
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 385 (C. 37)

CRIMINAL LAW

**The Human Trafficking and Exploitation
(Scotland) Act 2015 (Commencement No. 2
and Transitional Provisions) Regulations 2016**

Made - - - - *22nd November*
Laid before the Scottish *2016*
Parliament - - - - *24th November 2016*
Coming into force - - *17th December 2016*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 45(2) and (4) of the Human Trafficking and Exploitation (Scotland) Act 2015⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Human Trafficking and Exploitation (Scotland) Act 2015 (Commencement No. 2 and Transitional Provisions) Regulations 2016 and come into force on 17th December 2016.

(2) In these Regulations “the Act” means the Human Trafficking and Exploitation (Scotland) Act 2015.

Appointed day

2. The day appointed for the coming into force of paragraphs 2, 4 and 5 of the schedule of the Act is 17th December 2016.

Transitional provision

3.—(1) This regulation applies where, in any trial—

- (a) the accused is charged in respect of the same conduct with an offence under section 1 or (as the case may be) section 4 of the Act and an offence specified in paragraph (2) (“the repealed offence”);

(1) 2015 asp 12.

- (b) it is not established beyond reasonable doubt that the time when the conduct occurred was—
 - (i) on or after 31st May 2016; and
 - (ii) before 17th December 2016; and
- (c) the court or, in the case of a trial on indictment, the jury is satisfied in every other respect that the accused committed the repealed offence.
- (2) The offences referred to in paragraph (1)(a) are—
 - (a) an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.)(2);
 - (b) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation)(3); and
 - (c) an offence under section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 (slavery, servitude and forced or compulsory labour)(4).
- (3) Where this regulation applies, the accused may be found guilty of the repealed offence.
- (4) A reference in this regulation to an offence includes a reference to—
 - (a) an attempt to commit an offence;
 - (b) incitement to commit an offence;
 - (c) counselling or procuring the commission of an offence; and
 - (d) involvement art and part in an offence.

St Andrew's House, Edinburgh
22nd November 2016

MICHAEL MATHESON
A member of the Scottish Government

(2) 2003 asp 7. Section 22 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 46.

(3) 2004 c.19. Section 4 has been relevantly amended by the Human Tissue Act 2004 (c.30), Schedule 6, paragraph 7; the 2010 Act, section 46; and S.S.I. 2008/259.

(4) 2010 asp 13.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force paragraphs 2, 4 and 5 of the schedule of the Human Trafficking and Exploitation (Scotland) Act 2015 (“the Act”) on 17th December 2016. Those paragraphs repeal offences under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.), section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation) and section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 (slavery, servitude and forced or compulsory labour) which are replaced by offences under sections 1 and 4 of the Act.

Sections 1 and 4 of the Act were commenced on 31st May 2016. Regulation 3 of these Regulations makes provision for cases where an accused is charged with both an offence being repealed by paragraphs 2, 4 or 5 of the schedule of the Act (“the repealed offences”) and an offence under section 1 or 4 of the Act and it is not established that the conduct in respect of which the accused is charged occurred during the period between the coming into force of the section 1 and 4 offences on 31st May 2016 and the repeal of the repealed offences on 17th December 2016. In such circumstances, the accused may be convicted of the relevant repealed offence, provided the court or jury is in every other respect satisfied that the accused committed that offence.

The Bill for the Act received Royal Assent on 4th November 2015. Section 45(1) of the Act brought into force sections 40, 41, 42, 44, 45 and 46 on the day after Royal Assent.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

| <i>Provision</i> | <i>Date of Commencement</i> | <i>Instrument No.</i> |
|------------------------|-----------------------------|---------------------------------|
| Part 1 | 31st May 2016 | S.S.I. 2016/128 |
| Section 8 | 31st May 2016 | S.S.I. 2016/128 |
| Section 9 (partially) | 31st May 2016 | S.S.I. 2016/128 |
| Section 10 | 31st May 2016 | S.S.I. 2016/128 |
| Section 11 (partially) | 31st May 2016 | S.S.I. 2016/128 |
| Section 12 (partially) | 31st May 2016 | S.S.I. 2016/128 |
| Part 3 | 31st May 2016 | S.S.I. 2016/128 |
| Section 32 | 31st May 2016 | S.S.I. 2016/128 |
| Section 33 | 31st May 2016 | S.S.I. 2016/128 |
| Section 34(1) | 31st May 2016 | S.S.I. 2016/128 |
| Section 35 | 31st May 2016 | S.S.I. 2016/128 |
| Section 36 | 31st May 2016 | S.S.I. 2016/128 |
| Section 37 | 31st May 2016 | S.S.I. 2016/128 |
| Section 38 (partially) | 31st May 2016 | S.S.I. 2016/128 |

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

| <i>Provision</i> | <i>Date of Commencement</i> | <i>Instrument No.</i> |
|---------------------------------|-----------------------------|---------------------------------|
| Section 39 | 31st May 2016 | S.S.I. 2016/128 |
| Section 43 | 31st May 2016 | S.S.I. 2016/128 |
| Schedule, paragraphs 1, 3 and 6 | 31st May 2016 | S.S.I. 2016/128 |