

Justice Directorate

Criminal Justice Division

Scottish Government

Circular No: **LJ/02/2016**

Distribution by email as per list at Annex A

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13 May 2016

Dear Sir/Madam

**THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015
(COMMENCEMENT NO.1 AND TRANSITORY PROVISIONS) REGULATIONS
2016**

I am writing to draw your attention to the fact that certain provisions of the Human Trafficking and Exploitation (Scotland) Act 2015 (“the 2015 Act”) will come into force on Tuesday 31 May 2016.

The 2015 Act, and explanatory notes that accompany the 2015 Act, may be accessed at:

<http://www.legislation.gov.uk/asp/2015/12/contents>

<http://www.legislation.gov.uk/asp/2015/12/notes/contents>

A copy of the Commencement Regulations and accompanying policy note may be accessed at:

<http://www.legislation.gov.uk/ssi/2016/128/contents/made>

PROVISIONS OF THE 2015 ACT COMING INTO FORCE ON 31 MAY 2016

Part 1 – Offences

Part 1 of the 2015 Act brings into force a new single offence of human trafficking for all types of exploitation (section 1) and an offence of slavery, servitude and forced or compulsory labour (section 4). The Regulations also bring into force statutory aggravations of human trafficking where there is evidence that another crime has been carried out against a background of human trafficking and aggravations where a human trafficking offence has been committed by a public official, or separately, where the victim is a child (sections 5 to 7).

Section 8 – Lord Advocate’s instructions on prosecution of victims of offences

Section 8 of the 2015 Act places a statutory duty on the Lord Advocate to issue and publish instructions about what factors must be taken into account when considering

whether to prosecute a person who appears to be a victim of human trafficking or exploitation and may have committed a crime where (in the case of an adult) they appear to have been compelled to do so because of their victim status or (in the case of a child) they did so as a consequence of their victim status.

Section 9 – Support and assistance: victims of human trafficking

The UK is bound by the Council of Europe Convention on Action against Trafficking in Human Beings (COE Convention) which involves signing up to a minimum set of standards on the identification, protection and support of trafficking victims. Section 9 creates an equivalent obligation in domestic law for Scottish Ministers to provide support and assistance to potential adult victims of human trafficking.

Section 9(2)(b)(i) and (8) contains enabling powers which allow Scottish Ministers to define the relevant period during which they will secure provision of support and assistance to adult victims and to set out other elements of the process for provision of support and assistance. Section 9 is commenced on 31st May only for the purpose of making those regulations.

Section 10 – Support and assistance: victims of an offence under section 4

Section 10 contains powers for Scottish Ministers to make regulations about the support and assistance which may be provided to an adult who is, or appears to be, a victim of an offence under section 4 of the 2015 Act; namely slavery, servitude and forced or compulsory labour.

Section 11 – Independent child trafficking guardians

Section 11 requires Scottish Ministers to make arrangements to enable the appointment of independent child trafficking guardians for child victims of trafficking in respect of whom there appears to be no person in the United Kingdom with parental rights or responsibilities. Section 11(7) and (8) allow Ministers to make by regulations further provision about the appointment of independent child trafficking guardians, to add to the definition of a “person with parental rights or responsibilities”, and to specify further bodies which are required to refer eligible children to a guardian service. Section 11 is commenced on 31st May only for the purpose of making those Regulations).

Section 12 – Presumption of Age

Section 12 requires local authorities and health boards to assume that a victim of trafficking who appears to be a child is a child until that victim’s age is determined. Section 12(5) contains regulation making powers that enable Scottish Ministers to make modifications to the list of legislative provisions in respect of which presumption of age is to operate and the list of bodies that are required to operate the age presumption. Section 11 is commenced on 31st May only for the purpose of making those Regulations.

Part 3 – Confiscation of Property

Part 3 contains powers for the police to detain a vehicle, ship or aircraft if a person has been arrested for an offence of human trafficking. It also sets out the power of the court to order forfeiture of a vehicle, ship or aircraft following a conviction in solemn proceedings of the offence of human trafficking either in the High or Sheriff Court.

In addition, Part 3 amends the Proceeds of Crime Act 2002 so that the new offences of human trafficking and slavery, servitude and forced or compulsory labour are defined as lifestyle offences for the purposes of that Act.

Sections 32 and 33 – Offences and enforcement of UK Orders

The 2015 Act introduces new Trafficking and Exploitation Prevention and Risk Orders which will be commenced later in 2016 (TEPOs and TEROs). The Commencement Regulations bring into force section 32 of the 2015 Act which makes it an offence for a person to breach either a TEPO or TERO or an interim order or an equivalent order imposed elsewhere in the United Kingdom. Section 33 permits Scottish Ministers to provide by regulations what those equivalent orders are for the purposes of the section 32 offence.

Section 34(1) – Interpretation of Part 4

Section 34(1) sets out definitions relating to Part 4 of the 2015 Act.

Section 35 – Trafficking and exploitation strategy

Section 35 places a duty on Scottish Ministers to prepare a trafficking and exploitation strategy. The strategy will set out such actions, arrangements and outcomes as the Scottish Ministers consider appropriate in relation to the conduct which constitutes an offence under the 2015 Act. The strategy must be published and laid before the Scottish Parliament within one year of the new offence of human trafficking coming into force.

Section 36 – Review and publication of strategy

Section 36 places a duty on Scottish Ministers to review and report on the trafficking and exploitation strategy at least every three years since the last publication of the strategy or report on the strategy. Reports on reviews must be published and must include an assessment as to the extent to which the strategy has been complied with. Scottish Ministers are able to revise the strategy following its review, but if no revisions are made, the reasons for that must be contained in the review report.

Section 37 – Duty to co-operate on strategy

Section 37(1) requires specified Scottish public authorities to co-operate with Scottish Ministers in the preparation of the trafficking and exploitation strategy. Section 37(2) provides Ministers with a regulation-making power to specify which public authorities will be subject to that duty.

Section 38 – Duty to notify and provide information about victims

Section 38 places a duty on named Scottish public authorities to notify the chief constable of Police Scotland about victims or suspected victims of human trafficking and exploitation.

Section 38(3) and (4) contains powers for Ministers to make Regulations about who the named authorities are and what information should be included in a notification, some of which is subject to an adult victim's consent. Section 38 is commenced only for the purpose of making those Regulations.

Section 39 – Offences by bodies corporate etc

Section 39 provides that a body corporate, Scottish partnership, or other unincorporated association, can under specific circumstances, be charged with an offence under the 2015 Act.

Section 43 – Minor and consequential amendments

Section 43 and the schedule contain minor amendments to primary legislation which are consequential on the provisions of the 2015 Act.

ENQUIRIES

Should you have any queries in relation to any of the above, please contact the Human Trafficking Team via the details provided at the top of this circular.

Further information on the Human Trafficking and Exploitation (Scotland) Act 2015 is available on the Scottish Government's website.

<http://www.gov.scot/Topics/Justice/policies/reducing-crime/human-trafficking>

Yours faithfully

Susan Young
Human Trafficking Team
Criminal Justice Division
Justice Directorate
Scottish Government

ANNEX A

Aberlour
Abertay University
Action of Churches Together in Scotland (Parliamentary Officer)
Adult Protection Lead Officer (City of Edinburgh Council)
Amnesty International
Anti-Slavery International
Area Procurators Fiscal
Association of Labour Providers
Association of Scottish Police Superintendents
Audit Scotland
Barnardo's
Border Force
CARE
Chief Officers, Community Justice Authorities
Chief Social Work Officer (City of Edinburgh Council)
Child Protection Committees Scotland
Child Protection Lead Officer (City of Edinburgh Council)
Child Trafficking Advice Centre
Children First
Children in Scotland
Children's Commissioner
CICA
Citizens Advice Scotland
Clerk, Justice Committee, Scottish Parliament
Community Safety Glasgow
Compass Mental Health
COSLA
Criminal Injuries Compensation Authority
Crown Agent
Deputy Principal Clerk of Justiciary
Director of Judicial Institute
Director of Research (Scottish Council for Human Bioethics)
Dundee Child Protection
Dundee University
East and Midlothian Child Protection
East Dunbartonshire Health and Social Care
East Renfrewshire Child Protection Committee
ECPAT UK
Edinburgh City Council
Edinburgh University
Engender
Equal Scotland
Equality Human Rights Commission
Equality Now
Evangelical Alliance

Faculty of Advocates
Fishermen's Mission
FLEX
Gangmasters Licensing Authority
Glasgow Council
HMRC
Home Office
Human Trafficking Foundation
Independent Anti-Slavery Commissioner
Information Commissioner
Institute for Human Rights and Business
International Justice Mission UK
Joseph Rowntree Foundation
Judicial Institute for Scotland
Justice of the Peace Court Legal Advisors
Law Society of Scotland
Legal Services Agency
Let Scotland
Lord Advocate
Lord Justice Clerk
Lord Justice General
Migrant Help
Moray Council
National Association of Estate Agents
National Federation of Property Professionals
NCA
NFUS
NHS Health Scotland
NHSGGC Trauma Services
Northern Ireland, Human Trafficking Team (Protection & Organised Crime Unit)
NSPCC
Police Scotland
Police Service of Scotland
Rape Crisis Scotland
Red Cross
Salvation Army
ScotPep
Scottish Borders Council
Scottish Business Resilience Centre
Scottish Children's Reporters Administration
Scottish Council on Human Bioethics
Scottish Court Service
Scottish Episcopal Church
Scottish Fire and Rescue Service
Scottish Guardianship Service
Scottish Human Rights Commissioner

Scottish Independent Advocacy Alliance
Scottish Justices Association
Scottish Landlords
Scottish Parliament Information Centre (SPICe)
Scottish Prison Service
Scottish Refugee Council
Scottish Women's Aid
Scottish Women's Convention
Sex and Violent Offender Liason Officer
Sheriffs
Sheriffs Principal
Solicitor General
Soroptomists
Special Needs In Pregnancy team, NHSGGC
Stirling Uni
Streetwork
STUC
TARA (Head of Strategic Services)
The Church of Scotland
The Principal Clerk of Session & Justiciary
The United Reformed Church
Together Scotland
UK Visas and Immigration
UNICEF
University of Dundee
Victim Support Scotland
With Scotland