POLICY NOTE

THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015 (RELEVANT TRAFFICKING OR EXPLOITATION OFFENCES AND RELEVANT UK ORDERS) REGULATIONS 2017

SSI 2017/

1. The above instrument is made in exercise of the powers conferred by sections 16(2) and 33(1) of the Human Trafficking and Exploitation (Scotland) Act 2015 ("the 2015 Act"). This instrument is subject to the affirmative procedure.

Background

2. Part 4 of the 2015 Act introduces two new court orders, namely Trafficking and Exploitation Prevention Orders (TEPOs) and Trafficking and Exploitation Risk Orders (TEROs). This instrument makes amendments to section 16(1) (relevant trafficking or exploitation offences) and section 32(2) (offences committed by breaching an order), of the 2015 Act.

3. TEPOs can be made by the court in two sets of circumstances. Firstly, a TEPO can be made at the conclusion of criminal proceedings, by the High Court or the sheriff (as the case may be), at its own instance or on the motion of the prosecutor, where a person has been:

    a. convicted of a "relevant trafficking or exploitation offence",
    b. acquitted of such an offence by reason of the special defence in section 51A of the Criminal Procedure (Scotland) Act 1995 (criminal responsibility of a person with a mental disorder) or,
    c. found to be unfit for trial under section 53F of that Act but the court has found that the person has carried out the act which constitutes such an offence.

4. In addition, the court has to be satisfied that there is a risk that the person may commit a "relevant trafficking and exploitation" offence and that each prohibition or requirement within the TEPO is necessary to protect particular persons, or persons generally, from physical or psychological harm.

5. Secondly the court may make a TEPO in consequence of an application to the sheriff by the chief constable of the Police Service of Scotland where the person who is to be the subject of the TEPO is a "relevant offender". In these circumstances the court has to be satisfied that, since the person became a "relevant offender" the person has acted in a way which means there is a risk they might commit a "relevant trafficking or exploitation offence". Again, the court has to be satisfied that each prohibition or requirement within the TEPO is necessary to protect particular persons, or persons generally, from physical or psychological harm. In assessing risk the court may take into account any behaviour which occurred before the commencement of the 2015 Act.

6. Relevant offenders are defined in section 19 of the Act. This includes persons who have been convicted of a "relevant trafficking or exploitation offence", those acquitted by reason of the special defence under section 51A of the Criminal Procedure (Scotland) Act

1995 or its predecessor: by reason of insanity, and those found unfit for trial but to have carried out the act which constitutes such an offence. The definition extends to those convicted of equivalent offences (or acquitted in similar circumstances) out with the UK.

7. TEROs can only be made on application by the chief constable of Police Scotland and do not require a conviction. An order may be made if the sheriff is satisfied that the adult in respect of whom the order is sought has acted in a way that there is a risk they may commit a "relevant trafficking or exploitation offence" and that the order is necessary to protect persons generally, or particular persons, from physical or psychological harm. The sheriff may take into consideration actions which took place before the 2015 Act came into force. .

8. It is an offence if a person who is subject to a TEPO or TERO, or an interim order, does or fails to do anything required of him/her by such an order.

9. Both TEPOs and TEROs may only be made against a person aged 18 or over.

Amendment of section 16(1) of the Human Trafficking and Exploitation (Scotland) Act 2015

10. The relevant trafficking and exploitation offences are listed in section 16(1) of the Act. Presently the list at section 16(1) does not contain certain, more recent relevant trafficking or exploitation offences in force elsewhere in the UK. This instrument will amend section 16(1) by inserting relevant trafficking or exploitation offences from elsewhere in the UK allowing TEPOs and TEROs to be made in respect of those offences in the circumstances described above.

Policy Objective

11. The main policy objective of this instrument is to ensure that Scotland remains a hostile place to traffickers convicted elsewhere in the UK. If such a person is active or resident in Scotland then the amendments to section 16(1) of the 2015 Act will have the effect that such a person can be made subject to a TEPO.

Amendment of section 33(2) of the Human Trafficking and Exploitation (Scotland) Act 2015

12. Section 32(1) of the 2015 Act provides that it is an offence for a person to do anything they are prohibited from doing, or fail to do something they are obliged to do, by an order listed in section 32(2). Section 32(2) currently lists TEPOs, TEROs and the interim versions of such orders. Presently the list at section 32(2) does not contain relevant equivalent orders in force from elsewhere in the UK under the Modern Slavery Act 2015 and the Human Trafficking (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. This instrument will amend section 32(2) by inserting reference to relevant orders which can be imposed elsewhere in the UK.

Policy Objective

13. The main policy objective of this instrument is to ensure that Scotland remains a hostile environment to traffickers who are subject to an order made against them elsewhere in the

UK. If such a person is active or resident in Scotland then the amendments to section 32(2) of the 2015 Act will have the effect that a breach of the terms of that order can be enforced as a criminal offence in Scotland.

Consultation

14. Informal consultation has taken place with the Crown Office, the Modern Slavery Unit in the Home Office and the Organised Crime Branch of the Department for Justice, Northern Ireland. The amendments this instrument will make were positively received by both the Home Office and Department for Justice to ensure a joined up and collaborative approach to this crime across the UK.

Impact Assessment

15. An Equality Impact Assessment and a Child Impact Assessment were carried out in relation to the Bill as a whole. It was not considered necessary to carry out further assessments in relation to this instrument.

Scottish Government
Justice Directorate
April 2016