

Consultation Document on Sections 9(2)(b)(i) of Human Trafficking and Exploitation (Scotland) Act 2015

November 2016



Scottish Government
Riaghaltas na h-Alba
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CONSULTATION DOCUMENT ON SECTIONS 9(2)(b)(i) OF HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- ☐ Individual
- ☐ Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- ☐ Publish response with name
- ☐ Publish response only (anonymous) – Individuals only
- ☐ Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- ☐ Yes
- ☐ No

Responding to this Consultation

We are inviting responses to this consultation by 23 December

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/human-trafficking-team/period-of-support-for-adult-victims>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 23 December 2016.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Human Trafficking Team
GWR
St Andrew's House
Edinburgh EH1 3DG

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate

how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them human.trafficking@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

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PURPOSE

1. The purpose of this consultation paper is to seek your views on the proposed length of time for which support and assistance must be given to adult victims of trafficking.

BACKGROUND

2. In October 2015 the Scottish Parliament unanimously passed the Human Trafficking and Exploitation (Scotland) Act 2015 (“the Act”). This was the culmination of significant work between agencies and across the political spectrum, including the Cross Party Group on Human Trafficking.

3. The Act creates a new legislative context that will simplify how police and prosecutors can deal with these crimes. A Guide to the Act has been prepared and is available at: <http://bit.ly/2e0IPzo>.

4. The offence of human trafficking is defined in Section 1 of the Act as the recruitment, transportation or transfer, harbouring or receiving or exchange or transfer of control of another person for the purposes of exploiting them. The arrangement and facilitation of these actions also constitutes the offence. This definition does not require coercive means such as threats or intimidation to be present and it is irrelevant if the victim ‘consented’ to any part of the action.

5. **This consultation document is about section 9 of the Act, which relates to the provision of support and assistance to adult victims of human trafficking and requires the Scottish Ministers to secure such support in certain circumstances.** It asks for your views on the period during which adult victims of trafficking must be provided with support. It should be noted that this consultation does not relate to the support of child victims. Child victims of trafficking are abused children; they are therefore supported in the same way that all abused children are supported, by a range of professionals and organisations.

SECTION 9

6. Section 9(1) and (2) require Scottish Ministers to secure support and assistance to adult victims of trafficking during the ‘relevant period’. This is the period of time which:

- begins on the date that a competent authority¹ has determined that there are reasonable grounds to believe that an adult is a victim of trafficking, and
- ends after either **the end of a period set by regulations** or when a conclusive determination is made by a competent authority that the adult is or is not a victim of trafficking (whichever is earlier).

7. The determination process used to come to a conclusive determination is currently carried out through the UK-wide National Referral Mechanism².

8. We would like your views on how long the period set by regulations and referred to above should be.

9. The purpose of the relevant period is for victims to reflect on their experiences and begin a process of recovery with appropriate support. The relevant period is not an indication that it is expected that a victim will have fully recovered from their experiences within that time.

10. Examples of the types of support to be available to victims are listed within the Act at section 9(4) but the duty extends to the provision of any support and assistance that Ministers consider necessary based on an assessment of the victim's needs.

WHAT WE PROPOSE

11. The Scottish Government is of the view, subject to this consultation exercise, that the 'period to be set by regulations' should be 45 days. This time period reflects the current arrangements for the provision of support and assistance for victims of trafficking.

12. The setting of any defined period in this context is arbitrary to a certain degree, as each victim is an individual who will have unique needs. In addition, section 9(3) of the Act provides flexibility for Ministers to provide support before and after the relevant period, no matter what length of relevant period is specified in regulations, where required as a result of a victim's individual circumstances and needs. Many victims will also go on to be able to claim social security support or asylum support, dependent upon their nationality and immigration status.

¹ There are two competent authorities in the UK; the Home Office and the Modern Slavery Human Trafficking Unit (part of the National Crime Agency).

² The National Referral Mechanism is the system under which victims in Scotland (and the UK in general) are assessed to determine whether they are indeed a victim of human trafficking.

13. The relevant period is nonetheless important, not least in providing certainty to trafficking victims in indicating the period over which they can initially expect to be supported.

14. We consider that setting this period at 45 days is a tested, successful and sustainable approach. This period has been accepted by GRETA (Group of Experts on Action against Trafficking in Human Beings) in their recent report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the UK. It exceeds the 30 days required by that Convention, and matches what is currently provided in other parts of the UK, ensuring a level of consistency throughout Scotland, England, Wales and Northern Ireland.

The Scottish Government is of the view that the relevant period in Regulations under Section 9(2)(b)(i) should be 45 days for the reasons set out above.

Do you agree with this view? Y/N

If you do not agree, what would you propose and why?

15. The consultation will run until 23 December 2016. Responses will then be analysed and taken into account in determining how this section will be implemented. We are happy to discuss any aspect of this and look forward to hearing your comments and suggestions.

Thank you for your input.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 23 December 2016.



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