Draft Order laid before Parliament under paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998 for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2016 No.

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

CRIMINAL LAW

The Human Trafficking and Exploitation (Scotland) Act 2015 (Consequential Provisions and Modifications) Order 2016

Made - - - -	*2016*
Coming into force - -	*17th December 2016*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(4) and (5) of the Scotland Act 1998(**a**).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act, a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Human Trafficking and Exploitation (Scotland) Act 2015 (Consequential Provisions and Modifications) Order 2016 and comes into force on 17th December 2016.

(2) Except as provided in paragraphs (3) and (4) below, this Order extends to England and Wales, Scotland and Northern Ireland.

(3) The following provisions extend to Scotland only—

(a) article 2;

(b) article 4(1), (2) and (4); and

(c) paragraphs 1 and 2(a), (c) and (d) of the Schedule.

(4) The modifications in paragraph 3 of the Schedule have the same extent as the provisions modified.

(**a**) 1998 c.46.

Detention of vehicle, ship or aircraft

2.—(1) A senior immigration officer may detain a vehicle, ship or aircraft if—

(a) a person has been arrested for an offence of human trafficking (see section 1 of the 2015 Act); and

(b) the senior immigration officer has reasonable grounds to believe that an order for its forfeiture could be made under section 14 of the 2015 Act 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 14 of the 2015 Act; or

(iii) the proceedings are otherwise concluded.

(3) For the purposes of paragraph (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—

(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) paragraph (4) applies.

(4) This paragraph applies if—

(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 the vehicle, ship or aircraft if that person—

(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—

(a) the person arrested for the offence is convicted; and

(b) an order for forfeiture is made under section 14 of the 2015 Act.

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

(8) In this article—

"the 2015 Act" means the Human Trafficking and Exploitation (Scotland) Act 2015(**a**);

(**a**) 2015 asp 12.

"immigration officer" means a person appointed under paragraph 1 of Schedule 2 to the Immigration Act 1971(**a**);

"senior immigration officer" means an immigration officer not below the rank of chief immigration officer;

"ship" includes every description of vessel (including a hovercraft) used in navigation(**b**); and

"vehicle" means any vehicle other than a ship or an aircraft(**c**).

Consequential modifications

3. The Schedule to this Order (which makes consequential modifications to primary legislation) has effect.

Saving and transitional provisions

4.—(1) The modifications made by paragraph 1 of the Schedule do not apply in relation to the application of section 25C of the Immigration Act 1971(**d**) to offences under section 25, 25A or 25B of that Act committed wholly or partly before the date on which this Order comes into force.

(2) The modifications made by paragraph 2(a), (c) and (d) of the Schedule do not apply in relation to offences suspected to have been attempted or committed wholly or partly before the date on which this Order comes into force.

(3) The modification made by paragraph 2(b) of the Schedule does not apply in relation to offences suspected to have been attempted or committed wholly or partly before the date on which this Order comes into force.

(4) The modifications made by paragraph 3(3) of the Schedule do not apply in relation to offences suspected to have been committed wholly or partly before the date on which this Order comes into force.

Dover House
London
Date

Name
Secretary of State
Scotland Office

(**a**) 1971 c.77.
(**b**) This definition is the same as for "ship" in section 40 of the Human Trafficking and Exploitation (Scotland) Act 2015.
(**c**) This definition is the same as for "vehicle" in section 40 of the Human Trafficking and Exploitation (Scotland) Act 2015.
(**d**) 1971 c.77; sections 25 to 25C were substituted for section 25 by the Nationality, Immigration and Asylum Act 2002 (c.41), section 143. Section 25C has been amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19), section 1; the Modern Slavery Act 2015 (c.30), Schedule 5, paragraph 2 (in relation to England and Wales only); and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I.)), Schedule 4, paragraph 2 (in relation to Northern Ireland only).

SCHEDULE

Article 3

Consequential modifications

Immigration Act 1971

1. In section 25C(9)(b), (10)(b) and (11) of the Immigration Act 1971 (forfeiture of vehicle, ship or aircraft), for the words from "a passenger" to the end substitute "the victim of conduct which constitutes 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

2. Section 14(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(**a**) is amended as follows—

(a) omit paragraph (n);

(b) omit paragraph (o);

(c) omit paragraph (p); and

(d) after paragraph (q), insert—

"(r) an offence of human trafficking (see section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015).".

Modern Slavery Act 2015

3.—(1) The Modern Slavery Act 2015(**b**) is amended as follows.

(2) In section 30(1) (offences)—

(a) at the end of paragraph (e) omit the word "or";

(b) after paragraph (f) insert—

"(g) a trafficking and exploitation prevention order under section 17 or 18 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12);

(h) an interim trafficking and exploitation prevention order under section 24 of that Act;

(i) a trafficking and exploitation risk order under section 26 of that Act; or

(j) an interim trafficking and exploitation risk order under section 30 of that Act;".

(3) In section 36(8) (enforcement powers in relation to ships: Scotland), for paragraphs (a) to (c) substitute—

"(a) section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) (offence of human trafficking);

(b) section 4 of that Act (slavery, servitude and forced or compulsory labour).".

(4) In section 41(2) (general functions of Commissioner), for paragraphs (c) to (e) substitute—

"(c) section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) (equivalent offences in Scotland).".

(**a**) 2004 c.19; section 14 has been amended the Fraud Act 2006 (c.35), Schedule 1, paragraph 35 and Schedule 3; the Identity Documents Act 2010 (c.40), Schedule, paragraph 18; the Protection of Freedoms Act 2012 (c.9), Schedule 9, paragraph 141 (in relation to England and Wales only); the Modern Slavery Act 2015 (c.30), Schedule 5, paragraph 6 (in relation to England and Wales only); the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I.)), Schedule 4, paragraph 6 (in relation to Northern Ireland only); and by S.I. 2014/3229, Schedule 5, paragraph 16.

(**b**) 2015 c.30.

(5) In section 54(12) (transparency in supply chains etc.), for sub-paragraphs (iii) to (v) of paragraph (a) of the definition of "slavery and human trafficking" substitute—

"(iii) section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) (equivalent offences in Scotland), or".

(6) In Schedule 1, after paragraph 8 insert—

"*Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12)*

8A.—(1) An offence under section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (human trafficking; slavery, servitude and forced or compulsory labour).

(2) An offence aggravated by a connection with human trafficking activity in accordance with section 5 of that Act (general aggravation of offence).".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) ("the 2015 Act").

Article 2 confers on immigration officers not below the rank of chief immigration officer a power to detain vehicles, ships or aircraft where a person has been arrested for the offence of human trafficking under section 1 of the 2015 Act. The power will be available if that officer has reasonable grounds to believe that the property in question may be subject to forfeiture under section 14 of that Act if the arrested person were convicted. This mirrors a power already conferred on constables in Scotland by section 13 of that Act. Property detained under this article may be held until solemn proceedings against the arrested person are concluded or a decision is taken not to begin solemn proceedings against that person. Any person who owns or possesses under a hire-purchase agreement a detained vehicle ship or aircraft, or who is charterer of a detained ship or aircraft, may apply for release of the relevant property.

Article 3 and the Schedule make consequential modifications to primary legislation in consequence of the creation of two new Scottish statutory offences of human trafficking (section 1 of the 2015 Act) and slavery, servitude and forced or compulsory labour (section 4 of the 2015 Act) and the repeal of existing offences in section 22 of the Criminal Justice (Scotland) Act 2003, section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the Criminal Justice and Licensing (Scotland) Act 2010.

Article 4 makes saving and transitional provisions in relation to certain consequential modifications in the Schedule.

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