

HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part 2 – Protection of Victims

Support and assistance for adult victims

Section 9: Support and assistance: victims of offence of human trafficking

42. Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings¹ (“COE Convention”) sets out the support and assistance which must be provided for trafficked victims. The UK Government ratified the COE Convention in December 2008 and Scotland became bound by its terms in April 2009. Currently there is no statutory basis for potential victims of trafficking to access support and information on the type of support that they are entitled to. Support is currently provided through support agencies with grant funding from the Scottish Ministers.
43. **Section 9** places a duty on the Scottish Ministers to secure the provision of support and assistance for adult victims of human trafficking, on an assessment of needs, during a defined period. It also sets out a discretionary power for the Scottish Ministers to arrange the provision of support and assistance outwith the mandatory period.
44. Subsection (1) provides that where there are reasonable grounds to believe that an adult is a victim of human trafficking, the Scottish Ministers must secure the provision of such support and assistance as is necessary given the adult’s needs, for the relevant period.
45. Subsection (2) defines the relevant period. It begins on the day it is determined there are reasonable grounds to believe that the adult is a victim of human trafficking (paragraph (a)) and ends on the earlier of either the end of a period specified in regulations made by the Scottish Ministers (paragraph (b)(i)) or the date on which there is a conclusive determination that the adult is or is not a victim of a human trafficking offence (paragraph (b)(ii)).
46. Subsection (3) gives the Scottish Ministers discretion to provide support and assistance outwith the mandatory period under subsection (2). The support and assistance may be provided to the adult during the period when a competent authority is determining whether there are reasonable grounds to believe that the person is a victim of human trafficking (paragraph (a)). It may also be provided before the date on which there is a conclusive determination in relation to the adult, if the mandatory period has ended by then (paragraph (b)) or after that conclusive determination, for such period as Ministers think appropriate (paragraph (c)).

¹ <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>

*These notes relate to the Human Trafficking and Exploitation (Scotland)
Act 2015 (asp 12) which received Royal Assent on 4 November 2015*

47. Subsection (4) provides a non-exhaustive list of the kind of support and assistance that may be provided under section 9. The list provides that support and assistance may be provided in connection with (but not limited to) the following—
- 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 available to the adult; and
 - repatriation.
48. Subsection (5) provides that the Scottish Ministers must ensure that, in securing the provision of support and assistance, assistance is only provided where the adult consents (subsection (5)(a)) and that the provision of assistance is not made conditional on the adult assisting with a criminal prosecution or investigation (subsection (5)(b)).
49. Subsection (6)(a) describes when there are reasonable grounds to believe that an adult is a victim of a trafficking offence for the purposes of securing support and assistance. Subsection (6)(b) describes what is meant by a “conclusive determination that an adult is or is not a victim of an offence of human trafficking” for these purposes.
50. Subsection (7) defines what is meant by the terms “competent authority” and “the Trafficking Convention” for the purposes of this section.
51. Subsection (8) sets out a regulation-making power for Scottish Ministers to modify existing subsections (6) and (7) to make provision about the circumstances in which there are reasonable grounds and conclusive grounds to believe a person is a trafficking victim. Subsection (9) specifies that the regulation-making power can also make provision about any procedure to be followed by any person making a determination as to victim status, the criteria they must apply and the persons who may be involved in that process.