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Criminal Justice Division  
Scottish Government  
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26 June 2017

Dear Sir/Madam

**THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015  
(COMMENCEMENT NO.3 AND TRANSITIONAL PROVISIONS) REGULATIONS  
2017**

I am writing to draw your attention to the fact that the remainder of Part 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (“the Act”) is being brought into force. This is being done in two phases:

<b>Provision</b>	<b>Description</b>	<b>Date</b>
Section 16	Relevant Trafficking or Exploitation Offences	29 June 2017
Section 17-25	Trafficking and Exploitation Prevention Orders	30 June 2017
Section 34(2)-(6)	Interpretation of Part 4	30 June 2017
Section 26-31	Trafficking and Exploitation Risk Orders	31 October 2017

The Act, and explanatory notes, 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, accompanying policy note and associated court rules may be accessed at:

<http://www.legislation.gov.uk/ssi/2017/140/contents/made>  
<http://www.legislation.gov.uk/ssi/2017/140/policy-note/contents>  
<http://www.legislation.gov.uk/ssi/2017/145/contents/made>  
[http://www.legislation.gov.uk/ssi/2017/211/pdfs/ssi\\_20170211\\_en.pdf](http://www.legislation.gov.uk/ssi/2017/211/pdfs/ssi_20170211_en.pdf)

**PROVISIONS OF THE 2015 ACT COMING INTO FORCE ON 29 JUNE 2017**

**Section 16 – Relevant Trafficking or Exploitation Offences**

Section 16 provides a list of the relevant trafficking and exploitation offences for the purposes of making TEPOs and TEROs under the Act. The list includes repealed provisions as Orders (other than those made on sentencing) may still be made with reference to convictions under such provisions. Scottish Ministers have made

Regulations which add further offences to this section to coincide with its commencement.<sup>1</sup>

## **PROVISIONS OF THE ACT COMING INTO FORCE ON 30 JUNE 2017**

### **Section 17 – Trafficking and Exploitation Prevention Order (on sentencing)**

Section 17 provides that a court may instead of or in addition to dealing with an adult in any other way, make a TEPO on sentencing an adult. Section 17(1) sets out three circumstances when an Order can be imposed

1. Conviction of an adult of a relevant trafficking or exploitation offence
2. Acquittal of such an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995
3. A finding of unfitness for trial in relation to such an offence under section 53F of the Criminal Procedure (Scotland) Act 1995. There must be a finding that the adult has done the act constituting the offence.

TEPOs can either be made by the court at their own instance or on the application of the prosecutor.

Section 17(4) provides the test to be applied on sentencing for making a TEPO. The court must be satisfied that 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 that it is necessary to make the prohibitions and requirements in the Order for the purpose of protection of people generally, or particular people, from the physical or psychological harm which would be likely to occur if the adult committed such an offence.

TEPOs can be made at either the High or sheriff court.

### **Section 18 – Trafficking and Exploitation Prevention Order (on application)**

Section 18 of the Act provides that the chief constable of Police Scotland may apply to a sheriff for a TEPO against an adult. Section 18(2) sets out where the application must be lodged.

Section 18(3) sets out the tests the sheriff must apply when considering making a TEPO against an adult. The sheriff must be satisfied that the adult is a relevant offender and since the adult first became a relevant offender the adult has acted in a way that there is a risk the adult will commit a relevant trafficking or exploitation offence. In addition the sheriff must be satisfied that it is necessary to make the prohibitions or requirements in the Order for the purposes of protecting people generally or particular people from the physical or psychological harm which would be likely to occur if the adult committed such an offence.

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<sup>1</sup> The Human Trafficking and Exploitation (Scotland) Act 2015 (Relevant Trafficking or Exploitation Offences and Relevant UK Orders) Regulations 2017

In terms of section 18(4), conduct carried out before this section came into force may be considered when determining whether there is a risk that an adult may commit a relevant trafficking offence.

### **Section 19 – Meaning of Relevant Offender**

For the purposes of section 18, section 19 defines what is meant by a relevant offender. An adult is a relevant offender if any of the court disposals listed at subsection (2) have been made in the UK in relation to that adult and in respect of a relevant trafficking or exploitation offence.

An adult is also a relevant offender if under the law of a country outside the UK a disposal listed in subsection (3) is made in respect of an adult in relation to an offence which is equivalent to a section 16 offence. Section 19(4)&(5) set out the tests that determine whether an offence is equivalent to a relevant offence. Section 19(6) establishes a mechanism for determining whether an act constituting an offence in a country outwith the UK would constitute an offence in Scotland. Section 19(8) provides that for the purposes of section 19, convictions, acquittals, findings and cautions include those which took place before this section comes into force.

### **Section 20 – Contents of Prevention Orders**

A TEPO can contain prohibitions or requirements or both. A TEPO must have a fixed period of at least 5 years. Prohibitions or requirements within the Order must have a fixed period for at least 5 years. A TEPO can prohibit or require an adult to do or not do something either in Scotland, in any part of Scotland, or outwith Scotland. The prohibition or requirements may be for different periods. If an adult is already subject to an Order it ceases to have effect if a new Order is made.

### **Section 21 – Prohibition on Foreign Travel**

A prohibition on foreign travel within a TEPO must be for a fixed period of not more than 5 years. An Order which contains only such a prohibition must also be for a period of not more than 5 years. Prohibition on foreign travel means a prohibition to travel to any country outwith the UK either specifically or generally. The fixed period can be varied or renewed for a further fixed period of not more than 5 years under section 22 or 23 respectively. Each passport the adult has must be passed to the police on a specific date or within a specified period. Passports must be returned as soon as possible once the Order ceases to have effect.

### **Section 22 – Orders on sentencing: variation, renewal, discharge**

TEPOs made under section 17 can be varied, renewed or discharged. Applications can be submitted by either the adult who is the subject of the Order or by the prosecutor. The court can vary, renew or discharge certain prohibitions or requirements or add same or renew or discharge the Order as a whole. Subsection (4) details the meaning of appropriate court and where applications should be lodged.

The adult who is the subject of the Order, the prosecutor and the Chief Constable have the opportunity to make representations. In determining an application the court must apply the same tests it would apply making an Order under section 17. To discharge an Order the court must be satisfied that there is no longer any risk that the adult may commit an offence or that the prohibitions or requirements are no longer required.

### **Section 23 – Orders on application: variation, renewal, discharge**

TEPOs made under section 18 can be varied, renewed or discharged. Applications can be submitted by either the adult who is the subject of the Order, or the chief constable. The court can vary, renew or discharge certain prohibitions or requirements, add prohibitions on requirements or renew or discharge the Order as a whole. Subsection (4) details the appropriate sheriff an application should be made to.

The adult who is the subject of the Order, the prosecutor and the Chief Constable have the opportunity to make representations. In determining an application the court must apply the same tests it would apply making an Order under section 17. To discharge an Order the court must be satisfied that there is no longer any risk that the adult may commit an offence or that the prohibitions or requirements are no longer required.

### **Section 24 – Interim Prevention Orders**

Section 24 provides that a sheriff can make an interim TEPO pending determination of an application under section 18. Interim Orders will only have effect for a fixed period and will cease to have effect following determination of the main application under section 18 if the fixed period has not already expired. Interim Orders can be varied or discharged following applications by either the subject of the Order or the chief constable. Interim Orders can prohibit or require an adult to do certain things either within Scotland, any part of Scotland or outwith Scotland.

### **Section 25 – Appeals**

Section 25 provides for the appeals process for Orders made under

- Section 17 (TEPO on sentencing)
- Section 18 (TEPO on application)
- Section 22 (TEPO made under section 17 that is varied or renewed)
- Section 23 (TEPO made under section 18 that is varied or renewed)

For Orders made under section 17 and 22 these are to be treated as a sentence for the purposes of any appeal.

For Orders made under section 18 and 23 either the subject of the Order or the chief constable may appeal against any of these Orders. The court may suspend the decision appealed against pending determination of the appeal for Orders made under section 18 and 23.

## **PROVISIONS OF THE ACT COMING INTO FORCE ON 31 OCTOBER 2017**

### **Section 26 – Trafficking and Exploitation Risk Orders**

The chief constable may apply to the court for a TERO. TEROs are different to TEPOs as they do not require a conviction of a relevant offence but that an individual's behaviour indicates a risk that others may be at harm as a result of that adult committing an offence and early intervention is necessary to prevent that harm.

Section 26(3) sets out the tests for making a TERO. The court must be satisfied that the adult against whom the Order is sought has acted in a way which means there is a risk the adult may commit a relevant trafficking or exploitation offence and it is necessary to make the prohibitions or requirements in the Order for the purposes of protecting particular people or people generally from physical or psychological harm which would likely occur if the adult committed such an offence. The sheriff may take into account behaviour which occurred before this section comes into force.

### **Section 27 – Contents of Risk Orders**

A TERO may contain prohibitions or requirements or both. The prohibitions or requirements must have a fixed period of at least 2 years. In a similar way to TEPOs, TEROs may prohibit the subject of the Order from doing things or require that person to do things in Scotland, in any part of Scotland or outwith Scotland. The Order may specify different periods for each prohibition or requirement. If a sheriff makes a TERO against someone who is already subject to such an Order the earlier Order ceases to have effect.

### **Section 28 – Prohibitions on Foreign Travel**

In an exception to the requirement in section 27 that the prohibition or requirement must have effect for a fixed period of at least 2 years, a prohibition on foreign travel in a TERO must be fixed for a period of no more than 5 years. Prohibition on foreign travel means a prohibition to travel to any country out with the UK either specifically or generally. The fixed period can be varied or renewed but not for a period of more than 5 years. Each passport the person has must be passed to the police on a specific date or within a specified period. Passports must be returned as soon as possible once the Order ceases to have effect.

### **Section 29 – Orders on application: variation, renewal or discharge**

TEROs can be varied, renewed or discharged. Applications for same can be submitted by either the adult subject to the Order or by the chief constable. The court can vary, renew or discharge certain prohibitions or requirements, add prohibitions or requirements or renew or discharge the Order as a whole. The adult and the chief constable must be given the opportunity to make representations. Subsection (3) details the meaning of appropriate sheriff and where applications should be lodged.

In determining an application the court must apply the same tests it would apply in making an Order under section 26. To discharge an Order the court must be

satisfied that there is no longer any risk that the adult may commit an offence or that the prohibitions or requirements are no longer required.

### **Section 30 - Interim Risk Orders**

Section 30 provides that a sheriff may make an interim TERO pending determination of an application for a TERO under section 26. An interim Order may contain prohibitions or requirements (or both) preventing or requiring an adult to do certain things in Scotland, in any part of Scotland or outwith Scotland. Interim Orders only have effect for a fixed period and cease to have effect following determination of the main application. Interim Orders can be varied or discharged following an application by the adult in respect of whom it is made or the chief constable.

### **Section 31 - Appeals**

Section 31 provides for appeals against a TERO made under section 26, varied or renewed under section 29(1)(a) or (b) or against the making, variation or discharge of interim Orders. The adult against whom the Order is made or the chief constable may appeal. The court may suspend the decision appealed against pending determination of the appeal.

### **Section 34(2)-(6) – Interpretation of Part 4**

Section 34 (2) – (6) defines certain terms that are used in Part 4 of the 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**  
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