

# **Consultation on Regulations Under Section 10 of The Human Trafficking and Exploitation (Scotland) Act 2015**

**Report on Analysis of Responses**

November 2017

# CONSULTATION ON REGULATIONS UNDER SECTION 10 OF THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015

## REPORT ON ANALYSIS OF RESPONSES

### **INTRODUCTION**

1. In October 2015 the Scottish Parliament unanimously passed the Human Trafficking and Exploitation (Scotland) Act 2015 (“the Act”).

2. The offence of human trafficking is defined in Section 1 of the Act as the recruitment, transportation or transfer, harbouring or receiving or exchange or transfer of control of another person for the purposes of exploiting them. The arrangement and facilitation of these actions also constitutes the offence. This definition does not require coercive means such as threats or intimidation to be present and it is irrelevant if the victim ‘consented’ to any part of the action.

The offence of ‘Slavery, servitude and forced or compulsory labour’ is defined in section 4, covering the exploitation of persons who have not been trafficked.

Both offences now carry a maximum sentence of life imprisonment.

3. This consultation was on section 10 of the Act, which relates to the provision of support and assistance to victims of an offence under section 4 – slavery, servitude and forced or compulsory labour, with a view to determining how support and assistance should be secured for victims of the section 4 offence.

### **BACKGROUND**

4. Section 10 of the Act **enables** Scottish Ministers to make regulations about provision of support to victims of an offence under section 4 of the Act – slavery, servitude and forced or compulsory labour. It does not **place a duty** on them to provide that support in the way that Section 9 does with regard to victims of an offence under section 1 – human trafficking.

5. It was suggested to respondents that the [Guide to the 2015 Act](#) would be of help in considering this section and an extract was set out as below.

#### **The offence of slavery, servitude and forced and compulsory labour**

This is set out in section 4 of the Act. A person commits an offence where they know or ought to know that they are holding another person in slavery or servitude. A person also commits an offence where the person knows or ought to know that they are requiring another person to perform forced or compulsory labour. The meaning of “slavery, servitude and forced or compulsory labour” is not set out directly in the Act. Instead, the Act provides that the phrase is to be construed in accordance with Article 4 of the ECHR, which prohibits a person being held in slavery or servitude or being required to perform forced or compulsory labour.

Accordingly, where the treatment of a person would not be allowed under Article 4 of the ECHR then that treatment will fall within the scope of the offence.

Section 4 goes on to make clear that when deciding whether the offence has been committed, then the personal circumstances of a person which may make them more vulnerable, are to be taken into account. It also provides that the fact that a person consents to being treated in this way does not mean that the offence has not been committed.

#### **Differences between the offences**

Slavery, servitude and forced or compulsory labour is included as a form of “exploitation” in section 3 of the Act. Where a person carries out a “relevant action” as defined in section 1, together with an intention to exploit in a way which would – if the exploitation occurred – amount to an offence under section 4, then an offence of “human trafficking” has been committed. That is the case even if the exploitation does not in fact occur.

**Accordingly, where slavery, servitude and forced and compulsory labour occurs without the presence of a “relevant action”, then it is only the offence of slavery, servitude and forced or compulsory labour which has been committed.** It does not matter whether that other person consents to that action being taken. A “relevant action” is any of the following:

- Recruiting another person;
- Transporting or transferring another person;
- Harbours or receiving another person;
- Exchanging control over, or transferring control over another person;
- Arranging or facilitating (without necessarily doing), any of the actions above.

**Travel from one place to another is not a required action for there to be an offence under section 1 (human trafficking) in Scotland.**

Because the offence of human trafficking under section 1 is wide, this means that the circumstances in which an offence under section 4 would be committed are limited but nonetheless possible. For example, someone who is enslaved and exploited by their family.

**The Regulations under consideration would only apply to the victims of this section 4 offence.**

## **SUMMARY**

6. The consultation ran from 15 September to 30 October 2017.

7. 28 responses were received from a variety of stakeholders including public sector and third sector organisations as well as members of the public.

8. Written responses were received from the following organisations:

British Transport Police  
CARE for Scotland  
City of Edinburgh Council  
Community Safety Glasgow's TARA Service (On behalf of Glasgow City Council)  
COSLA  
Currie Community Council  
Highland Violence Against Women Partnership  
Hope for Justice  
Migrant Help UK  
NHS GG&C Psychological Trauma Service  
NHS Greater Glasgow and Clyde  
NHS Lothian Public Protection Team  
Police Scotland  
Scottish Independent Advocacy Alliance  
Soroptimist International of Dundee  
Stirling Council  
TechUK  
The Royal College of Midwives  
The Salvation Army  
Victim Support Scotland

Where individual respondents have given permission for their responses to be made public these are available on the Citizen Space website.

## **GENERAL THEMES WITHIN THE RESPONSES**

9. Overall, almost all respondents agreed with the proposals as set out. More detailed analysis is below. Some themes that appeared in a number of responses were: concerns about the National Referral Mechanism (NRM) and its operation; the need for tailored support for individuals, including consideration whether adult protection or domestic abuse referral pathways might be more appropriate; the importance of not creating a two tier system for victims however; and whatever the process, adequate funding will need to be available.

## ANALYSIS OF RESPONSES BY QUESTION

### **Question 1**

***The Regulations would be able to set out the method of determining whether an adult is or appears to be a victim of an offence under section 4.***

***In your view, how should that determination be made? For victims of the equivalent offence in England, Wales and Northern Ireland this is carried out through the National Referral Mechanism (NRM). The NRM is a framework for identifying victims and ensuring they receive the appropriate support. Further background on the NRM can be found [here](#).***

***Do you agree that this should be the route for potential victims recovered in Scotland?***

***If you do not agree, what would you suggest? What should identification encompass?***

10. 61% of respondents agreed; 22% did not and the remainder did not provide a response to this question.

11. Those who agreed with the proposal to use the NRM, recognised issues with the NRM but also felt that despite this it made sense to have the same identification process for a victim of human trafficking and a victim of slavery, servitude etc. Otherwise first responders would have to make a decision about which route to use and it could mean that one group would have greater administrative or practical hurdles to access support.

In addition, it was felt that it made financial sense not to create a separate system for this group.

12. Those who disagreed were mainly concerned about the problems with the NRM, the need for adults to give consent to the process and whether victims had the capacity to consent.

There was also a suggestion that adult protection processes could be used to identify and support victims.

### **Question 2**

***The Regulations would also be able to set out how long support must be provided for (equivalent to the mandatory period for adult victims of human trafficking). They may also set out the period during which support and assistance may be provided (the equivalent of the discretionary period for adult victims of human trafficking).***

***The Scottish Government proposes that a 90 day period of mandatory support would be available to victims of slavery etc, the same as will be the case for victims of human trafficking (a section 1 offence) once the relevant Regulations are in force, with a discretionary period based on need until a conclusive determination is given.***

***Do you agree with these proposals? Please feel free to comment further on your answer.***

13. 91% of respondents agreed with this proposal. 9% did not.

14. Those who agreed were of the view that there should be parity of support for all victims and that it was important not to create a two tier system.

Those who recorded themselves as disagreeing with the proposal did so on the basis that support should be tailored to the needs of the individual. However, this was also a theme of those who agreed with the proposal.

Specific comments were made in relation to pregnant women, with a suggestion that the regulations make provision for them until the baby is 6 weeks old.

Respondents also pointed out the need to ensure adequate funding is made available to provide support for victims.

Again, there was a suggestion that adult protection process should be considered for victims of both offences within the Act.

One response asked that the Regulations under section 10 should avoid duplicating the approach of section 9, which sets out that a conclusive determination will bring the mandatory period of support to an end.

### ***Question 3***

***The Regulations would also be able to set out the types of support and assistance to be provided. In section 9, the list of support and assistance that may be provided for trafficking victims includes accommodation; day to day living; medical advice and treatment (including psychological assessment and treatment); language translation and interpretation; counselling; legal advice; information about other services; and repatriation.***

***The Scottish Government proposes that the same types of support and assistance should be provided for victims of slavery etc, insofar as they are required by the adult.***

***Do you agree? Do you have any further comments?***

15. 96% of those who responded agreed with the proposals. 4% did not.

16. Those who disagreed did so on the basis that support should be tailored to the individual's needs.

Those who agreed with the proposals again did so on the basis that there should not be a two tier system of support

Again, there was a comment that specific reference should be made to the needs of pregnant women and new mothers.

A number of comments were made in relation to the mental health needs of victims, the need for independent advocacy and the necessity of ensuring that victims' human rights were protected.

One response also raised the need for a 'safety net' for those who do not consent to enter the formal processes.

#### **Question 4**

***The Regulations may also set out the manner in which the support and assistance should be provided. The Scottish Government proposes that the support and assistance should be provided in the same way as that provided for victims of a section 1 offence i.e. through the same providers as those appointed to support victims of a section 1 offence. Do you agree? Do you have any further comments?***

17. 87% of respondents answered yes and 4% answered no to this question.

18. Specific reference was made to the need to ensure that the Regulations under section 10 contained the same stipulations as those under section 9, that support should be provided only with the consent of the adult and should not be conditional on assisting with a criminal investigation.

There was also a comment that services should be delivered taking account of gender, age, culture and exploitation type and should be accessible, person-centred and have a human rights based approach.

Comments were made again in relation to the need to ensure adequate funding and also to consider whether other referral pathways using mainstream and third sector services and organisations might be more appropriate than the NRM.

#### **Question 5**

***Do you have any other points you want to make with regard to support for victims of slavery, servitude and forced or compulsory labour?***

19. Comments were made with regard to the need for raising awareness with the public; the importance of a flexible approach and for early engagement with the victim where possible.

### **NEXT STEPS**

20. The comments from stakeholders will be used to further develop the policy on support for adult victims of an offence under section 4 of the Human Trafficking and Exploitation (Scotland) Act 2015.



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