



Human Trafficking and Exploitation (Scotland) Act 2015

2015 asp 12

PART 3

CONFISCATION OF PROPERTY

Detention and forfeiture

13 Detention of vehicle, ship or aircraft

- (1) A constable may detain a vehicle, ship or aircraft if—
- (a) a person has been arrested for an offence of human trafficking, and
 - (b) the constable has reasonable grounds to believe that an order for its forfeiture could be made under section 14 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, or
 - (iii) the proceedings are otherwise concluded.
- (3) For the purposes of subsection (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,

Status: This is the original version (as it was originally enacted).

- (ii) the proceedings are deserted pro loco et tempore for any reason and no further trial diet is appointed, or
 - (iii) subsection (4) applies.
- (4) This subsection 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 a 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.
- (7) The sheriff may impose such other conditions as to the release as the sheriff thinks fit.

14 Forfeiture of vehicle, ship or aircraft

- (1) This section applies if a person is convicted on indictment of the offence of human trafficking.
- (2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the person convicted—
 - (a) owned the vehicle at the time the offence was committed,
 - (b) was at that time a director, secretary or manager of a company which owned the vehicle,
 - (c) was at that time in possession of the vehicle under a hire-purchase agreement,
 - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
 - (e) was driving the vehicle in the course of the commission of the offence.
- (3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the person convicted—
 - (a) owned the ship or aircraft at the time the offence was committed,
 - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
 - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,
 - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
 - (e) was at that time a charterer of the ship or aircraft, or
 - (f) committed the offence while acting as captain of the ship or aircraft.

Status: This is the original version (as it was originally enacted).

- (4) If subsection (3)(a) or (b) does not apply to the person convicted, forfeiture of a ship or aircraft may be ordered only if any of the following applies—
- (a) a person who, at the time the offence was committed, owned the ship or aircraft, or was a director, secretary or manager of a company which owned it—
 - (i) knew, or
 - (ii) ought to have known,of the intention to use it in the course of the commission of the offence of human trafficking,
 - (b) in the case of a ship other than a hovercraft, its gross tonnage is less than 500, or
 - (c) in the case of an aircraft, the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.
- (5) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to the court to make representations about its forfeiture, the court may not order its forfeiture unless the person has been given an opportunity to make representations.
- (6) In this section “the court” means the High Court, or as the case may be, the sheriff.

Proceeds of crime

15 Proceeds of Crime Act 2002: lifestyle offences

In Schedule 4 to the Proceeds of Crime Act 2002 (lifestyle offences: Scotland)—

- (a) for paragraph 4, substitute—
 - “4 (1) An offence under section 25, 25A or 25B of the Immigration Act 1971 (assisting unlawful immigration etc.).
 - (2) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation).
 - (3) An offence of human trafficking (see section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015).
 - (4) An offence to which section 5 of the Human Trafficking and Exploitation (Scotland) Act 2015 (offences aggravated by connection with human trafficking activity) applies.”, and
- (b) after paragraph 4, insert—

“Slavery, servitude and forced or compulsory labour

- 4A An offence under section 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (slavery, servitude and forced or compulsory labour).”.