

Justice Directorate
Criminal Justice Division
Scottish Government
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24 January 2018

Dear Sir/Madam

**THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015
(COMMENCEMENT NO.4) REGULATIONS 2018**

I am writing to draw your attention to the fact that section 12 of the Human Trafficking and Exploitation (Scotland) Act 2015 (“the Act”) is being brought into force on 31 January 2018.

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, may be accessed at:

<http://www.legislation.gov.uk/ssi/2018/9/contents/made>

These Regulations also bring into force the remainder of section 9 of the Act (support and assistance for adult victims) on 1 April 2018. Another circular will be issued before April in respect of section 9.

SECTION 12 – PRESUMPTION OF AGE

Policy Objectives

Section 12 of the Act requires a relevant authority to assume a person is a child when exercising functions under certain enactments with regard to the person where doubt exists as to their age.

Section 12 applies when (a) a relevant authority has reasonable grounds to believe that a person may be a victim of an offence of human trafficking¹, and (b) the authority is not certain of the person’s age but has reasonable grounds to believe that the person may be a child.

Until an assessment of the persons age is carried out by a local authority, or the person’s age is otherwise determined, the relevant authority must assume that the

¹ Section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015

person is a child for the purposes of exercising its functions under the relevant enactments.

Definitions

For the purposes of the Human Trafficking and Exploitation (Scotland) Act 2015, a **child** is defined as “**a person under 18 years of age**”.

For the purposes of section 12 a **relevant authority** is defined by the Act as “a Health Board constituted under section 2(1) of the National Health Service (Scotland) Act 1978, and a local authority”.

For the purposes of section 12 a **relevant enactment** is:

- a) an enactment which applies to a child who is looked after by a local authority within the meaning of section 17(6)(a) of the Children (Scotland) Act 1995 (child for whom a local authority is providing accommodation).
- b) Section 22 of the Children (Scotland) Act 1995 (promotion by a local authority of welfare of children in need).
- c) Section 25 of the Children (Scotland) Act 1995 (provision by a local authority of accommodation for children),
- d) Part 4 of the Children and Young People (Scotland) Act 2014 (provision of named persons),
- e) Part 5 of the Children and Young People (Scotland) Act 2014 (child’s plan), and
- f) Section 11 of the Human Trafficking and Exploitation (Scotland) Act 2015 (independent child trafficking guardians).

GUIDANCE

In preparation for section 12 coming into force, guidance has been developed with key stakeholders, to assist local authorities when a decision requires to be made about a person’s age.

It is important to remember that for the purposes of human trafficking legislation a child is anyone under the age of 18. This may therefore differ to your usual approach when dealing with children and young people.

A link to the guidance will be issued shortly.

ENQUIRIES

Should you have any queries in relation to any of the above, please contact the Child Protection Team, who lead on child trafficking policy, via the details below:

email: Child_Protection@gov.scot

phone: 0131 244 1648

Further information on Human Trafficking more generally is available on the Scottish Government's website.

<https://beta.gov.scot/policies/human-trafficking/>

Yours faithfully

Susan Young

Human Trafficking Team

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