of human trafficking offences - one person under section 22 of the 2003 Act and three people under section 4 of the 2004 Act for trafficking for forced marriage.

<sup>4</sup> <http://www.nationalcrimeagency.gov.uk/publications/399-nca-strategic-assessment-the-nature-and-scale-of-human-trafficking-in-2013/file>

<sup>5</sup> <http://www.legislation.gov.uk/asp/2003/7>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2004/19>

<sup>7</sup> <http://www.legislation.gov.uk/asp/2010/13>

The average custodial sentence length for those convicted of trafficking offences was 847 days (just under two years and four months), as well as any confiscation order imposed.

11. Although the number of convictions for trafficking offences has been small, police and the Crown Office and Procurator Fiscal Service (COPFS) have confirmed that, even though it is not possible to always prove the trafficking offence where a credible suspicion exists, people suspected of involvement with trafficking can and often are prosecuted and convicted for other crimes, such as crimes associated with prostitution, forced marriage, immigration offences and drugs offences, etc.

12. Police Scotland has established a dedicated National Human Trafficking Unit to enhance the police response to human trafficking, through awareness raising, intelligence gathering, training and providing divisions with advice and specialist knowledge. The COPFS has appointed dedicated expert fiscals to prosecute human trafficking offences.

### **Support for victims of trafficking**

13. The Scottish Government currently allocates direct grant funding to non-government organisations to provide and facilitate immediate support and assistance to the adult victims of human trafficking. This support can include immediate safe accommodation, psychological support, assistance in accessing medical treatment, material assistance, interpretation and translation and assistance either with repatriation or securing longer-term access to mainstream services and support, such as welfare benefits and housing. The provision of support and assistance is not conditional on the potential victim being willing to participate in the criminal justice process. Under the NRM, victims of trafficking are guaranteed “a recovery and reflection period”, to recover from their experience, escape the influence of those alleged to have trafficked or exploited them, and consider whether to engage with authorities. The Council of Europe Convention on Action Against Trafficking in Human Beings<sup>8</sup> provides for a reflection period of at least 30 days for all trafficked victims when there are reasonable grounds to believe that the person concerned is a victim. The current minimum recovery and reflection period in Scotland and the rest of the UK is 45 days.

14. In 2013-14, total grant funding of £723,000 was provided by the Scottish Government towards the costs of ensuring immediate support and assistance for the adult victims and potential victims of trafficking in Scotland. This funding was provided through two non-government organisations—

- the TARA Service, which works with women aged 18 years and over across Scotland where there are concerns that they have been trafficked for commercial sexual exploitation; and
- Migrant Help, a UK-wide organisation providing support and advice services to migrants, including new asylum claimants, refugees, EU nationals, etc.

15. Support for the child victims of trafficking is co-ordinated by local authorities as part of their child protection arrangements, and in line with the policy intention that children remain

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<sup>8</sup> [http://www.coe.int/t/dghl/monitoring/trafficking/docs/convntn/CETS197\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/docs/convntn/CETS197_en.asp)

children first and that their needs should be treated accordingly. The Scottish Government has produced a toolkit for agencies working with children and young people to ensure that staff are able to identify trafficked children and make appropriate referrals so that victims can receive protection and support. The toolkit is designed to be used in conjunction with National Child Protection Guidance,<sup>9</sup> which was first published in 2010 and refreshed in 2014, and other relevant national and international guidance. Information about current expenditure on child victims of trafficking is not recorded separately from information about wider expenditure on child protection services.

### **Lord Advocate guidance on prosecution policy**

16. In his letter of 21 January 2013 to the Scottish Parliament European and External Relations Committee,<sup>10</sup> the Lord Advocate set out the current arrangements for fiscals considering the prosecution of a confirmed or potential victim of human trafficking where it is believed or claimed that the crime was committed as a direct consequence of the person's trafficked status. The letter set out the basis for the current Lord Advocate's guidance to prosecutors, including the presumption against the prosecution of a credible trafficking victim for crimes that arise as a consequence of the victim's trafficked status.

### **Human trafficking strategic approach, awareness raising and training**

17. The first Scottish Human Trafficking Summit was hosted by the Cabinet Secretary for Justice in October 2012. The summit brought together key law enforcement, public, private and third sector organisations with an interest in human trafficking. Following the summit, a number of strategic collaborative actions were agreed and progressed, including with reference to awareness raising and training for frontline staff, data collection and analysis, identification, care and support for both child and adult victims of trafficking and enhancing enforcement.

18. One specific workstream related to awareness raising and training of front-line staff likely to come into contact with trafficking victims or potential instances of trafficking. Following the summit, Police Scotland, with support from the Scottish Government and others, prepared, published and circulated widely an awareness raising leaflet – *Reading the Signs*<sup>11</sup> – to assist police officers and staff in other front line posts in identifying the signs of potential trafficking. The Scottish Government also participated with the UK Government in a UK-wide public awareness raising campaign about modern slavery and trafficking.

19. In addition to general awareness raising, specific training material was prepared for key front-line staff. For example, all police officers were required to undertake an e-learning course on human trafficking. A special leaflet for health workers was prepared and circulated by NHS Health Scotland. An e-learning module for health workers about their role in identifying and

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<sup>9</sup> <http://www.scotland.gov.uk/Publications/2014/05/3052>

<sup>10</sup> [http://www.scottish.parliament.uk/S3\\_EuropeanandExternalRelationsCommittee/General%20Documents/LetterfromTheLordAdvocate.pdf](http://www.scottish.parliament.uk/S3_EuropeanandExternalRelationsCommittee/General%20Documents/LetterfromTheLordAdvocate.pdf)

<sup>11</sup> <http://www.scotland.police.uk/assets/pdf/174967/human-trafficking?view=Standard>

responding to victims of trafficking was made available through the National Gender Based Violence and Health Programme.<sup>12</sup>

## **IMPACT OF SPECIFIC PROVISIONS**

### **PART 1 - OFFENCES**

#### *Single trafficking offence*

20. The Bill establishes a new single offence of human trafficking for all types of exploitation for both adults and children, replacing existing separate criminal offences (see paragraph 9 above). As noted above, to date there have been relatively small numbers of prosecutions under existing trafficking offences.

21. The maximum penalty for conviction on indictment for the single trafficking offence will be life imprisonment, compared with a maximum of 14 years for the current separate offences. Although it will be for the court to decide how to sentence people convicted under the new single offence in any given case, it is likely that the availability of a higher maximum sentence will have cost implications for the Scottish Prison Service (SPS).

#### *Revised slavery, servitude and forced labour offence*

22. The Bill will also repeal and replace the existing exploitation offence within section 47 of the 2010 Act, which criminalises holding someone in slavery or servitude or requiring them to perform compulsory or forced labour. The offence will be revised and strengthened to allow the court to consider, in assessing whether a person has been a victim of an offence, the victim's characteristics such as age, physical or mental illness, disability or, where relevant, family relationships. The maximum penalty for the offence will be increased from 14 years for the current offence to life imprisonment for a conviction on indictment.

#### *Statutory aggravators*

23. The Bill makes provision for statutory aggravators which apply in cases where an accused person commits an offence connected with human trafficking and for when the offence is committed in connection with the accused's position as a public official. The court must take the aggravation into account in determining the appropriate sentence if it is proved that the offence is aggravated in this way. The statutory aggravator is not anticipated to have any substantial financial implications for public, private or third sector bodies, or for individuals.

### **Costs on the Scottish Administration**

24. Consolidating and clarifying the existing criminal law on trafficking and exploitation, alongside other measures arising from the Bill and the trafficking and exploitation strategy, including training and awareness raising and support for victims, should increase the potential for successful investigations, prosecutions and convictions of human trafficking and exploitation offences. There have been six successful prosecutions for a specific trafficking offence to date in Scotland, with an average custodial sentence length of two years and four months, against a

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<sup>12</sup> <http://www.gbv.scot.nhs.uk/>

maximum possible sentence of 14 years. The maximum number of prosecutions in any one year was four individuals in two separate cases.

25. Police and prosecutors already have in place specialist resources for investigating and prosecuting human trafficking and exploitation offences and these provisions will not add to these costs. Law enforcement agencies have confirmed that, whilst the number of prosecutions for specific trafficking offences has been low, where victims are identified but are unwilling to testify, individuals suspected of trafficking and exploitation will be prosecuted in court for other related offences. The Lord Advocate has identified that *“If we don’t have the evidence [to prosecute for a specific human trafficking offence], we prosecute for fraud, ID theft, or asylum and immigration offences.”*<sup>13</sup>

26. The Scottish Government does not anticipate, therefore, significant additional cost implications for law enforcement agencies or courts, as cases will often proceed with a trafficking offence alongside or in place of other related offences. For the same reason, the Scottish Government does not anticipate significant additional cost on the Scottish Legal Aid Board (SLAB). However, if it is assumed that the number of successful trials proceeding in any single year doubles from two to four, there would be some additional costs on the COPFS, the Scottish Court Service (SCS) and SLAB, based on the average unit costs for cases proceeded either through Sheriff Court Solemn procedure or through the High Court. These estimated costs, depending on whether cases are proceeded through the High Court or Sheriff Court solemn procedure, are illustrated in the table below.

**Table 3: Estimated unit costs of additional trial procedures through either High Court or Sheriff Court solemn procedure (£000)**

	Average prosecution costs per procedure (COPFS)	Average court costs per procedure (SCS)	Average legal aid costs per procedure (SLAB)
Sheriff Court solemn procedure (£000)	£4.9	£1.9	£1.6
High Court (£000)	£55.6	£9.0	£13.5
Estimated average costs of 2 additional trial procedures / 4 accused per annum (£000)	£9.9-£111.2	£3.8-£18.0	£6.4-£54.0

*Source: costs of the Criminal Justice System in Scotland Dataset (2013)*<sup>14</sup>

27. There will also be costs to the SPS, both through any increase in the number of successful convictions for trafficking and exploitation offences and an anticipated increase in the average length of custodial sentence for these crimes. It is not possible to know for certain the total

<sup>13</sup> <http://www.dailyrecord.co.uk/news/scottish-news/only-three-successful-prosecutions-brought-4457684>

<sup>14</sup> <http://www.scotland.gov.uk/Topics/Statistics/Browse/CrimeJustice/Publications/costcrimjustscot/costcrimjustdataset>  
<http://www.scotland.gov.uk/Topics/Statistics/Browse/CrimeJustice/Publications/costcrimjustscot/costcrimjustdataset>



number of future convictions or what sentencing decisions might be taken by courts in individual cases.

28. The table below illustrates the potential cost implications of either maintaining or increasing the current maximum number of convictions in any individual year from four to eight convictions. For the purpose of the calculation it is assumed that the average custodial sentence length for trafficking and exploitation offences will increase from two years and four months (classified as a short-term sentence) to over four years (classified as a long-term sentence), as increasing the maximum sentence to life imprisonment is anticipated to increase the average sentence for a trafficking offence. The estimated average annual cost of a prison place, based on SPS figures, is £42,500. Taking account of the current early release arrangements for long-term prisoners and the overlapping of individual sentences would result in an estimated increase of 8 to 21 total prison places each year after four years – i.e. with an additional four people receiving custodial sentences each year and released by the Parole Board at the halfway point of their sentence or automatically at the two-thirds point. The total costs to the SPS will be within a range of £340,000 to £890,000. These costs will fit within the overall budget costs to the SPS. As at 17 October 2014, there were 7,731 people in custody in Scotland. An additional 21 places accounts for 0.3% of the total prison population.

**Table 4: Estimated range of costs to the Scottish Prison Service from increasing the number and average length of successful prosecutions for trafficking offences**

	Year 1	Year 2	Year 3	Year 4
Additional Prison places	0-4	4-12	8-17	8-21
Additional Cost (£000)	£0-£170	£170- £510	£340-£720	£340-£890

**Table 5: Estimated range of combined costs for trial procedures and prison places**

	Year 1	Year 2	Year 3	Year 4
Additional Cost (£000)	£20-£353	£190- £693	£360-£900	£360-£1,073

### **Costs on other bodies, individuals and businesses**

29. There will be no new costs falling on other bodies, individuals and businesses as a consequence of these sections, but see the section below with reference to victim support.

### **Costs on local authorities**

30. There will be no new costs falling on local authorities as a consequence of these specific sections.

## **PART 2 - PROTECTION OF VICTIMS**

### *Duty on the Lord Advocate to publish guidance about the prosecution of credible trafficking and exploitation victims who have committed offences*

#### **Costs on the Scottish Administration**

31. As noted above, the Lord Advocate already prepares and publishes guidance to fiscals about the prosecution of credible victims of human trafficking for crimes committed as a direct

consequence of their trafficking status. The requirement to publish such guidance would, in future, be statutory. However, there will be no new costs on the Scottish Government or the COPFS as a consequence of placing the requirement for the Lord Advocate to issue this guidance on a statutory basis.

### **Costs on other bodies, individuals and businesses**

32. There will be no new costs falling on other bodies, individuals and businesses as a consequence of these sections.

### **Costs on local authorities**

33. There will be no new costs falling on local authorities as a consequence of these sections.

### **Ensure the rights of victims to access and support**

34. The Bill will place a statutory duty on the Scottish Ministers to secure the provision of relevant immediate support and recovery services for adult victims of trafficking, subject to an assessment of need. The Bill will specify those victims or potential victims entitled to support and the minimum time periods during which such services should be provided. Specifically, the Bill will require Ministers to provide support and assistance based on each individual's assessed needs during the recovery and reflection period (currently 45 days), during which the individual's trafficking status is determined. The Bill specifies minimum support and assistance that should be considered as part of the assessment, including access to housing, treatment, interpretation services, etc. The Scottish Ministers have the flexibility to provide support and assistance outwith the specified reflection and recovery period, where this is considered appropriate.

35. As noted above, the Scottish Ministers already provide grant funding totalling £723,000 to third sector organisations to assist identified adult potential victims of trafficking. Provision of support to adult victims will be placed on a statutory basis. The number of adult potential victims of trafficking referred through the NRM during 2013 was 77, although not all of these will have requested assistance or received the full range of support services. It is assumed that other actions arising from the Bill, including the single offence and publication of the trafficking and exploitation strategy, will result, over time, in an increase in identified victims and requests for assistance and support.

### **Costs on the Scottish Administration**

36. The Scottish Government anticipates that improved awareness raising and training of front-line staff will result in an increase in the number of victims identified over time. It is not possible to know how quickly this improvement will be achieved. However, between 2012 and 2013 the number of potential identified victims across the UK identified through the NCA strategic assessment and NRM increased by 22% and 41% respectively. Given the need for awareness raising and training to impact, the Scottish Government does not anticipate a similar scale of increase in the immediate term, but the Government considers it reasonable to anticipate a possible increase of between 10% and 20% per annum in the overall number of requests for assistance and support each year over the next four years. Assuming a similar mix of needs as



current victims, the increased costs to the Scottish Government, on top of existing funding, would range between £290,000 to £580,000 per annum by year four.

**Table 6: Estimated range of costs increases for victim support and assistance (£000)**

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>
Additional Cost (£000)	£0-£140	£140-£280	£220-£430	£290-£580

### **Costs on other bodies, individuals and businesses**

37. There will be no additional costs on other public bodies, individuals or businesses associated with these specific provisions. There will be no direct additional costs falling on third sector organisations as a consequence of the specific provisions. It is likely, however, that all or part of the additional funding identified above will be directed by the Scottish Government through relevant third sector organisations with the expertise to provide immediate support and protection to victims.

### **Costs on local authorities**

38. The Bill creates no new legislative requirements for the delivery of children's services, recognising that this already exists. It is, therefore, not anticipated that the Bill will result in any quantifiable additional costs on local authorities or other public bodies as a result of support for child victims. Child victims of trafficking are supported as part of the Getting It Right for Every Child (GIRFEC) approach: any child, whether identified as trafficked or not, will be assessed on the basis of its needs. It is anticipated that as a consequence of the strategy (for which the Bill provides), that more children may be identified as trafficked. It is noted, however, that various reports, including most recently the UK Government's NRM Review Report,<sup>15</sup> have found that children who are already receiving support from relevant authorities in the UK are often not identified as trafficked victims, because of lack of awareness of the referral process. It may be that actions arising from the development of the strategy and dialogue with stakeholders will give rise to additional activity or costs with reference to child victims of trafficking, but these are not known and cannot be estimated at this time.

## **PART 3 - CONFISCATION OF PROPERTY**

39. The Bill will provide police with powers to detain the property, such as cars, boats, etc. of a person arrested for a trafficking offence. This power will be exercised at the time of arrest and is not expected to impose any additional costs on the police or others.

### **Costs on the Scottish Administration**

40. There will be no additional costs on the Scottish Government as a result of these provisions. Individuals can apply to the court to have vehicles, ships or aircraft released from detention. This will be considered as part of the overall case and will not add to the costs to the criminal justice system.

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<sup>15</sup> <https://nrm.homeoffice.gov.uk/>

### **Costs on other bodies, individuals and businesses**

41. There will be no additional costs on other public bodies, individuals or businesses, including Police Scotland, as a result of these specific provisions.

### **Costs on local authorities**

42. There will be no additional costs on local authorities as a result of these specific provisions.

## **PART 4 - TRAFFICKING AND EXPLOITATION PREVENTION AND RISK ORDERS**

### *Introduce new measures to disrupt and prevent trafficking and exploitation*

43. The Bill will introduce two new civil orders and associated interim orders to assist in preventing trafficking and exploitation: Trafficking and Exploitation Prevention Orders (TEPOs) and Trafficking and Exploitation Risk Orders (TEROs). Where an individual has been convicted of a trafficking or exploitation offence or an offence with a statutory trafficking aggravator, a TEPO may be imposed by a court where there is a risk that that individual may commit a further human trafficking offence and it is necessary to make the order to protect people from the physical or psychological harm which might occur if such an offence were committed. The TEPO will prevent the individual from engaging in activities described in the order. Where a person has not been convicted of a trafficking or exploitation offence, but a court considers that the person presents a significant risk of harm to others through the individual committing a trafficking or exploitation offence, the court can impose a TERO restricting specific activities or imposing requirements. These orders will be civil, but breach of an order will constitute a criminal offence with a maximum penalty of five years in prison available to the court.

44. The Bill will categorise the trafficking and exploitation offences as lifestyle offences in order to automatically trigger provisions within the Proceeds of Crime Act 2002 (“the 2002 Act”). The definition of an offence as a “lifestyle offence” allows for proceedings under the 2002 Act to confiscate assets or monies from the individual convicted of the offence.

### **Costs on the Scottish Administration**

45. The purpose of TEPOs and TEROs is to prevent criminal activity associated with trafficking and exploitation from arising. There will be some cost implications for law enforcement organisations which will need to monitor the terms of any order imposed by the courts. However, these will be offset by the savings made from being able to intervene at an early stage of criminality if an order has been breached. For the equivalent civil orders within the UK Modern Slavery Bill, the UK Government has estimated potential net savings of between £130,000 and £1,090,000 per annum. The Scottish Government has not incorporated any savings for the purpose of Scottish legislation, but expects the costs of implementing TEPOs and TEROs and detention powers to be at least cost neutral for the Scottish Administration and other public bodies.

46. The Bill will give courts powers to impose a TEPO at the time of sentencing. There will be no immediate additional costs for the courts or COPFS associated with TEPOs imposed as part of sentencing. The Chief Constable of Police Scotland will also be able to apply to the court for a TEPO to be imposed on a relevant offender, previously convicted of a trafficking offence. There will be costs to Police Scotland in making the application and to the SCS and to SLAB in considering the application. As there have been only six previous convictions for trafficking offences in Scotland, the Scottish Government expects the number of applications for TEPOs for previous convictions to be small, one-off, and will not add to the overall costs of the criminal justice system. The Chief Constable of Police Scotland can also apply to the court for a TERO against an individual where it is considered that that individual is likely to commit a trafficking offence.

47. Looking at the equivalent costs for similar civil orders, e.g. Sexual Offences Prevention Orders, the total costs to the SCS, the COPFS and SLAB of applying for a TERO or post-sentencing TEPO are estimated at between £1,000 and £6,000 per order. It is not possible to know how many TEPOs or TEROs might be applied for, but assuming a number half the level of the estimated maximum number of potential convictions for trafficking offences each year (four to eight) would give estimated costs of between £2,000 (2 x £1,000) and £24,000 (4 x £6,000) per annum.

48. There will be costs to Police Scotland in monitoring TEPOs and TEROs, whether imposed at the time of sentence or by application, but this will sit alongside Police Scotland's existing crime prevention and investigative responsibilities and is not expected to add to manpower costs.

49. In addition to the costs of imposing and monitoring TEPOs and TEROs, there will be costs associated with prosecuting a breach of a TEPO or TERO. Analysis in England and Wales indicates that breaches of equivalent Serious Crime Prevention Orders are relatively low. Assuming one breach per annum, the total combined costs to the COPFS, the SCS and SLAB would be between £8,400 and £78,100, per annum (see the combined costs for either sheriff court or High Court procedures set out in Table 3 above). Assuming a maximum sentence of five years, the costs to the SPS for additional prison places would be between £85,000 and £127,500 per annum (i.e. the £42,500 average costs of a prison place times either two or three places depending on whether offenders are released early at the halfway or two-thirds point of their sentence).

50. It is important to remember, however, that the purpose of TEPOs and TEROs is to prevent further trafficking and exploitation offences occurring. A TEPO or TERO will only be imposed where a court considers that there is a credible risk of an individual committing such a crime. Any costs associated with the imposition and breach of TEPOs and TEROs needs to be offset against the potential costs of prosecutions. If each TEPO or TERO prevents the costs of a conviction for an offence as set out in Part 1 above, the costs to the Scottish Administration would be at least cost neutral, in terms of saved court and prison places expenditure.

### **Costs on other bodies, individuals and businesses**

51. There will be no costs on other bodies, businesses or other individuals as a consequence of these sections.

### **Costs on local authorities**

52. There will be no new costs on local authorities as a consequence of these sections..

## **PART 5 - STRATEGY AND REPORTING**

### *Ensure a strategic, cross-agency approach to tackling trafficking*

53. The Bill places a duty on the Scottish Ministers to prepare, publish and regularly review and update a trafficking and exploitation strategy, to assist in ensuring a co-ordinated and strategic approach to this issue. The provisions place a duty on Ministers to consult with such organisations and individuals as they consider to have a relevant interest in the issues of human trafficking and exploitation. The Bill places a duty on relevant public bodies, to be named in regulations, to assist in the preparation and review of the strategy.

54. The Bill will place a duty on relevant public authorities to provide anonymised data about potential human trafficking and exploitation victims to Police Scotland.

### **Costs on the Scottish Administration**

55. Activity arising from these provisions within the Bill will build on the activity and current resources already committed to this area of work.

56. Based on similar activities, the estimated additional costs to the Scottish Ministers of preparing and reviewing a trafficking and exploitation strategy will be approximately £25,000 every three years. Alongside the preparation and publication of the strategy, the Scottish Ministers would also propose to support additional awareness raising and training activity to build on the existing awareness raising and training activity already undertaken by relevant organisations, including the NHS, Police Scotland and COPFS. Consideration would be given to how best to co-ordinate these resources alongside existing expenditure and activity. For the purposes of the Financial Memorandum, and based on current activity, additional costs on top of existing activity are estimated at approximately £100,000 to £250,000 per annum over the first four years of the Bill. This is based on the best estimated costs of preparing and publishing publicity and guidance material averaged over a number of years. The exact costs will depend on decisions taken in dialogue with stakeholders as part of the preparation of the strategy.

57. The Scottish Government anticipates that the costs to relevant public authorities of providing anonymised data about potential human trafficking victims to Police Scotland will be marginal. Costs to Police Scotland of collating this data will form part of their existing intelligence gathering activity.

## **Costs on other bodies, individuals and businesses**

58. There will be some costs on other bodies, individuals and businesses in engaging with the Scottish Ministers in the preparation and publication of the Strategy. For business and individuals this will be voluntary depending on their willingness to engage. For public bodies, their level of engagement will depend on the relevance of the issue of trafficking and exploitation to their work and their potential contribution to combating this behaviour. Any additional costs are expected to fit within or sit alongside their existing responsibilities, for example, with reference to promoting and ensuring equalities and the application of human rights obligations.

## **Costs on local authorities**

59. There will be costs on local authorities associated with engaging in the preparation and review of the trafficking and exploitation strategy and in awareness raising and training of front-line staff. The additional costs should be marginal on top of the existing guidance and activity already in place with reference to the identification and support of potential child victims of trafficking. The aim will be to minimise costs for other front-line local authority staff by adapting the general awareness raising and training materials described above.

## **SUMMARY**

60. The table below provides a summary of the costs of each element of the Bill as described above:

**Table 7: Summary table of costs for each aspect of the Bill (£000)**

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>
Clarifying & Strengthening the Criminal Law – Para. 28	£20-£353	£190- £693	£360-£900	£360-£1,073
Ensure the rights of victims to access and support - Para 36	£70-£140	£140-£280	£220-£430	£290-£580
Introduce new measures to disrupt and prevent trafficking	£0 <sup>16</sup>	£0	£0	£0
Ensure a strategic, cross agency approach to tackling trafficking – Para 56	£125-£275	£100-£250	£100-£250	£125-£275
<b>TOTAL</b>	<b>£215-£768</b>	<b>£430-£1,223</b>	<b>£680-£1,580</b>	<b>£775-£1,928</b>

<sup>16</sup> The Scottish Government considers that the overall costs are at least cost neutral – see paragraphs 45 to 50

*These documents relate to the Human Trafficking and Exploitation (Scotland) Bill (SP Bill 57)  
as introduced in the Scottish Parliament on 11 December*

## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

On 11 December 2014, the Cabinet Secretary for Justice (Michael Matheson MSP) made the following statement:

“In my view, the provisions of the Human Trafficking and Exploitation (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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## **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

On 11 December 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Human Trafficking and Exploitation (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Human Trafficking and Exploitation (Scotland) Bill (SP Bill 57)  
as introduced in the Scottish Parliament on 11 December*

# **HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) BILL**

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

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# **HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Human Trafficking and Exploitation (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 11 December 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 57–EN.

### **BACKGROUND**

2. The trafficking of human beings for exploitation is a serious, complex and multifaceted crime. It is an international and cross-border crime, although trafficking can also occur within Scotland and within the UK. It involves the transport of both children and adults for a variety of exploitative purposes. Prosecutors from across the UK and Ireland have acknowledged that investigating and prosecuting this crime raises unique challenges, but is a key priority. Trafficking for the purposes of exploitation is a violation of individuals’ rights. Once identified, victims of trafficking need time for recovery and reflection following their trafficking experience and have the right to expect appropriate standards of immediate support and assistance based on an assessment of their individual needs.

3. Preventing and tackling this crime in Scotland is a joint responsibility of the Scottish Government, the UK Government, the police, prosecutors, local authorities, support agencies and others. Working in partnership with relevant agencies on an international and UK level, the Scottish Government aims to make Scotland a hostile place for traffickers and to better identify and support potential and confirmed victims.

4. The Scottish Parliament has played an important role in raising awareness and understanding of this crime. The Equal Opportunities Committee published the report of its inquiry into migration and trafficking on 14 December 2010.<sup>1</sup> The report identified a number of key findings and recommendations on trafficking. The Committee concluded that—

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<sup>1</sup> <http://archive.scottish.parliament.uk/s3/committees/equal/inquiries/migration/migration.htm#top>



- the definition of human trafficking within the Council of Europe Convention on Action against Trafficking in Human Beings<sup>2</sup> (COE Convention), building on the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (UN Palermo Protocol)<sup>3</sup>, offered front-line services the best means of understanding the issues associated with this crime;
- the Scottish Government should have a clear strategic role in the development of UK-wide and Scottish anti-trafficking policy;
- there should be better information sharing at both UK and Scottish levels to help inform policy and operational activity;
- public awareness should be raised of all forms of trafficking, not just trafficking for the purpose of sexual exploitation;
- there should be a separation between the process for characterising human trafficking and the immigration and asylum process;
- there should be sharing of best practice in relation to child trafficking;
- front-line staff should be properly trained to identify possible victims;
- support agencies should work with the police and prosecutors so that the victims of trafficking are provided with the best possible support.

5. Subsequent reports and documents, including inquiries by the Equality and Human Rights Commission (EHRC)<sup>4</sup> and Scottish Commissioner for Children and Young People<sup>5</sup>, and Jenny Marra MSP's consultation<sup>6</sup> on a proposal for a member's Bill on human trafficking, have built on the understanding and analysis of human trafficking in Scotland.

6. The Scottish Government, working with other relevant agencies, has taken forward a range of actions in response to the Equal Opportunities Committee inquiry and subsequent reports to strengthen Scotland's approach to combating human trafficking. At UK-level, the Scottish Government has participated actively in the Interdepartmental Ministerial Group (IDMG) on Human Trafficking and also in responding to UK Government reviews of the National Referral Mechanism for identifying and supporting victims of human trafficking.

7. In 2011 the first successful prosecutions in Scotland for a specific human trafficking offence were achieved. Following its establishment in April 2013, Police Scotland created a dedicated National Human Trafficking Unit to enhance the police response to human trafficking, through awareness raising, intelligence gathering, training and providing divisions with advice and specialist knowledge. The Crown Office and Procurator Fiscal Service (COPFS) has appointed dedicated expert fiscals to prosecute human trafficking offences.

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<sup>2</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

<sup>3</sup> [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf)

<sup>4</sup> <http://www.equalityhumanrights.com/publication/inquiry-human-trafficking-scotland>

<sup>5</sup> [http://www.sccyp.org.uk/uploaded\\_docs/policy/sccyp%20child%20trafficking%20report.pdf](http://www.sccyp.org.uk/uploaded_docs/policy/sccyp%20child%20trafficking%20report.pdf)

<sup>6</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/67134.aspx>

8. The Scottish Government has continued to provide direct grant funding to the Trafficking Awareness Raising Alliance (TARA) and Migrant Help to support victims and encourage improved training among frontline professionals. Awareness raising and training material has been shared with frontline staff, for example within the police and National Health Service. Specialist guidance has been published to help local agencies identify and respond to the specific needs of child victims of trafficking as part of wider child protection measures.

9. In October 2012, the Cabinet Secretary for Justice hosted the first Scottish human trafficking summit, bringing together law enforcement agencies, local government and relevant public, private and third sector organisations, as well as contacts from England and Wales, Northern Ireland and the Republic of Ireland to review progress and identify further actions to strengthen the response to trafficking in Scotland. All organisations which attended the summit agreed on the need to demonstrate leadership by taking forward a continuing multi-agency approach to the issue.

10. A series of twelve actions were agreed covering further awareness raising and training of frontline staff, improved data collection and sharing, victim care and support for both adults and children and enforcement. Progress on these actions has been taken forward and reviewed by the multi-agency Anti-Trafficking Progress Group.

11. On 17 October 2014, at a meeting hosted by the Lord Advocate, Frank Mulholland QC, the heads of prosecution services for Scotland, England and Wales, Northern Ireland and the Republic of Ireland agreed a joint communique committing to working together as prosecutors to disrupt the trade in human beings. COPFS welcomed Scottish Government proposals for a dedicated Scottish Human Trafficking and Exploitation Bill to help strengthen and clarify the criminal law in Scotland against human trafficking, building on international good practice standards and ensuring the rights of victims to access support and assistance.

## **Legislative background**

12. The UK is bound by the COE Convention which involves signing up to a set of minimum standards on the identification, protection and support of trafficking victims. The COE Convention is a comprehensive treaty mainly focused on the protection of victims of trafficking and the safeguarding of their rights. It also aims at preventing trafficking as well as prosecuting traffickers. The COE Convention applies to all methods of trafficking, whether national or transnational, whether or not related to organised crime, whoever the victim, women, men or children and whatever the form of exploitation, sexual exploitation, forced labour or services, etc..

13. The setting up of an independent monitoring mechanism through the Group of Experts on Action against Trafficking in Human Beings (GRETA), guaranteeing Parties' compliance with its provisions, was also provided for by the COE Convention.

14. The UK Government as the Member State has also opted into the EU Directive on Human Trafficking<sup>7</sup> (EU Directive). The EU Directive builds on the COE Convention and

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<sup>7</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

covers action in different areas such as criminal law provisions, prosecution of offenders, victims' support and victims' rights in criminal proceedings. The EU Directive replaces the 2002 Framework Decision on Trafficking, which originally established the rules under which Member States had to legislate for human trafficking.

15. A number of domestic measures have been introduced in Scotland which relate to human trafficking. These are—

- Section 22 of the Criminal Justice (Scotland) Act 2003<sup>8</sup> (“the 2003 Act”) created an offence of engaging in trafficking people into, within or out of the UK for the purpose of exploitation by way of control over an individual for prostitution or involvement in the making or production of obscene or indecent material, with a maximum penalty of 14 years.
- Sections 4 and 5 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004<sup>9</sup> (“the 2004 Act”) created offences of trafficking people into, within or out of the UK for the purpose of exploitation. For the purposes of the offence, a person is exploited if the person is—
  - the victim of behaviour contravening Article 4 of the European Convention on Human Rights (ECHR)<sup>10</sup> (slavery or forced labour);
  - encouraged, required or expected to do something which would mean an offence is committed concerning organ removal;
  - subjected to force, threats or deception designed to induce the person to provide services or benefits or enable another person to acquire benefits; or
  - requested or induced to do something, having been chosen on the grounds of being ill, disabled, young or related to a person, in circumstances where a person without the illness, disability, youth or family relationship would be likely to refuse or resist.

The maximum penalty for the offence is 14 years.

- Section 46 of the Criminal Justice and Licensing (Scotland) Act 2010<sup>11</sup> (“the 2010 Act”) amended and extended the 2003 and 2004 Acts by extending the extraterritorial effect of trafficking offences in both Acts to ensure that the offence applies to anything done in or outwith the UK and creating a new offence of trafficking of persons into, within or out of a country other than the UK. These new offences apply to UK nationals, persons habitually resident in Scotland and UK corporate bodies. The 2010 Act also expanded the definition of exploitation in the Act 2004 Act to include—
  - offences under human tissue legislation to apply to such conduct wherever it takes place,

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<sup>8</sup> <http://www.legislation.gov.uk/asp/2003/7>

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/2004/19>

<sup>10</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>11</sup> <http://www.legislation.gov.uk/asp/2010/13>

- removing body parts (including blood) which would amount to an offence other than under human tissue legislation i.e. for purposes other than transplantation,
- cases where the role of the person being exploited is entirely passive and that person is being used to enable others to gain a benefit of any kind.
- Section 47 of the 2010 Act also created a standalone offence covering the exploitative behaviours of holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour, with a maximum penalty of 14 years.
- Section 99 of the 2010 Act also extended powers to police to close premises associated with human exploitation.

## **POLICY OBJECTIVES OF THE BILL**

16. The overarching policy objectives of the Bill are to consolidate and strengthen the existing criminal law against human trafficking and the offence relating to slavery, servitude and forced or compulsory labour and enhance the status of and support for victims. The Bill will also place a duty on the Scottish Ministers to prepare and review periodically a trafficking and exploitation strategy and require specified public authorities to work with the Scottish Ministers to assist in the preparation and review of that strategy.

17. The overall aim of the Bill is to develop legislation that gives the police, prosecutors and other agencies the power to make Scotland a hostile environment for human traffickers and those who exploit individuals, and also helps to identify and support the needs of victims.

18. The policy aims of the Bill contribute to the following national outcomes—

- We live our lives safe from **crime**, disorder and danger;
- We have strong, resilient and supportive **communities** where people take responsibility for their own actions and how they affect others;
- Our **public services** are high quality, continually improving, efficient and responsive to local people's needs; and
- We have improved the life chances for **children, young people and families** at risk.

19. Specifically the Bill will include provision to—

- **clarify and strengthen the law against traffickers and those who exploit individuals** - creating a single offence of human trafficking for all types of exploitation for both adults and children; establishing statutory aggravators of human trafficking for other crimes; reframing the current standalone exploitation offence relating to slavery, servitude and forced or compulsory labour;
- **introduce new measures to disrupt and prevent trafficking and those who exploit others** – powers to issue two new types of preventive order and associated interim orders to assist in preventing trafficking and exploitation activity and the harm to potential victims; providing for the detention of property of a person arrested on suspicion of a human trafficking offence; placing a duty on public authorities to

provide anonymised data about potential human trafficking victims and exploitation to Police Scotland;

- **ensure the rights of trafficked victims to access support and assistance** - placing a duty on the Scottish Ministers to secure the provision of relevant immediate support and recovery services for adult victims of trafficking;
- **place a duty on the Lord Advocate to publish guidance about the prosecution of credible trafficked and exploitation victims who have committed offences;**
- **ensure a strategic, cross-agency approach to tackling trafficking and exploitation** – placing a duty on Ministers to engage with relevant stakeholders to develop and publish a trafficking and exploitation strategy; placing a duty on specified public authorities to co-operate with the Scottish Ministers in preparing the strategy.

20. Human trafficking is, by its nature, a hidden crime and its drivers are complex and international. The Bill's provisions outlined above are an important step in ensuring a strategic Scottish response to this issue; clarifying the criminal law to assist law enforcement agencies in bringing traffickers to justice and enhancing the rights of victims to immediate support and time for recovery.

21. In taking forward these provisions, amongst other matters, the Bill gives effect to the three high level proposals set out by Jenny Marra MSP in her consultation for a draft Scottish Human Trafficking Member's Bill within the Scottish Parliament. The Bill also draws on experience and issues raised during the consultation and on-going progress through the UK Parliament of the UK Government's Modern Slavery Bill,<sup>12</sup> and the progress through the Northern Ireland Assembly of the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill,<sup>13</sup> sponsored by Lord Morrow of Clogher Valley MLA.

22. Legislation is, however, only part of the answer. Therefore, the Bill will commit the Scottish Ministers to publish and update regularly a trafficking and exploitation strategy. That strategy will set out a vision and key objectives for a multi-agency approach to raising awareness of trafficking and making Scotland a hostile environment for traffickers and those who exploit others, benefitting potential adult and child victims.

23. The majority of provisions within the Bill have equal application to adult and child victims of trafficking, including the development of the trafficking and exploitation strategy. However, it should be noted that those provisions relating to support for victims are explicitly aimed at providing a statutory basis for the support and assistance of adult victims of trafficking. This is because the necessary support for children who may be victims of trafficking is already enshrined in legislation which provides for all vulnerable children: the Children (Scotland) Act 1995<sup>14</sup> ("the 1995 Act"), the Children's Hearings (Scotland) Act 2011<sup>15</sup> ("the 2011 Act") and the

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<sup>12</sup> <http://services.parliament.uk/bills/2014-15/modernslavery.html>

<sup>13</sup> <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Current-Non-Executive-Bill-Proposals/Human-Trafficking-and-Exploitation-Further-Provisions-and-Support-for-Victims-Bill/>

<sup>14</sup> <http://www.legislation.gov.uk/ukpga/1995/36>

<sup>15</sup> <http://www.legislation.gov.uk/asp/2011/1>

Children and Young People (Scotland) Act 2014 (“the CYPA”)<sup>16</sup>. The CYPA is being brought into force in stages, with key elements likely to commence in 2016. Children who may be victims of trafficking may have other complex needs in addition to those relating directly to having been trafficked. The view of relevant public, professional and third sector agencies is that it is critical that the situation of child victims of trafficking be assessed in the round and in the context of both the Scottish Government’s child-centred approach set out in *Getting It Right for Every Child*<sup>17</sup> and the wider child protection system. It is, therefore, intended that enhancing support for child victims be addressed within the context of the trafficking and exploitation strategy mentioned above rather than explicitly in this legislation.

## **SPECIFIC PROPOSALS**

### **Creation of single offence of human trafficking for all forms of exploitation for adults and children**

#### *Current position*

24. The requirement for human trafficking activity to be criminalised is set out in a number of international instruments, including the UN’s Palermo Protocol and, building on this, the COE Convention and EU Directive. International law envisages that human trafficking involves three essential elements—

- the “**act**”, i.e. the recruitment, transportation, transfer, harbouring or reception of individuals;
- the “**means**”, i.e. the use of coercion, including threats, deception, fraud, abuse of power and vulnerability, etc.
- the “**purpose**”, i.e. any form of exploitation, including sexual exploitation, forced labour, begging, slavery, servitude, etc.

25. For child victims to be trafficked, the “means” are not required; a child is deemed to have been trafficked if the first and third elements are present. The consent of an adult victim to be moved is not relevant if the “means”, such as threats or deception, have been used.

26. Various reports have claimed that the current piecemeal legislative framework is acting as a barrier to successful prosecutions and have called for a statutory definition of what human trafficking is and clearer, simpler offences relating to human trafficking and where necessary, consolidating the legislation by bringing it all together in one Act.

#### *Proposed approach*

27. The Bill will create a single offence of human trafficking dealing with all relevant forms of exploitation. Having a single offence should assist in clarifying the law and in detecting and prosecuting trafficking offences.

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<sup>16</sup> <http://www.legislation.gov.uk/asp/2014/8/enacted>

<sup>17</sup> <http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright/publications/practice-guide>

28. The single offence will criminalise any person who arranges or facilitates the travel of another person for the purposes of that other person's exploitation. Travel for these purposes may be travel to, from or within the United Kingdom or travel which is arranged or facilitated in the UK. In the case of UK nationals and habitual residents of Scotland who arrange or facilitate travel for exploitation, the offence is committed even if none of the arranging, facilitating or the travel itself occurs within the UK.

29. The Bill defines these elements of travel and exploitation broadly to aim to deal with the full range of circumstances in which trafficking or intended trafficking can arise. Under the proposed approach it is not necessary to prove that the exploitation took place, only that the person knew or should have known that the intended purpose was exploitation. The Bill will allow for the prosecution not only of those criminals who undertake the exploitation, but also those who commission or facilitate trafficking of a person with a view to their exploitation by a third party.

30. Exploitation for the purposes of the offence includes control over a person's prostitution and other forms of sexual exploitation, slavery, servitude and forced or compulsory labour, conduct related to forced organ donation and the provision of any other services or benefits through the use of force, threats, deception or abuse of a victim's vulnerability.

31. The current maximum penalty for conviction for a human trafficking offence on indictment is 14 years. The Bill will increase the maximum penalty for the single trafficking offence to life imprisonment.

#### *Alternative approach*

32. One alternative would be to make no legislative change. Doing nothing would not achieve the policy objective of simplifying and consolidating existing trafficking legislation under one Act. This alternative approach would fall short of providing a common focal point for police and prosecutors in relation to human trafficking offences and would not help to remove the barriers to prosecution which hamper successful prosecutions for human trafficking offences.

33. Another alternative would be to replicate more precisely the international definitions of trafficking in the new offence. It is clear, however, that the conduct covered by these international definitions is narrower than that covered by existing Scottish offences. Adopting this approach might in effect decriminalise some trafficking-related conduct which is currently criminal. Moreover, consultation with COPFS during the development of these provisions revealed that adding the extra evidential burdens with strict adherence to international norms would present significant challenges to the successful prosecution of trafficking offences in Scotland and make these harder to prosecute in comparison with other UK jurisdictions. There was a risk, therefore, that convictions for trafficking could reduce under that approach. The Scottish Ministers do not view this as an acceptable outcome from this Bill.

34. A further alternative would be to introduce a specific statutory "definition" of human trafficking. Various independent inquiries have called for such a definition to be introduced. The purpose of calls for a definition appears to be to clarify for victims, stakeholders and the wider public exactly what constitutes the act of human trafficking. The definition of what constitutes a particular form of criminal conduct would delineate the elements of the offence. The Scottish



Government's view is that this would be best achieved not by a definition but by a clearly drawn criminal offence, labelled as the offence of "human trafficking". The Bill will, therefore, address this in the description of the single offence.

35. One specific issue considered was the notion of establishing a separate offence for the trafficking of children. In his scoping study into the nature and extent of child trafficking in Scotland, "*Scotland: A Safe Place for Child Traffickers*",<sup>18</sup> Scotland's Commissioner for Children and Young People called on the Scottish Government to monitor the effectiveness of existing legislative provisions with reference to the prosecution of child trafficking and to ensure that child trafficking in Scotland "does not go unpunished". The Scottish Government has considered carefully this option and whether there would be benefits in having a separate child trafficking offence. The Scottish Ministers agree the need for focused awareness raising and training to help better identify potential child victims of trafficking and to ensure relevant support and protection for child victims, both generally and specifically within any criminal justice process. However, there is no clear basis or benefit in having a separate child trafficking offence. Ministers' preference is for a single unified offence, in line with established international norms, covering trafficking of all victims for all potential forms of exploitation.

### **Revised slavery, servitude and forced labour offence**

#### *Current position*

36. Section 47 of the 2010 Act currently criminalises holding a person in slavery or servitude or requiring a person to perform compulsory or forced labour.

37. The offence was introduced in response to the case of *Siliadin v France*<sup>19</sup>. In that case, the European Court of Human Rights held that there had been a violation of Article 4 of the European Convention on Human Rights (ECHR) which covers the exploitative behaviours of slavery, servitude and forced or compulsory labour.

#### *Proposed approach*

38. The Bill will repeal section 47 and replace it with strengthened provisions. The offence will be revised and strengthened to allow the court to consider, in assessing whether a person has been a victim of an offence, the victim's characteristics such as age, physical or mental illness, disability or, where relevant, family relationships. The maximum penalty for the offence will be increased from 14 years for the current offence to life imprisonment for a conviction on indictment.

#### *Alternative approach*

39. The alternative approach would be to make no legislative change. The existing criminal offence, as provided for in the 2010 Act, would still allow for prosecution of individuals who hold a person in slavery or servitude or require a person to perform compulsory or forced labour. However, doing nothing would mean that the offence would not be revised to include consideration of the victim's characteristics, nor would the maximum penalty for the offence be

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<sup>18</sup> [http://www.sccyp.org.uk/uploaded\\_docs/policy/sccyp%20child%20trafficking%20report.pdf](http://www.sccyp.org.uk/uploaded_docs/policy/sccyp%20child%20trafficking%20report.pdf)

<sup>19</sup> [http://www.coe.int/t/dghl/monitoring/trafficking/docs/echr/SILIADIN\\_v\\_FR.pdfBack\[1\]](http://www.coe.int/t/dghl/monitoring/trafficking/docs/echr/SILIADIN_v_FR.pdfBack[1])



increased. Only a revised and strengthened slavery, servitude and forced labour offence, as proposed in the Bill, would achieve the Scottish Government's policy objective.

## **Establish statutory aggravations of human trafficking**

### *Current position*

40. It is recognised that there may be cases involving other offences, for example producing false documents, immigration offences, brothel keeping, drugs offences etc., where there is insufficient evidence to raise proceedings under the human trafficking offence, but where there is evidence that the offence has been committed against a background of human trafficking.

41. At present, there is no mechanism for recording where human trafficking forms the backdrop to the principal offence in a particular case. Where there is insufficient evidence to raise proceedings for a specific human trafficking offence (either in relation to section 22 of the 2003 Act or section 4 of the 2004 Act), there is no way of leading evidence to demonstrate to the court that the principal offence was committed against a background of trafficking.

42. The EHRC published the report of its Inquiry into Human Trafficking in Scotland in November 2011.<sup>20</sup> Among other recommendations, the EHRC recommended that a trafficking background should be made a statutory aggravation in the sentencing of those convicted of related criminal offences. The EHRC's recommendations were arrived at following a consultation process with organisations having an interest in tackling trafficking or supporting victims.

43. Provisions in line with this approach are already included within the Criminal Justice (Scotland) Bill,<sup>21</sup> currently before the Parliament. It is proposed that these measures are included within this Bill and are removed from the Criminal Justice (Scotland) Bill at Stage 2 in the parliamentary process.

### *Proposed approach*

44. The Bill proposes a statutory aggravation to any criminal offence where it can be proved that the offence had a connection with a human trafficking background. The underlying purpose or motivation of committing, or conspiring to commit, any offence should be considered to be more serious when it takes place against a human trafficking background.

45. To meet obligations under Article 4.3 of the EU Directive, the Scottish Government proposes to apply a statutory aggravation where a human trafficking offence has been committed by a public official while acting, or purporting to act, in the course of the official's duties. The Bill will, therefore, require the courts to take into account any link between an offence and human trafficking activity, and when dealing with a human trafficking offence, to take into account the fact that the person who committed it did so by abusing his or her position as a public official.

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<sup>20</sup> [http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human Trafficking in Scotland / inquiry into human trafficking in scotland-full-report pdf .pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human_Trafficking_in_Scotland_inquiry_into_human_trafficking_in_scotland-full-report_pdf.pdf)

<sup>21</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/65155.aspx>

*Alternative approach*

46. One alternative approach would be to make no legislative change. Doing nothing would fail to recognise the strong evidence base of cases where there was insufficient evidence to raise proceedings under the human trafficking offence, but where there is evidence that the offence has been committed against a background of human trafficking.

47. Moreover, in relation to the public official aggravation, doing nothing would mean that the Scottish Government would fail to meet its obligations under Article 4.3 of the EU Directive. Doing nothing would, therefore, fail to achieve the Scottish Government's policy objective.

**Place a duty on the Lord Advocate to publish guidance about the prosecution of credible trafficking victims who have committed offences**

*Current position*

48. Article 8 of the EU Directive, which came into effect on 6 April 2013 relates to the non-prosecution and non-application of penalties to the victims of human trafficking. Article 8 states—

“Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.”

49. Article 8 has been interpreted by some stakeholders as indicating that identified victims of human trafficking should be protected automatically from prosecution, although in practice the Article only requires that authorities should be “entitled” not to prosecute. It is accepted that there are circumstances where victims of human trafficking will be compelled to commit offences by others as part of their exploitation. Prosecutors in Scotland have the discretion not to prosecute in such circumstances.

50. Lord Advocate guidance has been developed and published to assist prosecutors in discharging their responsibilities where there are concerns that the subject of a potential prosecution is a victim of trafficking. The current guidance instructs that, where there is credible evidence that the accused person is a possible victim of human trafficking and that the specific offence was committed as a direct consequence of the person's trafficked status, there should be a presumption against prosecution. Any decision by a fiscal where it is considered in the public interest to act against this presumption must be referred for consideration by the Senior Advocate Depute with responsibility for human trafficking matters.

51. There have been repeated calls for specific Scottish legislation to prevent the criminalisation of trafficked victims since the EU Directive came into force. Such calls have acknowledged the need for independent prosecutors to take the final decision on whether to prosecute in each case, taking account of the specific circumstances and interests of justice.

### *Proposed approach*

52. Section 48 of the Scotland Act 1998 protects the independence of the Lord Advocate in taking decisions about the prosecution of crime. However, to demonstrate clear compliance with Article 8 of the EU Directive, the Bill will place on a statutory basis a duty on the Lord Advocate to prepare and publish guidelines for prosecutors providing for consideration of the non-prosecution of credible or confirmed victims of trafficking and of the slavery, servitude and forced or compulsory labour offence. This approach demonstrates the existence of protective measures that are in place to avoid further victimisation of trafficked victims or those who have been victims of slavery, servitude or forced or compulsory labour and to encourage them to act as witnesses in criminal proceedings against traffickers and those who exploit others.

53. The EU Directive states that the necessary measures to protect trafficked victims from prosecution or punishment for criminal activities committed as a direct result of their trafficked status are to be determined in accordance with the basic principles of the legal systems of the relevant Member States. In addition, the guidance will cover those victims who have been exploited by slavery, servitude or forced or compulsory labour. The Bill will not provide blanket immunity from prosecution for these victims in all circumstances.

54. The content of the guidance will be a matter for the Lord Advocate.

### *Alternative approach*

55. One alternative approach would be to make no legislative change. COPFS currently produces guidance for prosecutors providing for consideration of the non-prosecution of credible or confirmed victims of trafficking. But placing a statutory duty on the Lord Advocate to produce such guidelines further demonstrates compliance with Article 8 of the EU Directive in relation to trafficking victims and ensures that these guidelines will also now cover victims of the standalone exploitation offence.

56. Another alternative approach would be to introduce a statutory defence for a person who commits an offence as a consequence of their victim status if a reasonable person would have acted in the same way in similar circumstances. Doing this would place a burden on victims to prove their connection between their offending behaviour and trafficked status, which would run contrary to the Scottish Government's victim-centred approach to the issue.

## **Duty on Scottish Ministers to secure the provision of relevant immediate support and recovery services for the victims of trafficking**

### *Current position*

57. Human trafficking can have a significant physical, emotional and psychological impact on victims. Even once freed from the immediate trafficking circumstance, victims can remain highly vulnerable and are often disconnected from both family and support services. It is recognised that victims can require access to immediate support, such as medical attention, emergency accommodation and time for reflection and recovery for victims to make a decision as to what their next steps will be (e.g. repatriation, assisting law enforcement authorities with enquiries, etc.), as well as assistance in accessing longer-term support and services, such as benefits, permanent housing and relocation, etc..

58. Currently there is no statutory basis for potential adult victims of trafficking to access the support and assistance that they are entitled to under the terms of the COE Convention and EU Directive. Although the Scottish Government, in line with its obligations under the COE Convention and EU Directive, currently provides grant funding to support agencies to deliver this support and assistance this funding could be withdrawn at any time. There is benefit in placing on a statutory basis the entitlement of these services to victims.

59. Children are, of course, vulnerable to trafficking and, indeed, to other forms of abuse and neglect. It is accepted that their needs, and the appropriate means of meeting these, do not always match exactly with those of adult victims: children are children first. The provisions of the 1995 Act, the 2011 Act and the CYPA provide for the needs of vulnerable children in all circumstances to be assessed and addressed. Guidance for public authorities in identifying and meeting the needs of vulnerable children specifically references child trafficking, while recognising that vulnerable children may have additional needs that do not arise solely from their trafficked status. The existing children's legislation, therefore, provides for services to be provided to potentially trafficked children: this applies to children under the age of 18. It is, therefore, a priority to ensure that existing legislation with reference to children, including elements of the CYPA, when commenced, is applied appropriately. However, this is a matter for effective engagement and good practice rather than further legislation.

#### *Proposed approach*

60. The Bill will place on a statutory footing Ministers' duty to secure the provision of such services for those victims known to be 18 years or over. The types of services which will be provided, as a minimum, are also listed in the Bill, but the duty extends to the provision of any support and assistance Ministers consider necessary based on an assessment of the victim's needs. Mandatory support is to be provided from the time at which there are reasonable grounds to believe that an individual is a victim of the offence of human trafficking until either a conclusive determination is made as to an individual's victim status or the expiry of a period to be prescribed by Ministers in regulations, whichever comes first. Support is currently provided for a 45-day period, but this period is currently subject to review and may change. Ministers are also given discretion to provide support outside this mandatory period, which will permit the provision of support before a reasonable grounds decision is made and following the conclusion of the mandatory support period. Formalising details of the support and assistance available, to whom it is available and for what period will provide clarification for victims and first responders.

61. The provision of relevant immediate support and recovery services for the victims of trafficking will apply to adult victims of trafficking only. As noted above, child victims of human trafficking already have a statutory right to access specific support and services under existing children's legislation.

#### *Alternative approach*

62. One alternative approach would be to make no legislative change and support as currently provided to victims of trafficking would continue. Placing a duty on Ministers to secure the provision of such services will ensure the rights of victims to access the support and assistance that is available. Furthermore, the Bill will provide for an assessment of individual needs, which

will ensure that support provided is tailored to the victim's specific needs and requirements, ensuring that resources are used to the best effect.

63. Another alternative would be to create a specific public body to administer support and recovery services for victims of human trafficking and exploitation. There would be a significant cost involved in establishing such a body, cost which would be better used in ensuring that victims are able to access the range of existing expert support services tailored to their specific needs.

## **Confiscation of property of those arrested for trafficking offences**

### *Current position*

64. In Scotland there have been calls for asset recovery powers to be used widely in human trafficking and slavery operations. The EHRC for example, called for greater use of asset recovery powers<sup>22</sup>.

65. Powers currently exist under sections 25C and 25D of the Immigration Act 1971<sup>23</sup>, as applied by section 5(4) of the 2004 Act, for the detention and forfeiture of vehicles, ships and aircraft used in the commission of certain trafficking offences. Those powers are little known and not widely used by police or prosecutors and do not apply to all forms of trafficking offences (e.g. trafficking for prostitution under section 22 of the 2003 Act).

### *Proposed approach*

66. The Bill, therefore, includes provisions to consolidate the existing powers in the Immigration Act 1971 and applies them to the human trafficking offence. The powers will allow the police to detain, without the requirement for a warrant, vehicles, ships or aircraft owned or possessed by persons arrested on suspicion of a trafficking offence if there are reasonable grounds to believe that, on conviction of that person, the property could be subject to forfeiture. A separate power for courts to order forfeiture of such property when used in the commission of the human trafficking offence is also contained in the Bill. This measure is intended to disrupt and deter trafficking activity by preventing further criminality or disposal of assets. Consolidating existing powers in this Bill is intended to highlight their availability to police and prosecutors and in turn encourage their increased use. These powers do not affect any more general forfeiture powers under Scots law (e.g. under Part II of the Proceeds of Crime (Scotland) Act 1995).

### *Alternative approach*

67. The alternative approach would be to make no legislative change. Doing nothing would mean that powers of detention and forfeiture in Scotland would not apply to all forms of exploitation criminalised by the new trafficking offence. Failing to strengthen provisions on detention and forfeiture would not achieve the policy aim.

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<sup>22</sup> [http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human Trafficking in Scotland / inquiry into human trafficking in scotland-full-report pdf .pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human%20Trafficking%20in%20Scotland%20-%20inquiry%20into%20human%20trafficking%20in%20scotland-full-report.pdf)

<sup>23</sup> <http://www.legislation.gov.uk/ukpga/1971/77>

## **Criminal lifestyle offence**

### *Current position*

68. The Proceeds of Crime Act 2002 (POCA)<sup>24</sup> contains, among other things, a regime for the confiscation of the proceeds of an offender's criminal activity.

69. Section 92 of that Act requires a court to make a confiscation order against an accused where certain conditions are satisfied. The accused must have been convicted (and a disposal ordered) or discharged absolutely and the prosecutor must have asked the court to consider making a confiscation order. The court must then assess whether the accused has what is called a "criminal lifestyle" and, if so, whether the accused has benefited from that general criminal conduct.

70. Section 142 of POCA sets out tests which, if satisfied, demonstrate that an accused has a criminal lifestyle. One of those provides that conviction of an offence specified in Schedule 4 to POCA in itself establishes that an accused has a criminal lifestyle.

71. The offences specified in Schedule 4 are not simply offences which are very serious, but offences which are commonly and demonstrably committed by career criminals who live their lives off the proceeds of their offending or use the proceeds of their offending to fund further criminal activity.

72. A number of human trafficking related offences<sup>25</sup> are already included as criminal lifestyle offences in Schedule 4 and can trigger a confiscation order to confiscate assets gained through criminal activity from offenders after conviction. However, the current offence of slavery, servitude and forced or compulsory labour as contained in section 47 of the 2010 Act is not included as a criminal lifestyle offence and would not, therefore, automatically trigger the provisions of POCA.

### *Proposed approach*

73. The Bill will categorise all trafficking and exploitation offences as lifestyle offences in order to automatically trigger the confiscation procedures in POCA as this will help towards creating a hostile environment for traffickers to operate in.

### *Alternative approach*

74. The only alternative would be to make no legislative change. Doing nothing would mean that some human trafficking related offences which are already classed as criminal lifestyle offences would remain. Human trafficking and exploitation in any form will not be tolerated in Scotland. Allowing confiscation of the proceeds of an offender's criminal activity for only

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<sup>24</sup> <http://www.legislation.gov.uk/ukpga/2002/29>

<sup>25</sup> Section 25, 25A or 25B of the Immigration Act 1971 (c.77) (assisting unlawful immigration etc), Section 22 of the Criminal Justice (Scotland) Act 2003 and Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

certain types of activity would fail to deliver the policy aim of making Scotland a hostile environment to operate in for traffickers and those who exploit others.

## **Establish trafficking and exploitation prevention orders and risk orders**

### *Current position*

75. Human trafficking and exploitation are high-harm activities which affect the rights and freedoms of those who are victims of it. Although a suite of civil preventative orders<sup>26</sup> currently exists which may cover some of the activities carried out by those involved in human trafficking and exploitation, the variety and wide range of offending means that some human trafficking and exploitation offences would not reach the threshold law enforcement agencies would usually consider when making an application for existing measures e.g. the less organised end of labour exploitation.

76. The Scottish Government is seeking a Legislative Consent Motion to extend to Scotland serious crime prevention orders (SCPOs) via the UK Serious Crime Bill<sup>27</sup> which is before the UK Parliament and there may be potential for these orders to overlap. SCPOs also cannot be used to create travel restrictions. However, the existing serious crime prevention order is generally used in relation to organised criminality, and would not be used in some of the scenarios in human trafficking, primarily domestic servitude outside of organised crime.

### *Proposed approach*

77. The Bill will, therefore, provide the courts with powers to issue two new types of preventive orders and associated interim orders to assist in preventing trafficking: trafficking and exploitation prevention orders (TEPOs) and trafficking and exploitation risk orders (TEROs).

78. Where an individual has been convicted of a trafficking or exploitation offence or an offence with a statutory trafficking aggravator, a TEPO may be imposed by a court where there is a risk that that individual may commit a further human trafficking offence and it is necessary to make the order to protect people from the physical or psychological harm which might occur if such an offence were committed. The TEPO will be time limited and will prevent the individual from engaging in activities described in the order. This might include the employment of staff, making travel arrangements for other people, travelling overseas, having contact with children, etc. Positive requirements such as the requirement to report to a police station at a prescribed time and place; require the individual to inform the police of a change of address, vehicle usage, mobile telephone number(s) etc. may also be imposed. The Bill will allow the court to impose an “interim TEPO” whilst it is considering the application for a full TEPO. The maximum penalty for breach of a TEPO will be up to five years in prison.

79. Where a person has not been convicted of a trafficking or exploitation offence, but a court considers that the person presents a significant risk of harm to others through the individual

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<sup>26</sup> For example, sexual offences prevention orders (SOPOs) in the Sexual Offences Act 2003 (Section 112 of that Act modifies the provisions for sexual offences prevention orders for Scottish purposes) and the Risk of Sexual Harm Order (RSHO) provided for in the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

<sup>27</sup> <http://services.parliament.uk/bills/2014-15/seriouscrime.html>

committing a trafficking or exploitation offence, the court can impose a TERO restricting specific activities or imposing requirements. Like a TEPO, the TERO will be time limited. The maximum penalty for breach of a TERO will be up to five years in prison. Interim TEROs will also be available while the court considers the main application.

80. These measures are intended to help prevent harm by disrupting and deterring trafficking and exploitation activity.

#### *Alternative approach*

81. The alternative approach would be to make no legislative change. Doing nothing would fail to provide law enforcement authorities and the courts with additional necessary tools to ensure prevention of further harm caused by trafficking and exploitation activity. Availability of these orders would encourage law enforcement authorities to take further preventative action they may not otherwise consider.

### **Trafficking and exploitation strategy**

#### *Current position*

82. There have been calls in various independent reports<sup>28</sup> for the Scottish Ministers to take a clear strategic lead in co-ordinating the response in Scotland to human trafficking.

83. One outcome from the Summit hosted by the Scottish Government in October 2012 was that, whilst there was a need to review and strengthen the current legislation on human trafficking, many of the necessary actions did not require legislation. These include actions to promote better public awareness and understanding of human trafficking; the provision of training for frontline workers who might come into contact with potential victims of trafficking; improved data collection and intelligence sharing; etc..

84. Placing the strategy on a statutory basis will ensure that the Scottish Parliament has the opportunity to scrutinise formally the strategic, multi-agency approach to tackling and preventing human trafficking in Scotland and to ensuring effective support for victims and the progress made in implementing this strategy. The Bill does not seek to place new statutory burdens on individual organisations, but to ensure that all relevant agencies, from the public, private and third sector, law enforcement, Scottish Government and local authorities are fulfilling their existing functions in a manner that responds effectively to trafficking and exploitation and are contributing actively to this agenda.

#### *Proposed approach*

85. The Bill will, therefore, place a duty on the Scottish Ministers to prepare, publish and regularly review and update a trafficking and exploitation strategy. The strategy and subsequent updates will require to be laid before the Parliament.

86. The Bill will require Ministers to engage with relevant stakeholders in the public, private and third sectors in developing and implementing the strategy. The Bill also places a duty on

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<sup>28</sup> As set out in paragraphs 4 and 5 above.



relevant public authorities, to be named in regulations, to engage with the Scottish Ministers on the preparation and implementation of the strategy.

#### *Alternative approach*

87. The alternative approach would be to make no legislative change. Even without a statutory basis, the Scottish Government is committed to working with relevant bodies to prepare, publish and regularly review a trafficking and exploitation strategy. Placing the duty on a statutory footing will, therefore, put this commitment beyond doubt.

### **Duty on public bodies to provide anonymised information about potential victims**

#### *Background*

88. There are very significant challenges in establishing credible information about levels of human trafficking and numbers of victims. Potential victims can be reluctant to engage with authorities, including law enforcement agencies. The complex, hidden nature of this crime makes it particularly difficult to quantify its impacts and scale accurately. A large proportion of cases are never recognised or reported, and do not appear in any statistics. As a result, estimates about the true scale of the problem vary widely.

89. In 2013, at UK level, 1,746 potential victims of human trafficking were referred to the National Referral Mechanism (NRM) while there were 99 potential victims referred from Scotland. The UK Human Trafficking Centre (UKHTC) (part of the National Crime Agency (NCA)) Strategic Assessment for 2013 estimated that there were up to 2,744 possible victims of human trafficking in the UK. Of these potential victims, 55 were reported from agencies in Scotland<sup>29</sup>.

90. Currently, victims of human trafficking who are identified by a “first responder” are referred to the UKHTC and UK Visas and Immigration (UKVI), by filling out a NRM form. If the UKHTC or UKVI believes on the basis of the form that there are “reasonable grounds” to believe the person is a genuine victim of human trafficking, the person will get access to Government funded support. For children, this support is generally provided at a local level through multi-agency services, and in accordance with an assessment of the child’s needs.

91. However, this means that if the adult victim opts not to be referred (for example because the person does not want support), the case might not get referred to the UKHTC or UKVI at all, which means that knowledge and understanding of the scale and nature of trafficking (and related data) is incomplete. For child referrals consent of the child is not required.

#### *Proposed approach*

92. The Bill will place a duty on public authorities specified by regulations to provide anonymised data about potential human trafficking and exploitation victims to Police Scotland.

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<sup>29</sup> <http://www.nationalcrimeagency.gov.uk/publications/399-nca-strategic-assessment-the-nature-and-scale-of-human-trafficking-in-2013/file>

93. Although it will not be possible to confirm whether these individuals were or were not victims, the anonymised data will provide wider information about trafficking activity in Scotland not currently collected through the NRM or criminal justice processes. This will assist in providing intelligence to build a more accurate picture of the scale and extent of trafficking and slavery, servitude and forced or compulsory labour in Scotland and of the people, adults and children, most directly affected. It will also provide a clear basis for the requirement and provision of support services for these victims.

94. Non-public authorities, such as third sector organisations, will be asked to provide similar anonymised information about potential victims through a memorandum of understanding.

#### *Alternative approach*

95. The alternative approach would be to make no legislative change. Doing nothing would mean that data would still be collected under current arrangements and an incomplete understanding of the scale of human trafficking in Scotland would endure. The Bill will place a duty on specified public authorities to provide anonymised data about potential victims to Police Scotland. The anonymised data will provide wider information about trafficking activity in Scotland not currently collected through the NRM or criminal justice processes. This will assist in providing intelligence to build a more accurate picture of the scale and extent of trafficking and slavery, servitude and forced or compulsory labour in Scotland, thereby allowing law enforcement resources to be deployed effectively. It will also assist in achieving the policy aim by providing a clear basis for the requirement and provision of support services for victims of trafficking and exploitation.

### **FURTHER ALTERNATIVES**

96. As part of the Scottish Government's consideration of the content of legislation on human trafficking and exploitation, a number of further policy alternatives have been considered.

#### **Anti-trafficking commissioner**

97. A number of stakeholders have called for the establishing of a Scottish Anti-trafficking commissioner to raise awareness and promote good practice in the identification and combating of human trafficking, exploitation and support for victims.

98. The UK Modern Slavery Bill contains provisions to create an Independent Anti-Slavery Commissioner. The functions of that Commissioner are to encourage good practice in the prevention, detection, investigation and prosecution of exploitation and trafficking offences and the identification of victims, including both adults and children. At introduction the remit of the Commissioner only extended to England and Wales. However, as human trafficking is a cross-border crime the Scottish Ministers believe that sharing of good practice and expertise will best be achieved by having a UK-wide Commissioner. Therefore the Scottish Government is seeking a Legislative Consent Motion to extend the remit and functions of the Independent Anti-Slavery Commissioner to Scotland. Northern Ireland has adopted a similar stance.

## **Specific duties on police and prosecutors to investigate and prosecute human trafficking**

99. A number of stakeholders have called for the police and prosecutors to be under a specific statutory duty to have “*the necessary capacity and approach for the effective investigation and prosecution of human trafficking*”.<sup>30</sup> Police and prosecutors are already responsible for investigating and prosecuting crime. The Scottish Government’s view therefore, is that no further statutory measures are required. Any statutory intervention could indeed impact inappropriately on the operational independence of the police and COPFS.

## **Support for trafficking victims as witnesses within the criminal justice system**

100. Victims of human trafficking can be particularly vulnerable. Effective support and reassurance can be essential to assist victims who are willing to participate within the criminal justice process. The UK Modern Slavery Bill includes provisions to provide victims of human trafficking with the automatic right to specific support and protection when acting as witnesses in criminal trials. Section 10 of the Victims and Witnesses (Scotland) Act 2014<sup>31</sup> (“the 2014 Act”), once implemented, will provide victims of human trafficking in Scotland with the automatic right to access special support measures, such as screens in court or giving evidence by video link. The Scottish Government’s view, therefore, is that no further statutory measures are required.

## **Trafficking reparation orders**

101. The UK Modern Slavery Bill includes provisions to allow for a court to impose a trafficking reparation order, requiring reparation payments to be provided to the victims of offences under that Bill, where a confiscation order is imposed against the person convicted of the crime. In Scotland, compensation orders are covered by sections 249 to 253 of the Criminal Procedure (Scotland) Act 1995. Section 24 of the 2014 Act – when brought into force – will amend section 249 of the Criminal Procedure (Scotland) Act 1995 to require a court to consider making a compensation order in any case where it would be competent for it to do so. This ensures that in all relevant circumstances a court in Scotland will consider imposing a compensation order, even if no confiscation order is imposed.

## **Legislation on supply chains**

102. Legitimate businesses, in particular larger businesses, can play a valuable role in identifying and combating the exploitation of trafficked human beings within supply chains. A number of stakeholders, including the STUC, have called for specific provisions to require companies to report on their supply chains as part of their obligations to report on human rights within their annual company reports. Such provisions would relate to the reserved matter of “business associations” which reserves to the UK Parliament the “creation, operation, regulation and dissolution of types of business association”. On 13 October 2014, the UK Government confirmed that amendments would be made to the UK Modern Slavery Bill to require larger businesses to report each year on the actions they have taken to ensure that their supply chains are free of trafficking and exploitation. The Scottish Ministers support this measure, which has

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<sup>30</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/67134.aspx>

<sup>31</sup> <http://www.legislation.gov.uk/asp/2014/1>

now been included in the UK Bill and will extend to Scotland, subject to the approval of a Legislative Consent Motion by the Scottish Parliament.

103. The Scottish Government will engage with businesses of all sizes in Scotland, as part of the development and implementation of the trafficking and exploitation strategy, to consider what further actions might be taken by business to help identify and combat trafficking alongside the UK legislative measures on supply chains.

### **Establish a Scottish National Referral Mechanism**

104. The NRM is the UK-wide process for identifying victims of human trafficking and ensuring they receive access to appropriate support and assistance. The UKHTC collects information about the scale and nature of trafficking via the NRM. The NRM has been subject to repeated criticism about the assessment process and sharing of information.<sup>32</sup> Stakeholders have called for the establishment of a Scottish NRM.<sup>33</sup>

105. The UK Home Office undertook a review of the NRM from April to November 2014. The review was asked to examine and make recommendations to the Home Secretary on six key areas: (i) identification of victims; (ii) how they access support; (iii) the level of support that victims receive; (iv) decision making; (v) governance of the NRM and (vi) collection and sharing of data. The Scottish Government, local government, Police Scotland, COPFS and relevant stakeholder organisations in Scotland were consulted during the review process. The report of the review was published by the Home Office in November 2014.<sup>34</sup> The review report makes a number of significant recommendations about the operation of the NRM across the UK. The Home Secretary has accepted, in principle, the report recommendations, but further discussions as to implementation are required. It has not been possible, therefore, to reflect the final outcome of the review at this time. The Scottish Ministers will consider the outcome of the review and any implications and opportunities for the better identification and support of victims in Scotland as the Bill progresses.

### **Child trafficking advocates**

106. The UK Modern Slavery Bill provides for UK Ministers to make arrangements to enable persons, to be called child trafficking advocates, to be available to represent and support children who there is reason to believe may be victims of human trafficking. In Scotland, children who have been trafficked receive support from local authority professionals and, from August 2016, every child will have a named person under the provisions of the CYPA. At this time, it does not seem appropriate to create an additional role within the landscape to advocate for trafficked children.

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<sup>32</sup> For example the Anti Trafficking Monitoring Group Report  
[http://www.antislavery.org/includes/documents/cm\\_docs/2010/a/1\\_atmg\\_report\\_for\\_web.pdf](http://www.antislavery.org/includes/documents/cm_docs/2010/a/1_atmg_report_for_web.pdf)

<sup>33</sup> For example  
[http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human Trafficking in Scotland /inquiry into human trafficking in scotland-full-report pdf .pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human%20Trafficking%20in%20Scotland%20-%20Inquiry%20into%20human%20trafficking%20in%20Scotland-full-report.pdf)

<sup>34</sup> <https://nrm.homeoffice.gov.uk/>

## CONSULTATION

107. The issue of human trafficking has been the subject of a number of reports, inquiries and consultations over recent years which have examined the response to human trafficking within Scotland or across the UK. In view of this, the Scottish Government did not undertake another specific consultation but instead has drawn on the analysis and recommendations within these reports to inform the preparation of this Bill and the parallel draft Scottish Human Trafficking and Exploitation Strategy. These reports include—

- The Scottish Parliament's Equal Opportunities Committee's Report into Migration and Trafficking (2010);<sup>35</sup>
- Equality and Human Rights Commission Report on Inquiry into Human Trafficking in Scotland (2011);<sup>36</sup>
- Scotland's Commissioner for Children and Young People Study into the Nature and Extent of Child Trafficking in Scotland (2011);<sup>37</sup>
- Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) Report (2012);<sup>38</sup>
- UK Anti-trafficking Monitoring Group Report (2013);<sup>39</sup>
- Jenny Marra MSP consultation on Proposal for a Human Trafficking (Scotland) Bill (2013);<sup>40</sup>
- UK Parliament's Joint Committee Report on the Draft UK Modern Slavery Bill (2014).<sup>41</sup>

108. The Scottish Ministers acknowledge and are grateful for the work of all those involved in the preparation of the above reports, which have raised significantly the awareness and understanding of the nature of human trafficking in Scotland and areas for improved activity in response to this crime and the needs of its victims. These various reports have highlighted a number of consistent themes and proposed actions necessary to strengthen the response to human trafficking. These include the need for—

- comprehensive and focused human trafficking legislation, including a single human trafficking offence, for all forms of exploitation, based on international good practice;
- clear strategic leadership and multi-agency partnership working to ensure a collaborative response to human trafficking for all forms of exploitation;

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<sup>35</sup> <http://archive.scottish.parliament.uk/s3/committees/equal/inquiries/migration/migration.htm#top>

<sup>36</sup> <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/human-rights-scotland/inquiry-human-trafficking-scotland>

<sup>37</sup> [http://www.sccyp.org.uk/uploaded\\_docs/policy/sccyp%20child%20trafficking%20report.pdf](http://www.sccyp.org.uk/uploaded_docs/policy/sccyp%20child%20trafficking%20report.pdf)

<sup>38</sup> [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2012\\_6\\_FGR\\_GBR\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf)

<sup>39</sup> [http://www.antislavery.org/english/what\\_we\\_do/programme\\_and\\_advocacy\\_work/trafficking/anti\\_trafficking\\_monitoring\\_group.aspx](http://www.antislavery.org/english/what_we_do/programme_and_advocacy_work/trafficking/anti_trafficking_monitoring_group.aspx)

<sup>40</sup> <http://www.jennymarra.com/human-trafficking-bill/4579313773>

<sup>41</sup> <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-modern-slavery-bill/written-evidence/>

- actions to help prevent trafficking happening or to disrupt the actions of those involved in trafficking;
- more training of front-line staff and others to better identify potential signs of trafficking and to respond to the needs of victims;
- wider awareness raising amongst the public and businesses to help acknowledge and recognise trafficking;
- improved collection and sharing of data and other information about the extent of trafficking;
- co-ordinated support and time for recovery for the victims of trafficking;
- targeted identification and support for the child victims of trafficking.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

109. An Equality Impact Assessment (EQIA) has been carried out and the results will be published on the Scottish Government website at:

<http://www.scotland.gov.uk/Publications/Recent>.

110. In relation to the provisions contained within the Bill, the Scottish Government considers that these do not discriminate on the basis of the protected characteristics namely age, maternity and pregnancy, marriage and civil partnership, gender reassignment, race, disability, religion and belief, sex or sexual orientation. Indeed, some of the proposals are intended to ensure that the particular circumstances of individuals may be taken into account (e.g. the slavery, servitude and forced or compulsory labour offence which requires that the court, in assessing whether a person has been the victim of the offence, is to have regard to any of the alleged victim's characteristics that make them more vulnerable than other people). Such characteristics could include those originating from a protected characteristic.

### **Human rights**

#### *Part 1 – Offences*

111. The European Court of Human Rights has noted that trafficking in human beings, by its very nature and the aim of exploitation, is based on the exercise of powers attaching to the right of ownership; treats human beings as commodities to be bought and sold and put to forced labour; implies close surveillance of the activities of victims, whose movements are often circumscribed; and involves the use of violence and threats against victims. Accordingly the Court has held that trafficking itself is prohibited by Article 4 (prohibition of slavery and forced or compulsory labour) of the ECHR.

112. Against that background, the Scottish Government considers that the provisions in Part 1 which further strengthen and expand the tools available to the police and prosecutors for disrupting and prosecuting the conduct which is contrary to Article 4 of the ECHR in particular

will affect positively the human rights of individuals who are at risk of being victims of such conduct.

### *Part 3 – Confiscation of property*

113. Part 3 of the Bill consolidates existing provision for the detention and forfeiture of ships, vehicles and aircraft used in the commission of trafficking offences. It also amends the POCA to include the offences in section 1 and 4 of the Bill in the list of lifestyle offences for the purposes of confiscation under that Act.

114. Any regime for the confiscation of an individual's property engages consideration of Article 1 of Protocol 1 to the ECHR which restricts the circumstances in which an individual's property may be appropriated by the state. In short, such appropriation is permitted only where (1) in pursuit of a legitimate aim or public interest (2) proportionate in order to achieve that aim or interest and (3) in accordance with law. While it is clear that these powers do, and will continue to, impact on the rights of the owners of confiscated property, the Scottish Government is satisfied that they are justified.

115. It is considered that there is a legitimate public interest behind both the detention and forfeiture powers here. In respect of the former, the power will allow for the preservation of evidence, may prevent the commission of further crimes and ensure that property used in the commission of offences (and thus liable to forfeiture) cannot be disposed of. In respect of the latter, similar legitimate aims exist, with the addition of an element of punishment directed at proven offenders.

116. In terms of proportionality, it is clear that states have a wide margin of appreciation when enacting laws depriving a person of property, particularly where a deprivation is penal in nature. That said, the Scottish Government considered there to be a rational connection in general terms between the aims mentioned above and the measures proposed to achieve those aims and adequate safeguards to ensure that detention or forfeiture are proportionate responses in individual cases.

117. The proportionality of detention of property in any given case can be tested and assessed by virtue of the right to apply to the court for release of detained property, a right which extends to any person (including the accused) with a relevant interest in the detained property. Domestic case law highlights the importance of such a judicial mechanism for assessing proportionality,<sup>42</sup> particularly since seizure can be effected without a warrant.

118. In relation to forfeiture orders, the power to make such an order is discretionary and again interested parties are to be entitled to make representations. It will be a matter for the court to assess whether forfeiture is proportionate in individual cases.

119. The Scottish Government's view is that these measures are lawful, both in terms of being prescribed by law and in terms of the quality of that law (including its foreseeability and the existence of safeguards to ensure that the exercise of the powers concerned is not arbitrary).

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<sup>42</sup> *Anwar v Cassidy* [2013] HCJAC 134.

120. The amendments to the POCA in section 11 add the offences under sections 1 and 4 of the Bill to the list of lifestyle offences in Schedule 4 to that Act. The result is that a conviction of one of these offences requires the court to assume that certain of the offender's property has been obtained as a consequence of that person's criminal conduct and permits the court to make an order for the confiscation of that property. This procedure engages Article 6 of the Convention which guarantee's the individual's right to be presumed innocent and requires the prosecution to prove the accusations it makes against an accused. Adding to the list of offences which triggers that procedure will have an effect on the Article 6 rights of individuals convicted of those offences. But the procedure itself has been held by the European Court of Human Rights to be compatible with Article 6 (*Phillips v United Kingdom*, application no. 41087/98).

121. The only question when adding new lifestyle offences which automatically trigger the operation of that scheme is, therefore, whether there is a sufficiently strong and justifiable public interest in utilising that scheme in relation to the particular offence. That entails consideration of both the seriousness of the offence and the relevance of the criminal lifestyle assumptions to that type of offending. New lifestyle offences should, in particular, be of a type commonly committed (1) for financial gain and (2) by habitual offenders.

122. The offences of slavery and human trafficking are commonly committed by organised crime groups and are part of a core of self-sustaining criminal activity in which these groups engage. As such, evidence from law enforcement agencies suggests that offenders involved in human trafficking are commonly involved in other forms of serious criminal activity. Exploitation and trafficking offences are invariably committed with a view to significant financial gain which is then utilised to fund the commission of these further offences (and the commission of other offences may in turn be aimed at funding trafficking activity). Even when not committed by organised crime groups in the sense commonly understood by law enforcement agencies, commission of exploitation and trafficking offences is likely to amount to serious organised crime for the purposes of the offences in sections 28 to 31 of the 2010 Act.

123. Accordingly, the Scottish Government is satisfied that any interference with Article 6 of the ECHR occasioned by listing these offences in Schedule 4 to POCA can be justified.

#### *Part 4 – Trafficking and exploitation prevention and risk orders*

124. Part 4 of the Bill establishes the framework for TEPOs and TEROs. These are orders which are available at sentencing where a person is convicted of a relevant offence and on civil application where a person was previously convicted of such an offence or (in the case of TEROs) is considered by virtue of the person's conduct to pose a risk of committing such an offence. The orders allow for prohibitions and requirements to be imposed on individuals subject to them.

125. It is clear that the prohibitions and requirements in TEPOs have the potential to interfere with an individual's right to private life under Article 8 of the Convention. Prohibitions can include, for example, restrictions on foreign travel or could include restrictions as to residence in a particular area, the establishment of relationships with other people or business activities. That said, the Scottish Government is of the view that the interference with Article 8 rights which may be occasioned by TEPOs and TEROs can be justified as being (1) in pursuit of legitimate aims and (2) necessary in a democratic society in pursuit of those aims.



126. TEPOs and TEROs are capable of being made where a person demonstrates a risk of committing a human trafficking or exploitation offence and the order is necessary to protect people from the harm which might occur were such an offence committed. The legitimate aims are, therefore, the prevention of crime and protection of others from harm. The power to make the orders is a discretionary one for the courts. In relation to both orders, that discretion, as already noted, may only be exercised where the court considers the prohibitions or requirements in the order to be necessary to prevent harm to others should the subject of the order commit a trafficking or exploitation offence. It is, therefore, for the court to assess the proportionality of the order in every case. This test provides a sufficient safeguard to ensure that orders should not be made unless necessary in a democratic society.

127. As well as the initial test for making orders, the Bill provides mechanisms for the review of orders throughout their duration. In particular, the subject of the order may apply for variation or discharge should that person consider that the order (or any prohibition or requirement within it) is no longer justified. A right of appeal is also conferred in relation to the initial order or to its variation on the application of some person other than the subject of the order.

128. Proceedings for the making of a TEPO against a person involve the determination of that person's civil rights. The right to a fair trial under Article 6 of the Convention is, therefore, engaged. Again, the Scottish Government is satisfied that the scheme put in place by the Bill entails no contravention of that Article. In particular, the procedures by which TEPOs and TEROs can be made allow for representations to be made by the person who is to be subject to the order.

129. Finally, TEPOs can be made with regard to criminal convictions occurring before the Bill is passed. There may, therefore, be a question as to whether the Article 7 prohibition on retrospective penalties is engaged. That would, however, require the conclusion that a TEPO is a "penalty" and in the Scottish Government's view that conclusion cannot be maintained. Although TEPOs on sentencing in particular can be made directly following a conviction, TEPOs can also be made where there is no conviction (e.g. where there is a finding that an individual is not guilty of a relevant offence by reason of a mental disorder). They can also be made in civil proceedings. More significantly, the policy rationale for TEPOs is not a punitive one. The orders are directed at prevention and protection from harm and can only be made for those purposes. A TEPO could not be made for purely punitive reasons. The fact that the orders may have a punitive *effect* is not sufficient to infer a punitive purpose (*Gough v Chief Constable of Derbyshire Constabulary* [2002] QB 459). For these reasons, the Scottish Government is satisfied that TEPOs do not constitute a penalty for the purposes of Article 7 and that Article is, therefore, not engaged in this context.

### **Island communities**

130. Human trafficking can arise in urban, rural and island communities, for example in connection with the fishing industry. The Scottish Government is satisfied that the Bill has no differential impact upon island or rural communities.

### **Local government**

131. The Scottish Government is satisfied that the Bill has no significant effect on local government. Local authority staff and other front-line public sector staff have an important role in helping to identify and report potential trafficking situations. Local authorities are already responsible for providing support and services for the child victims of human trafficking.

### **Sustainable development**

132. The Scottish Government is satisfied that the Bill has no negative effect on sustainable development. The potential environmental impact of the Bill has been considered. A pre-screening report confirmed that the Bill has no impact on the environment and consequently that a full Strategic Environmental Assessment does not need to be undertaken. It is, therefore, exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005.

### **Business and Regulatory Impact Assessment**

133. A partial Business and Regulatory Impact Assessment (BRIA) was carried out and revealed no need for a full BRIA. The illegal exploitation of workers in forced labour and criminal activity undermines the interests of legitimate businesses and the Scottish Government is satisfied that the Bill has no significant effect on businesses and other non-public bodies.

*This document relates to the Human Trafficking and Exploitation (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 11 December 2014*

# **HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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# Human Trafficking and Exploitation (Scotland) Bill

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 57-EN. A Policy Memorandum is printed separately as SP Bill 57-PM.

# Human Trafficking and Exploitation (Scotland) Bill

[AS INTRODUCED]

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

## PART 1

### OFFENCES

#### *Human trafficking*

#### **1 Offence of human trafficking**

(1) A person commits an offence if the person—

(a) arranges or facilitates another person's travel, including in particular by—

- (i) recruiting the person with a view to transporting or transferring the person,
- (ii) transporting or transferring the person,
- (iii) transferring or exchanging control of the person,
- (iv) harbouring or receiving the person, and

(b) arranges or facilitates that travel with a view to the other person being exploited.

(2) It is irrelevant whether the other person consents to any part of the arrangement or facilitation of the travel.

(3) For the purposes of subsection (1)(b), a person arranges or facilitates travel with a view to the other person being exploited only if—

- (a) the person intends to exploit the other person (in any part of the world) during or after the travel, or
- (b) the person knows or ought to know the other person is likely to be exploited (in any part of the world) during or after the travel.

(4) An offence under this section is to be known as the offence of human trafficking.



- (5) A person who commits an offence of human trafficking is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for life or a fine (or both).

## **2 Application of offence to conduct in United Kingdom and elsewhere**

- (1) A person mentioned in subsection (2) commits an offence of human trafficking regardless of—
- (a) where the arranging or facilitating takes place, or
  - (b) where the travel takes place.
- (2) The persons are—
- (a) a person who is a UK national,
  - (b) a person who at the time of the offence was habitually resident in Scotland,
  - (c) a body incorporated under the law of a part of the United Kingdom.
- (3) A person not mentioned in subsection (2) commits an offence of human trafficking if—
- (a) any part of the 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.

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

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

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

- (2) The person is the victim of conduct which—
- (a) involves the commission of an offence under section 4, or
  - (b) would constitute such an offence were it done in Scotland.

### *Prostitution and sexual exploitation*

- (3) Another person exercises control, direction or influence over prostitution by the person in a way which shows that the other person is aiding, abetting or compelling the prostitution.
- (4) Another person involves the person in the making or production of obscene or indecent material (material is to be construed in accordance with section 52(1)(a) of the Civic Government (Scotland) Act 1982 and includes images within the meaning of section 51A of that Act).
- (5) The person is the victim of conduct which—
- (a) involves the commission of an offence under—
    - (i) sections 1, 2 or 7 to 10 of the Criminal Law (Consolidation) (Scotland) Act 1995 (sexual offences),

- (ii) sections 9 to 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (sexual services of children and child pornography),
- (iii) Part 1 of the Sexual Offences (Scotland) Act 2009 (rape etc.),
- (iv) Part 4 of the Sexual Offences (Scotland) Act 2009 (children), or
- (v) Part 5 of the Sexual Offences (Scotland) Act 2009 (abuse of a position of trust), or

(b) would constitute such an offence were it done in Scotland.

*Removal of organs etc.*

- (6) The person is encouraged, required or expected to do anything—
- (a) which involves the commission, by the person or another person, of an offence under Part 1 of the Human Tissue (Scotland) Act 2006 (transplantation etc.),
  - (b) in connection with the removal of any part of a human body as a result of which the person or another person would commit an offence under the law of Scotland (other than an offence mentioned in paragraph (a)), or
  - (c) which would constitute an offence mentioned in paragraph (a) or (b) were it done in Scotland.

*Securing services and benefits*

- (7) The person is subjected to force, threats or deception designed to induce the person—
- (a) to provide services of any kind,
  - (b) to provide another person with benefits of any kind, or
  - (c) to enable another person to acquire benefits of any kind.
- (8) Another person uses or attempts to use the person for any purpose within subsection (7)(a), (b) or (c), having chosen the person for that purpose on the grounds that—
- (a) the person is mentally or physically ill or disabled, is young, or has a family relationship with a particular person, and
  - (b) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose.

*Slavery, servitude and forced or compulsory labour*

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

- (1) A person commits an offence if—
- (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is so held, or
  - (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform such labour.

- (2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).
- 5 (3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard is to be had in particular to any personal circumstances of the person (for example the person's age, family relationships or health) that may make the person more vulnerable than other persons.
- (4) A person who commits an offence under this section is liable—
- 10 (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for life or a fine (or both).
- (5) In this section “the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950.
- 15

*Aggravation as to human trafficking*

**5 General aggravation of offence**

- (1) This subsection applies where it is—
- 20 (a) libelled in an indictment or specified in a complaint that an offence is aggravated by a connection with human trafficking activity, and
- (b) proved that the offence is so aggravated.
- (2) An offence is aggravated by a connection with human trafficking activity if the offender is motivated (wholly or partly) by the objective of committing or conspiring to commit the offence of human trafficking.
- 25 (3) It is immaterial whether or not in committing an offence the offender in fact enables the offender or another person to commit the offence of human trafficking.
- (4) Evidence from a single source is sufficient to prove that an offence is aggravated by a connection with human trafficking activity.
- (5) Where subsection (1) applies, the court must—
- 30 (a) state on conviction that the offence is aggravated by a connection with human trafficking activity,
- (b) record the conviction in a way that shows that the offence is so aggravated,
- (c) take the aggravation into account in determining the appropriate sentence, and
- (d) state—
- 35 (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
- (6) otherwise, the reasons for there being no such difference.

**6 Aggravation involving public official**

- 40 (1) This subsection applies where it is—

- (a) libelled in an indictment or specified in a complaint that the offence of human trafficking is aggravated by an abuse of a public position, and
- (b) proved that the offence is so aggravated.
- (2) The offence of human trafficking is aggravated by an abuse of a public position if the offender is, at the time of committing the offence—
- (a) a public official, and
- (b) acting or purporting to act in the course of official duties.
- (3) Evidence from a single source is sufficient to prove that the offence is aggravated by an abuse of a public position.
- (4) Where subsection (1) applies, the court must—
- (a) state on conviction that the offence is aggravated by an abuse of a public position,
- (b) record the conviction in a way that shows that the offence is so aggravated,
- (c) take the aggravation into account in determining the appropriate sentence, and
- (d) state—
- (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
- (ii) otherwise, the reasons for there being no such difference.
- (5) In this section “a public official” means an individual who (whether in Scotland or elsewhere)—
- (a) holds a legislative or judicial position of any kind,
- (b) exercises a public function in an administrative or other capacity, or
- (c) is an official or agent of an international organisation.
- (6) For the purpose of subsection (5)(c), “an international organisation” means an organisation whose members are—
- (a) countries or territories,
- (b) governments of countries or territories,
- (c) other international organisations, or
- (d) a mixture of any of the above.
- (7) The Scottish Ministers may by regulations modify subsections (5) and (6).

## **PART 2**

### **PROTECTION OF VICTIMS**

#### *Prosecution of victims*

#### **7 Lord Advocate’s guidelines on prosecution of victims of offences**

- (1) The Lord Advocate must make and publish guidelines about the prosecution of a person who is, or appears to be, the victim of an offence—
- (a) of human trafficking,

(b) under section 4.

- (2) The guidelines must in particular include factors to be taken into account or steps to be taken by the prosecutor when deciding whether to prosecute a person in circumstances where—

- (a) a person does an act which constitutes an offence because the person has been compelled to do so, and
- (b) the compulsion is directly attributable to the person being, or appearing to be, a victim of an offence mentioned in subsection (1).

- (3) The Lord Advocate may from time to time revise the guidelines.

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

*Support and assistance for adult victims of human trafficking*

**8 Duty to secure support and assistance**

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

- (2) The relevant period—

- (a) begins on the date it is determined there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking, and
- (b) ends on the earlier of the following—
- (i) the end of the period specified in regulations made by the Scottish Ministers, or
- (ii) the date on which there is a conclusive determination that the adult is or is not a victim of an offence of human trafficking.

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

- (a) during the period in which a competent authority is determining whether or not there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking,
- (b) where the relevant period in relation to the adult ends by virtue of subsection (2)(b)(i), during the period until there is a conclusive determination that the adult is or is not a victim of an offence of human trafficking,
- (c) for such period as they think appropriate after the conclusive determination.

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

- (a) accommodation,
- (b) day to day living,
- (c) medical advice and treatment,
- (d) language translation and interpretation,

- (e) counselling,
- (f) legal advice,
- (g) information about other services available to the adult,
- (h) repatriation.

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

- (a) support and assistance is only provided where the adult consents, and
- (b) the provision of support and assistance is not made conditional on the adult assisting with a criminal investigation or prosecution.

(6) For the purposes of this section—

- (a) there are reasonable grounds to believe that the adult is a victim of an offence of human trafficking if a competent authority has determined for the purposes of Article 10 of the Trafficking Convention (identification of victims) that there are such grounds,
- (b) there is a conclusive determination that an adult is or is not a victim of an offence of human trafficking when, on completion of the identification process required by that Article, a competent authority concludes that the adult is or is not such a victim.

(7) In this section—

“competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention,

“the Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005).

### **PART 3**

#### **CONFISCATION OF PROPERTY**

##### *Detention and forfeiture*

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

(1) A constable may detain a vehicle, ship or aircraft if—

- (a) a person has been arrested for an offence of human trafficking, and
- (b) the constable has reasonable grounds to believe that an order for its forfeiture could be made under section 10 if the person arrested were convicted of the offence.

(2) The vehicle, ship or aircraft may be detained—

- (a) until a decision is taken as to whether or not to begin solemn proceedings against the person arrested for the offence, or
- (b) if solemn proceedings are begun against the person arrested for the offence, until—
  - (i) the person is acquitted,

(ii) the person is convicted and the High Court or, as the case may be, the sheriff decides whether or not to order forfeiture of the vehicle, ship or aircraft under section 10, or

(iii) the proceedings are otherwise concluded.

5 (3) For the purposes of subsection (2)—

(a) solemn proceedings begin against a person at the earlier of—

(i) the person's first appearance before the sheriff on petition, or

(ii) the service on that person of an indictment, and

(b) proceedings are taken to be otherwise concluded if—

10 (i) the proceedings are deserted simpliciter,

(ii) the proceedings are deserted pro loco et tempore for any reason and no further trial diet is appointed, or

(iii) subsection (4) applies.

(4) This subsection applies if—

15 (a) the indictment falls or is for any other reason not brought to trial,

(b) the diet is not continued, adjourned or postponed, and

(c) no further proceedings are in contemplation.

(5) A person may apply to the sheriff for the release of a vehicle, ship or aircraft if that person—

20 (a) owns the vehicle, ship or aircraft,

(b) was, immediately before the detention of the vehicle, ship or aircraft, in possession of it under a hire-purchase agreement, or

(c) is a charterer of the ship or aircraft.

(6) The sheriff may, if satisfactory security is tendered, release the vehicle, ship or aircraft on condition that it is made available if—

25 (a) the person arrested for the offence is convicted, and

(b) an order for forfeiture is made under section 10.

(7) The sheriff may impose such other conditions as to the release as the sheriff thinks fit.

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

30 (1) This section applies if a person is convicted on indictment of the offence of human trafficking.

(2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the person convicted—

(a) owned the vehicle at the time the offence was committed,

35 (b) was at that time a director, secretary or manager of a company which owned the vehicle,

(c) was at that time in possession of the vehicle under a hire-purchase agreement,

(d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or

(e) was driving the vehicle in the course of the commission of the offence.

(3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the person convicted—

(a) owned the ship or aircraft at the time the offence was committed,

(b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,

(c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,

(d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,

(e) was at that time a charterer of the ship or aircraft, or

(f) committed the offence while acting as captain of the ship or aircraft.

(4) If subsection (3)(a) or (b) does not apply to the person convicted, forfeiture of a ship or aircraft may be ordered only if any of the following applies—

(a) a person who, at the time the offence was committed, owned the ship or aircraft, or was a director, secretary or manager of a company which owned it—

(i) knew, or

(ii) ought to have known,

of the intention to use it in the course of the commission of the offence of human trafficking,

(b) in the case of a ship other than a hovercraft, its gross tonnage is less than 500, or

(c) in the case of an aircraft, the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

(5) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to the court to make representations about its forfeiture, the court may not order its forfeiture unless the person has been given an opportunity to make representations.

(6) In this section “the court” means the High Court, or as the case may be, the sheriff.

### *Proceeds of crime*

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

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

(a) for paragraph 4, substitute—

“4 (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (assisting unlawful immigration etc.).

(2) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation).

(3) An offence of human trafficking (see section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015).



- (4) An offence to which section 5 of the Human Trafficking and Exploitation (Scotland) Act 2015 (offences aggravated by connection with human trafficking activity) applies.”, and

(b) after paragraph 4, insert—

“*Slavery, servitude and forced or compulsory labour*

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

## PART 4

### TRAFFICKING AND EXPLOITATION PREVENTION AND RISK ORDERS

#### *Trafficking and exploitation offences*

### **12 Relevant trafficking or exploitation offence**

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

#### *Trafficking and exploitation prevention orders*

### **13 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
  - 5 (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.
- 10 (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—
  - 15 (a) there is a risk that the adult in respect of whom the order is to have effect may commit a relevant trafficking or exploitation offence, and
  - (b) each prohibition or requirement in the order is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an
  - 20 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.

#### **14 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—
  - 30 (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
  - 35 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,
  - 40 (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.

5       (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.

## 15       **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—

- 10       (a) the adult has been convicted of a relevant trafficking or exploitation offence,
- (b) the adult has been acquitted of a relevant trafficking or exploitation offence by reason of the special defence set out in section 51A of the 1995 Act (criminal responsibility of persons with mental disorder),
- 15       (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.

20       (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,
- 25       (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.

30       (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,
- 35       (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.

40       (6) In relation to an application under section 14 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.

## **16 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 17).

(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.

## **17 Prohibitions on foreign travel**

(1) A fixed period of not more than 5 years of effect must be applied to—

(a) a prohibition on foreign travel contained in a trafficking and exploitation prevention order, and

(b) an order that contains such a prohibition and no other prohibitions or requirements.

(2) A “prohibition on foreign travel” means—

(a) a prohibition on travelling to any country outwith the United Kingdom named or described in the order,

(b) a prohibition on travelling to any country outwith the United Kingdom other than a country named or described in the order, or

(c) a prohibition on travelling to any country outwith the United Kingdom.

(3) A further period (of not more than 5 years each time) may be applied to—

(a) a prohibition mentioned in subsection (1)(a) by a variation or a renewal under section 18 or, as the case may be, section 19, 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.

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

(1) This section applies to a trafficking and exploitation prevention order—

(a) made under section 13, 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

(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 16 and 17 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).

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

(1) This section applies to a trafficking and exploitation prevention order—

(a) made under section 14, or

(b) varied or renewed following an application made under this section.

(2) On the application of a person mentioned in subsection (3), the appropriate sheriff may—

(a) vary, renew or discharge a prohibition or requirement in, or add a prohibition or requirement to, the order,

(b) renew the order,

(c) discharge the order.

(3) The persons are—

(a) the adult in respect of whom the order was made,

(b) the chief constable.

(4) The “appropriate sheriff” means—

(a) the sheriff who made the order,

(b) a sheriff in the sheriffdom of that sheriff, or

(c) a sheriff in the sheriffdom in which—

(i) the adult in respect of whom the order was made is resident at the time of the application,

(ii) the chief constable believes that adult to be, or

(iii) the chief constable believes that adult intends to come to.

(5) Before determining an application under this section, the sheriff must give an opportunity to make representations to—

(a) the adult in respect of whom the order was made, and

(b) the chief constable.

(6) After taking into account any such representations, the sheriff may make such order as the sheriff thinks appropriate.

(7) The sheriff may—

(a) vary, renew or add a prohibition or requirement under subsection (2)(a) or renew an order under subsection (2)(b) only if the sheriff is satisfied that—

(i) since the adult in respect of whom the order was made first became a relevant offender, that adult has acted in a way which means that there is a risk that the adult may commit a relevant trafficking or exploitation offence, and

(ii) each prohibition or requirement in the order (as it is to have effect following the renewal, variation or addition) is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an offence,

(b) discharge a prohibition or requirement under subsection (2)(a) or discharge an order under subsection (2)(c) only if the sheriff is satisfied that—

(i) there is no longer a risk that the adult in respect of whom the order was made may commit a relevant trafficking or exploitation offence, or

- (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 16 and 17 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.

## **20 Interim prevention orders**

- (1) The sheriff may, after receiving an application under section 14, 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 14.
- (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.

## **21 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 13, or
  - (b) varied or renewed in accordance with section 18.
- (2) A person mentioned in subsection (3) may appeal against—
  - (a) a trafficking and exploitation prevention order—
    - (i) made under section 14,
    - (ii) varied or renewed in accordance with section 19,
  - (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.
- (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.

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*Trafficking and exploitation risk orders*

## **22 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.

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## **23 Contents of risk orders**

- (1) A trafficking and exploitation risk order may contain prohibitions or requirements (or both) in relation to the adult in respect of whom the order is to have effect.
- (2) Each of the following must have an effect for a fixed period, specified in the trafficking and exploitation risk order, of at least 2 years—
  - (a) a prohibition or requirement in the order,
  - (b) the order.
- (3) Subsection (2) does not apply to a prohibition on foreign travel or to an order that contains a prohibition on foreign travel and no other prohibitions or requirements (see section 24).
- (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,

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(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.

## **24 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 25, and  
(b) an order mentioned in subsection (1)(b) by a renewal under that section.

- (4) A trafficking and exploitation risk order that contains a prohibition mentioned in subsection (2)(c) must require the adult in respect of whom the order is made to surrender each passport that the adult has at a police station specified in the order—

- (a) on or before the date when the prohibition takes effect, or  
(b) within a period specified in the order.

- (5) Any passport surrendered must be returned as soon as reasonably practicable after the adult ceases to be subject to a prohibition mentioned in subsection (2)(c).

- (6) Subsection (5) does not apply in relation to—

- (a) a passport issued by or on behalf of the authorities of a country outwith the United Kingdom if the passport has been returned to those authorities,  
(b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

## **25 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—
  - (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 23 and 24 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.

**26 Interim risk orders**

- (1) The sheriff may, after receiving an application under section 22, 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 22.
- (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.

**27 Appeals: risk orders**

- (1) A person mentioned in subsection (2) may appeal against—
- (a) a trafficking and exploitation risk order—
    - (i) made under section 22, or
    - (ii) varied or renewed in accordance with section 25(1)(a) or (b),
  - (b) the making, variation or discharge of an interim trafficking and exploitation risk order.
- (2) The persons are—
- (a) the adult in respect of whom the order was made,
  - (b) the chief constable.
- (3) Where such an appeal is made, the court may, in the appeal proceedings, suspend the decision appealed against pending the disposal of the appeal.

*Offences and supplementary provision*

**28 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.

(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).

## **29 Enforcement of other UK orders**

(1) The Scottish Ministers may by regulations amend section 28(2) so as to—

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

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

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

## **30 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 20,

“interim trafficking and exploitation risk order” means an order made under section 26,

“passport” means—

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

“relevant offender” has the meaning given by section 15,

“relevant trafficking or exploitation offence” means an offence listed in section 12(1),

“trafficking and exploitation prevention order” means an order made under section 13 or 14 or varied or renewed under section 18 or 19,

“trafficking and exploitation risk order” means an order made under section 22 or varied or renewed under section 25.

(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.

## **PART 5**

### **STRATEGY AND REPORTING**

#### **31 Trafficking and exploitation strategy**

(1) The Scottish Ministers must prepare a trafficking and exploitation strategy.

(2) A trafficking and exploitation strategy is a strategy which sets out such actions, arrangements and outcomes as the Scottish Ministers consider appropriate in relation to the conduct which constitutes an offence under this Act.

(3) The strategy may in particular set out—

(a) actions to raise awareness of the conduct which constitutes an offence under this Act,

(b) arrangements to facilitate the detection and prevention of that conduct, and

- (c) support and assistance which is, or is to be, available (whether under section 8 or otherwise) to adults or children who are, or appear to be, victims of an offence under this Act.

### **32 Review and publication of strategy**

- (1) The Scottish Ministers must review the strategy prepared under section 31 before the end of the period of 3 years beginning with—
  - (a) the date on which the strategy was last published, or
  - (b) if subsequent to that date a report was prepared under subsection (2)(a) but the strategy was not revised under subsection (2)(b), the date of the most recent report.
- (2) Following a review under subsection (1), the Scottish Ministers—
  - (a) must prepare a report on the review, including in particular Ministers' assessment of the extent to which the strategy has been complied with, and
  - (b) may revise the strategy.
- (3) If, following a review, the Scottish Ministers decide not to revise the strategy under subsection (2)(b), the report prepared under subsection (2)(a) must set out their reasons for not doing so.
- (4) Before preparing or reviewing the strategy, the Scottish Ministers must consult such persons as they consider likely to have an interest in the strategy.
- (5) The Scottish Ministers must—
  - (a) publish the strategy and each revision of the strategy,
  - (b) publish each report prepared under subsection (2)(a), and
  - (c) lay before the Scottish Parliament—
    - (i) a copy of the strategy and each revision of the strategy, and
    - (ii) each report prepared under subsection (2)(a).

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

- (1) A specified Scottish public authority must—
  - (a) provide such information and assistance to the Scottish Ministers as they may reasonably require, and
  - (b) otherwise co-operate with the Scottish Ministers,
 in the preparation of the strategy under section 31 and the review of the strategy under section 32.
- (2) The Scottish Ministers may by regulations specify a Scottish public authority for the purposes of subsection (1).

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

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

- (2) A notification under subsection (1) relating to an adult must not include information that—
- (a) identifies the adult, or
  - (b) enables the adult to be identified (either by itself or in combination with other information),
- unless the adult consents to the inclusion of that information.
- (3) The Scottish Ministers may by regulations—
- (a) specify a Scottish public authority for the purposes of subsection (1),
  - (b) make provision about information to be included in a notification.

## **PART 6**

### **FINAL PROVISIONS**

#### **35 Offences by bodies corporate etc.**

- (1) Where—
- (a) an offence under this Act has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual, or
    - (ii) an individual purporting to act in the capacity of a relevant individual,
- the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate—
    - (i) a director, manager, secretary or other similar officer of the body,
    - (ii) where the affairs of the body are managed by its members, the members,
  - (b) in relation to a Scottish partnership, a partner,
  - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

#### **36 Interpretation**

In this Act—

“adult” means an individual aged 18 or over,

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

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

“travel” means—



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

“UK national” means—

- (a) a British citizen,
- (b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has a right of abode in the United Kingdom, or
- (c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar,

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

### 37 Regulations

- (1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—
  - (a) different provision for different purposes,
  - (b) incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) Regulations under—
  - (a) section 6(7),
  - (b) section 12(2),
  - (c) section 29(1),
  - (d) section 38(1) which contain provisions that add to, replace or omit any part of the text of an Act,
 are subject to the affirmative procedure.
- (3) All other regulations under this Act are subject to the negative procedure.
- (4) This section does not apply to regulations under section 41.

### 38 Ancillary provision

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

### 39 Minor and consequential amendments

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

**40 Crown application**

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

**41 Commencement**

- (1) This section and sections 36, 37, 38, 40 and 42 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may contain transitional, transitory or saving provision.

**42 Short title**

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

SCHEDULE  
*(introduced by section 39)*

MINOR AND CONSEQUENTIAL MODIFICATIONS

*Criminal Justice (Scotland) Act 2003*

- 5        1        Section 22 of the Criminal Justice (Scotland) Act 2003 is repealed.

*Antisocial Behaviour etc. (Scotland) Act 2004*

- 2        In section 40A(1) of the Antisocial Behaviour etc. (Scotland) Act 2004—
- 10        (a) paragraphs (e) and (h) are repealed,
- (b) for paragraph (m) substitute—
- “(m) an offence under section 4 of the Human Trafficking and Exploitation  
       (Scotland) Act 2015 (slavery, servitude and forced or compulsory labour),”,  
       and
- 15        (c) after paragraph (m) insert—
- “(n) an offence of human trafficking (see section 1 of the Human Trafficking and  
       Exploitation (Scotland) Act 2015).”.

*Asylum and Immigration (Treatment of Claimants, etc.) Act 2004*

- 20        3        Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 is  
       repealed.

*Criminal Justice and Licensing (Scotland) Act 2010*

- 4        Section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 is repealed.



# **Human Trafficking and Exploitation (Scotland) Bill**

[AS INTRODUCED]

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

Introduced by: Michael Matheson  
On: 11 December 2014  
Bill type: Government Bill

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