

Human Trafficking (Further Provisions and Support for Victims) Bill [HL]

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TO

Make provision about human trafficking offences, measures to prevent and combat human trafficking and the provision of support for victims of human trafficking.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

OFFENCES

Offences and aggravating factors

1 Human trafficking offences

- (1) In this Act, a “human trafficking offence” means an offence listed in the Schedule. 5
- (2) The consent of a victim to a human trafficking offence shall be irrelevant where the victim has agreed to an action because of—
- (a) threats, the use of force or other forms of coercion,
 - (b) abduction, 10
 - (c) fraud,
 - (d) deception,
 - (e) the abuse of power or of a position of vulnerability,
 - (f) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, or 15
- because the victim was a child.
- (3) For the purposes of this section and section 5, “a position of vulnerability” occurs when the person has no real or acceptable alternative but to submit to the abuse involved.

2 Aggravating factors

- (1) Where a court is considering for the purposes of sentencing the seriousness of a human trafficking offence, the court must treat the following as aggravating factors –
- (a) the offence was committed by a public official in relation to the performance of her or his duties; 5
 - (b) the offence was committed against a victim who was a child;
 - (c) the offence was committed against a vulnerable adult;
 - (d) the offence was committed by a person participating in a criminal organisation; 10
 - (e) the offence deliberately or by gross negligence endangered the life of the victim; or
 - (f) the offence was committed by use of serious violence or caused serious harm to the victim.
- (2) In this section – 15
- “serious harm” has the same meaning as in section 224 of the Criminal Justice Act 2003;
 - “vulnerable adult” has the same meaning as in section 59 of the Safeguarding Vulnerable Groups Act 2006.

3 Amendments to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 20

Section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (trafficking people for exploitation) is amended as follows –

- (a) in paragraph (4)(c) after “threats” insert “other forms of coercion, abduction, fraud”; 25
- (b) in paragraph (4)(d)(i) after “young” insert “, is subject to a position of trust relationship with a person”;
- (c) in paragraph (4)(d)(ii) –
 - (i) after “youth” insert “, position of trust”,
 - (ii) after “purpose” insert “or”; 30
- (d) after paragraph (4)(d) insert –
 - “(e) another person is given or receives payments or benefits to achieve the consent of him for any purpose within paragraph (c)(i), (c)(ii) or (c)(iii). 35
- (4A) For the purposes of this subsection –
 - (a) “services” or “benefits of any kind” can include forced begging or criminal activities;
 - (b) “position of trust” has the same meaning as in section 21 of the Sexual Offences Act 2003 in relation to England, Wales, section 43 of the Sexual Offences (Scotland) Act 2009 in relation to Scotland and section 29 of the Sexual Offences (Northern Ireland) Order 2008 in relation to Northern Ireland.” 40

4 Offences outside the United Kingdom

- (1) The Sexual Offences Act 2003 shall be amended as follows – 45
- (a) after section 59 (trafficking out of the UK for sexual exploitation), insert

the following new section –

“59A Trafficking involving a country other than the UK for sexual exploitation

- (1) A person (A) commits an offence if he or she intentionally arranges or facilitates – 5
- (a) the arrival in, entry into or travel to a country other than the United Kingdom of another person (B), and –
 - (i) A intends to do anything to or in respect of B, after B’s arrival in any part of the world, which if done will involve committing a relevant offence, or 10
 - (ii) A believes that another person is likely to do something to or in respect of B, after B’s arrival in any part of the world, which if done will involve committing a relevant offence; or 15
 - (b) the departure from another country other than the United Kingdom of another person (B) and –
 - (i) A intends to do anything to or in respect of B, after B’s departure in any part of the world, which if done will involve committing a relevant offence, or 20
 - (ii) A believes that another person is likely to do something to or in respect of B, after B’s departure in any part of the world, which if done will involve committing a relevant offence. 25
- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.”; and 30
- (b) in section 60 (sections 57 to 59: interpretation and jurisdiction), in subsections (1) and (2), for “59” substitute “59A”. 35
- (2) In section 5 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, in paragraph (5)(g) for “Scotland” substitute the words “in the United Kingdom”. 35

Investigation and prosecution

5 Requirements for investigation or prosecution

- (1) The investigation or prosecution of a human trafficking offence shall not be dependent on reporting or accusation by a victim wherever the offence takes place. 40
- (2) Any criminal proceedings may continue even if the victim has withdrawn his or her statement.
- (3) Where the victim of a human trafficking offence (A) has committed a criminal act as a direct consequence of the human trafficking offence, no prosecution or imposition of penalties shall occur if – 45

- (a) A has been compelled to commit the criminal act as a direct consequence of being subjected to –
 - (i) threats, the use of force or other forms of coercion,
 - (ii) abduction,
 - (iii) fraud,
 - (iv) deception,
 - (v) the abuse of power or of a position of vulnerability, or
 - (vi) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or
- (b) A was a child.

6 Requirements for resources for investigation or prosecution

It shall be a requirement that the Secretary of State shall take the necessary measures to ensure –

- (a) persons, units or services responsible for investigating or prosecuting human trafficking offences are trained accordingly; and
- (b) effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating human trafficking offences.

PART 2

ASSISTANCE AND SUPPORT

7 Requirements for assistance and support

- (1) The Secretary of State shall, by order, set out the procedure for identifying a person who might have been the victim of a human trafficking offence.
- (2) The Secretary of State must ensure that –
 - (a) as soon as a person is identified under subsection (1), he or she must be provided, and continue to be provided, assistance and support until three months after criminal proceedings are completed;
 - (b) for a child identified under subsection (1), there shall be a plan to safeguard and promote the long-term welfare of that child based on an individual assessment of that child’s best interests;
 - (c) if the family of a child identified under subsection (1) is resident in the United Kingdom or are British citizens they shall be entitled to assistance and support under this section;
 - (d) assistance and support provided under this section –
 - (i) is not conditional on the person’s willingness to act as a witness; and
 - (ii) shall be provided with the agreement of the person.
- (3) For the purpose of this section, “assistance and support” shall include but not be restricted to –
 - (a) appropriate and safe accommodation;
 - (b) material assistance, including assistance for a person with special needs caused by pregnancy, physical or mental health, disability, or being the victim of serious psychological, physical or sexual violence;
 - (c) medical treatment, including psychological assistance;

- (d) counselling;
- (e) information, including information on a reflection and recovery period, the possibility of granting international protection and refugee status;
- (f) translation and interpretation services;
- (g) access to education for child victims and children of victims; 5
- (h) legal counselling, either through legal aid or other means;
- (i) legal representation, either through legal aid or other means;
- (j) assistance in applying for compensation.

8 Compensation for victims of trafficking

The Secretary of State shall, by order, set out – 10

- (a) the procedures to be adopted whereby a person shall be able to apply for compensation if he or she has been a victim of a human trafficking offence;
- (b) the arrangements to be made if leave to remain is required; and
- (c) the assistance to be provided under section 7(3)(j). 15

9 Legal advocate for child

- (1) It shall be a requirement that the Secretary of State shall, by order, make arrangements for each child who has been the victim of a human trafficking offence to have a legal advocate appointed to represent the best interests of that child if the person who has parental responsibility fulfils any of the conditions set out in subsection (2). 20
- (2) Subsection (1) shall apply if the person who has parental responsibility for the child –
 - (a) is suspected of taking part in a human trafficking offence;
 - (b) has another conflict of interest with the child; or 25
 - (c) is not in contact with the child.
- (3) In this section, “parental responsibility” has the same meaning as in section 3 of the Children Act 1989.

PART 3

SPECIAL MEASURES FOR WITNESSES 30

10 Amendments to the Youth Justice and Criminal Evidence Act 1999

The Youth Justice and Criminal Evidence Act 1999 shall be amended as follows –

- (a) in section 17(4) (witnesses eligible for assistance on grounds of fear or distress about testifying), after “sexual” insert “or human trafficking”; 35
- (b) in section 21(1)(b)(ii) (special provisions relating to child witnesses) after “(c)” insert “, (ca)”;
- (c) in section 22(1)(b)(ii) (extension of provisions of section 21 to certain witnesses over 17) after “(c)” insert “, (ca)”;
- (d) in section 34 (complaints in proceedings for sexual offences), after “sexual” insert “or human trafficking”; and 40
- (e) in section 35 (cross examination of child witnesses), in subsection (3),

after paragraph (c) insert –

“(ca) trafficking offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004;”.

11 Amendments to the Criminal Evidence (Northern Ireland) Order 1999

The Criminal Evidence (Northern Ireland) Order 1999 (N.I. 8) shall be amended as follows – 5

- (a) in article 3 (meaning of “sexual offence” and other references to offences), in subsection (1), after paragraph (ga) insert –
 - “(gb) trafficking offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004;” 10
- (b) in article 5(4) (witnesses eligible for assistance on grounds of fear or distress about testifying), after “sexual” insert “or human trafficking”;
- (c) in article 9(1)(b)(ii) (special provisions relating to child witnesses) after “(c)” insert “, (cd)”;
- (d) in section 10(1)(b)(ii) (extension of provisions of section 21 to certain witnesses over 17) after “(c)” insert “, (cd)” 15
- (e) in section 23 (child complainants and other of child witnesses), in subsection (3), after paragraph (cc) insert –
 - “(cd) trafficking offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004;” 20

PART 4

PREVENTION AND MONITORING

12 Prevention and monitoring

- (1) It shall be a requirement that the Secretary of State shall annually publish a strategy on raising awareness of and reducing human trafficking offences. 25
- (2) The Secretary of State shall, by order, establish a national body to report to Parliament on the performance of this Act in the United Kingdom and on related matters.
- (3) The national body established under subsection (2) shall provide relevant information to the European Union to prevent and monitor human trafficking. 30

PART 5

GENERAL

13 General interpretation

- (1) The following apply for the purposes of this Act.
- (2) A “child” shall mean any person below 18 years of age. 35
- (3) If the age of the person is uncertain and there are reasons to believe the person is a child, the person shall be presumed to be a child.

14 Orders

- (1) All orders under this Act are to be made by statutory instrument.
- (2) A statutory instrument containing an order under this Act is subject to annulment in pursuance of a resolution in either House of Parliament.

15 Short title, commencement and extent

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- (1) This Act may be cited as the Human Trafficking (Further Provisions and Support for Victims) Act 2011.
- (2) This Act comes into force in accordance with provision made by the Secretary of State by order.
- (3) This Act extends to England and Wales, Scotland and Northern Ireland.

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SCHEDULE

Section 1

HUMAN TRAFFICKING OFFENCES

PART 1

ENGLAND AND WALES

- | | | |
|---|---|----|
| 1 | (1) An offence under section 57 of the Sexual Offences Act 2003 (trafficking into the UK for sexual exploitation). | 5 |
| | (2) An offence under section 58 of that Act (trafficking within the UK for sexual exploitation). | |
| | (3) An offence under section 59 of that Act (trafficking out of the UK for sexual exploitation). | 10 |
| | (4) An offence under section 59A of that Act (trafficking involving a country other than the UK for sexual exploitation) (as inserted by this Act). | |
| | (5) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (trafficking people for exploitation). | |

PART 2

15

SCOTLAND

- | | | |
|---|--|----|
| 2 | (1) An offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution, etc). | |
| | (2) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (trafficking people for exploitation). | 20 |

PART 3

NORTHERN IRELAND

- | | | |
|---|--|----|
| 3 | (1) An offence under section 57 of the Sexual Offences Act 2003 (trafficking into the UK for sexual exploitation). | |
| | (2) An offence under section 58 of that Act (trafficking within the UK for sexual exploitation). | 25 |
| | (3) An offence under section 59 of that Act (trafficking out of the UK for sexual exploitation). | |
| | (4) An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (trafficking people for exploitation). | 30 |

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To make provision about human trafficking offences, measures to prevent and combat human trafficking and the provision of support for victims of human trafficking.

Lord McColl of Dulwich

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