

Consultation document on regulations under Section 10 of the Human Trafficking and Exploitation (Scotland) Act 2015

September 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

Responding to this Consultation

We are inviting responses to this consultation by 30 October 2017

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/support-for-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 30 October 2017

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
Regent Road
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 If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.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.



CONSULTATION DOCUMENT ON REGULATIONS UNDER SECTION 10 OF THE 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 (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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

CONSULTATION DOCUMENT ON REGULATIONS UNDER SECTION 10 OF THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015

INTRODUCTION

1. 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.

2. A [Guide to the Act](#) has been prepared.

3. The Act creates a new legislative context that will simplify how police and prosecutors can deal with these crimes. Until now, police and prosecutors have had to rely on a number of different legislative instruments to charge suspected perpetrators.

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.

The offence of ‘Slavery, servitude and forced or compulsory labour’ is defined in section 4, covering the exploitation of persons who have not been trafficked.

Both offences now carry a maximum sentence of life imprisonment.

5. The Act also takes forward improved protection for victims, through the Lord Advocate’s instructions on the presumption against the prosecution of victims in certain circumstances and by placing a duty on Scottish Ministers to provide support and assistance for victims. Further, the Act makes provision for orders for which the police can apply, to disrupt activity related to trafficking and exploitation.

6. This consultation document refers to section 10 of the Act, which relates to the provision of support and assistance to victims of an offence under section 4 – slavery, servitude and forced or compulsory labour.

7. This consultation allows you to give your views. The responses will then be analysed and considered by the Scottish Government with a view to determining how support and assistance should be secured for victims of the section 4 offence.

Background

8. Section 10 of the Act **enables** Scottish Ministers to make regulations about provision of support to victims of an offence under section 4 of the Act – slavery,

servitude and forced or compulsory labour. It does not **place a duty** on them to provide that support in the way that Section 9 does with regard to victims of an offence under section 1 – human trafficking.

9. The Guide to the 2015 Act may be of help in considering this section and an extract is set out below.

The offence of slavery, servitude and forced and compulsory labour

This is set out in section 4 of the Act. A person commits an offence where they know or ought to know that they are holding another person in slavery or servitude. A person also commits an offence where the person knows or ought to know that they are requiring another person to perform forced or compulsory labour. The meaning of “slavery, servitude and forced or compulsory labour” is not set out directly in the Act. Instead, the Act provides that the phrase is to be construed in accordance with Article 4 of the ECHR, which prohibits a person being held in slavery or servitude or being required to perform forced or compulsory labour.

Accordingly, where the treatment of a person would not be allowed under Article 4 of the ECHR then that treatment will fall within the scope of the offence.

Section 4 goes on to make clear that when deciding whether the offence has been committed, then the personal circumstances of a person which may make them more vulnerable, are to be taken into account. It also provides that the fact that a person consents to being treated in this way does not mean that the offence has not been committed.

Differences between the offences

Slavery, servitude and forced or compulsory labour is included as a form of “exploitation” in section 3 of the Act. Where a person carries out a “relevant action” as defined in section 1, together with an intention to exploit in a way which would – if the exploitation occurred – amount to an offence under section 4, then an offence of “human trafficking” has been committed. That is the case even if the exploitation does not in fact occur.

Accordingly, where slavery, servitude and forced and compulsory labour occurs without the presence of a “relevant action”, then it is only the offence of slavery, servitude and forced or compulsory labour which has been committed. It does not matter whether that other person consents to that action being taken. A “relevant action” is any of the following:

- Recruiting another person;
- Transporting or transferring another person;
- Harbours or receiving another person;
- Exchanging control over, or transferring control over another person;
- Arranging or facilitating (without necessarily doing), any of the actions above.

Travel from one place to another is not a required action for there to be an offence under section 1 (human trafficking) in Scotland.

Because the offence of human trafficking under section 1 is wide, this means that the circumstances in which an offence under section 4 would be committed are limited but nonetheless possible. For example, someone who is enslaved and exploited by their family.

The Regulations under consideration would only apply to the victims of this section 4 offence.

PROPOSALS

The Scottish Government plans to commence this section and make Regulations in order to provide support and assistance to adult victims of a section 4 offence. These Regulations would be subject to the affirmative procedure.

In order to inform our policy thinking, there are a number of issues on which we would welcome your views.

1). The Regulations would be able to set out the method of determining whether an adult is or appears to be a victim of an offence under section 4.

In your view, how should that determination be made? For victims of the equivalent offence in England, Wales and Northern Ireland this is carried out through the National Referral Mechanism (NRM). The NRM is a framework for identifying victims and ensuring they receive the appropriate support. Further background on the NRM can be found [here](#).

Do you agree that this should be the route for potential victims recovered in Scotland

Y/N

If you do not agree, what would you suggest? What should identification encompass?

2). The Regulations would also be able to set out how long support must be provided for (equivalent to the mandatory period for adult victims of human trafficking). They may also set out the period during which support and assistance may be provided (the equivalent of the discretionary period for adult victims of human trafficking).

The Scottish Government proposes that a 90 day period of mandatory support would be available to victims of slavery etc, the same as will be the case for victims of human trafficking (a section 1 offence) once the relevant Regulations are in force, with a discretionary period based on need until a conclusive determination is given.

Do you agree with these proposals?

Y/N

Please feel free to comment further on your answer.

3). The Regulations would also be able to set out the types of support and assistance to be provided. In section 9, the list of support and assistance that may be provided for trafficking victims includes accommodation; day to day living; medical advice and treatment (including psychological assessment and treatment); language translation and interpretation; counselling; legal advice; information about other services; and repatriation.

The Scottish Government proposes that the same types of support and assistance should be provided for victims of slavery etc, insofar as they are required by the adult.

Do you agree?
Y/N

Do you have any further comments?

4). The Regulations may also set out the manner in which the support and assistance should be provided. The Scottish Government proposes that the support and assistance should be provided in the same way as that provided for victims of a section 1 offence i.e. through the same providers as those appointed to support victims of a section 1 offence. Annex A gives further details

Do you agree?
Y/N

Do you have any further comments?

5). Do you have any other points you want to make with regard to support for victims of slavery, servitude and forced or compulsory labour?

SUMMARY DESCRIPTION OF SUPPORT SERVICES FOR ADULT VICTIMS OF HUMAN TRAFFICKING

- Will be provided in accordance with Council of Europe Convention obligations
- Will be tailored to the needs of the individual
- Will be delivered in partnership with other agencies as needed
- Will take a human rights based approach and with reference to the Trafficking Survivor Care Standards
- Will be available to any adult victim of trafficking, wherever they are recovered in Scotland
- May include accommodation, day to day living, medical advice and treatment, language translation and interpretation, counselling, legal advice, information about other services available to the adult, repatriation as needed.
- Will be aimed at achieving the best outcomes possible for the client and transitioning them towards safety and recovery.
- Must be provided for the relevant period (to increase to 90 days once relevant Regulations are in force), and may be provided for any days between potential clients coming to the attention of the provider and a reasonable grounds decision.
- Appropriate support may be provided if judged by the provider to be required once the relevant period is completed, up till a conclusive determination is reached. This will take into account other supports that are available to the victim as part of more general mainstream or other provision.



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