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As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Human Trafficking and Exploitation (Scotland) Bill introduced in the Scottish Parliament on 11 December 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is published separately as SP Bill 57–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

3. The Bill’s overarching objective is to consolidate and strengthen the existing criminal law against human trafficking and exploitation and enhance the status of and support for its victims. The Bill will also give Ministers power, by regulations, to specify relevant authorities to work with the Scottish Government to develop and implement a Scottish trafficking and exploitation strategy.

4. The Bill will consolidate and clarify existing trafficking offences into one single offence. Current domestic criminal law against human trafficking in Scotland sits in a number of different Acts—
   - Section 22 of the Criminal Justice (Scotland) Act 2003\(^1\) (‘2003 Act’) criminalises arranging or facilitating a person’s travel for the purposes of prostitution and involvement in the making or production of indecent materials;
   - Section 4 and 5 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004\(^2\) (‘2004 Act’) criminalises arranging or facilitating a person’s travel for the purposes of other forms of exploitation;
   - Section 46 of the Criminal Justice and Licensing (Scotland) Act 2010\(^3\) (‘2010 Act’) amends the provisions in the 2003 and 2004 Acts, for example to create an offence under both for someone who arranges or facilitates travel into, within or out of a country other than the UK.

5. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

THE STRUCTURE AND A SUMMARY OF THE BILL

6. The Bill is in six parts.

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7. Part 1 (Offences) includes provision on the creation of a single offence of human trafficking for all types of exploitation of both adults and children; establishes statutory aggravators of human trafficking for use with other crimes; and reframes the current standalone offence of slavery, servitude and forced or compulsory labour.

8. Part 2 (Protection of victims) includes provision on prosecutorial guidelines for the prosecution of victims and provision about the support and assistance to which adult victims are entitled.

9. Part 3 (Confiscation of property) includes provision on detention and forfeiture of property and proceeds of crime.

10. Part 4 (Trafficking and exploitation prevention and risk orders) includes provision on two new preventive orders, the trafficking and exploitation prevention order and the trafficking and exploitation risk order.

11. Part 5 (Strategy and reporting) includes provision on the trafficking and exploitation strategy and the duty on specified Scottish public authorities to notify and provide information about victims.


PART ONE – OFFENCES

Human trafficking

Section 1: Human trafficking

13. Section 1 provides for a single offence of human trafficking for the purpose of all forms of exploitation of adults and children. See paragraph 4 above for existing offence legislation.

14. Subsection (1) defines the conduct which constitutes the offence of human trafficking. A person commits an offence if the person arranges or facilitates another person’s travel with a view to the other person being exploited. It is irrelevant whether that other person consents to the arrangement or facilitation of travel (subsection (2)). Examples of what constitutes arranging or facilitating another person’s travel for these purposes include (but are not limited to)—

- recruiting the person with a view to transporting or transferring the person;
- transporting or transferring the person;
- transferring or exchanging control of the person;
- harbouring or receiving the person.

15. Subsection (3) provides that the person arranges or facilitates another person’s travel with a view to the other person being exploited only if the person intends to exploit the other person or the person knows or ought to know the other person is likely to be exploited (in any part of the world) during or after the travel.
16. Subsection (5)(a) provides that on summary conviction of the offence, the maximum penalty is imprisonment for a term not exceeding 12 months, a fine not exceeding the statutory maximum or both. Subsection (5)(b) provides that on conviction of the offence on indictment, the maximum penalty is imprisonment for life, or a fine, or both.

Section 2: Application of offence to conduct in United Kingdom and elsewhere

17. Section 2 provides for the application of the human trafficking offence to conduct in the United Kingdom and elsewhere, reflecting the fact that human trafficking activity may involve activity that is completely or partly outwith Scotland. This measure implements the terms of Article 10(2)(c) (jurisdiction) of the Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, replacing Framework Decision 2002/629/JHA (“EU Directive”). It should be read with the definition of travel in section 36.

18. Subsections (1) and (2) provide that a UK national, a person who at the time of the offence was habitually resident in Scotland or a body incorporated under the law of a part of the UK, commits an offence of human trafficking regardless of where the arranging or facilitating of travel takes place, or where the travel itself takes place. Whether or not a person is “habitually resident” in Scotland will be determined in the light of all the facts and circumstances of the case.

19. Subsection (3) provides that any other person commits the offence of human trafficking only if any part of the arranging or facilitating of travel takes place in the UK, or the travel consists of arrival in or entry into, departure from, or travel within, the UK.

Section 3: Exploitation for purposes of offence of human trafficking

20. Section 3 describes what constitutes exploitation for the purposes of the offence of human trafficking. By virtue of subsection (1), only exploitation of a type mentioned in subsections (2) to (8) is to be regarded as exploitation in this context.

21. Subsection (2) provides that a person is exploited if the person is the victim of conduct which involves the commission of an offence under section 4 of the Bill (slavery, servitude and forced or compulsory labour) or would be if the conduct occurred in Scotland.

22. Subsections (3) to (5) deal with prostitution and sexual exploitation and provide that a person is exploited if—

- another person exercises control, direction or influence over the first person’s prostitution in a way which shows that the other person is aiding, abetting or compelling the prostitution;
- another person involves the first person in the making or production of obscene or indecent material; or

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• the person is the victim of conduct constituting one of a number of listed sexual offences (or which would constitute such an offence if that conduct occurred in Scotland).

23. The categories of exploitation related to prostitution and the making of indecent material are drawn from the existing offence in section 22 of the 2003 Act. The category related to other forms of exploitation in connection with sexual offences is a new development in Scots law, though has some precedent under the Sexual Offences Act 2003 in England and Wales.

24. Subsection (6) deals with exploitation relating to the removal of organs etc. It provides that a person is exploited in that context if they are encouraged, required or expected to do anything constituting either an offence under Part 1 of the Human Tissue (Scotland) Act 2006 which deals principally with removal of organs for transplantation, or any other offence under the law of Scotland involving removal of a part of the human body (or anything which would constitute such an offence were it done in Scotland). This latter category ensures that the removal of organs or tissue for purposes other than transplantation is caught by the trafficking offences. This covers the removal of body parts for research, sacrificial rites, consumption, etc. For these purposes, a part of the body comprises all parts of the body, including blood.

25. Subsections (7) and (8) make more general provision. Subsection (7) establishes that a person is exploited if force, threats or deception are used to induce the person to provide services or benefits or to enable another person to acquire benefits. Subsection (8) provides that a person is exploited if another person takes advantage of the person’s vulnerability to use or attempt to use the person to provide services or benefits (or to enable another person to acquire benefits). This will ensure the offence captures those cases where the role of the person being exploited is entirely passive, and where the person is being used as a tool by which others can gain a benefit of any kind.

26. The categories of exploitation in subsections (6) to (8) are derived from section 4 of the 2004 Act.

Slavery, servitude and forced or compulsory labour

Section 4: Slavery, servitude and forced or compulsory labour

27. Section 4 provides for an offence of slavery, servitude and forced or compulsory labour. Subsections (1) and (2) provide that a person is guilty of an offence if that person holds another person in slavery or servitude or requires that other person to perform forced or compulsory labour in circumstances which show that the first person knows or ought to know that the person is being so held. The offence must be interpreted in accordance with Article 4 of the European Convention on Human Rights. That Article prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour. This is currently an offence under section 47 of the 2010 Act, which was created in response to the case of Siliadin v France5 (where the European Court of Human Rights held that there had been a violation of Article 4 in relation to the holding of an individual in domestic servitude).

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28. Subsection (3) provides that, in assessing whether a person has been the victim of the offence, the court is to have regard to any of the alleged victim's characteristics that make the person more vulnerable than other people. Examples of these characteristics include age, health or family relationships.

29. Subsection (4) sets out the maximum penalty available on conviction of the offence of slavery, servitude and forced or compulsory labour. This is an increase from the current maximum penalty for the offence under section 47 of the 2010 Act. Subsection (4)(a) provides that on summary conviction of the offence, the maximum penalty is imprisonment for a term not exceeding 12 months, a fine not exceeding the statutory maximum, or both. Subsection (4)(b) provides that on conviction of the offence on indictment, the maximum penalty is imprisonment for life, a fine, or both.

**Aggravation as to human trafficking**

**Section 5: General aggravation of offence**

30. Section 5 makes provision for a statutory aggravation which applies in cases where an accused commits any other offence and that offence has a connection with a human trafficking offence. Where an indictment or complaint libels or specifies that an offence is aggravated by a connection with human trafficking activity and it is subsequently proved that the offence is aggravated in that way, the court must state on conviction that the offence is so aggravated, record the conviction in a way which shows that the offence is so aggravated, take the aggravation into account when determining the appropriate sentence and state the extent of any difference in the sentence in light of the aggravation (or, if there is no difference, the reasons for that) (subsections (1) and (5)).

31. Subsection (2) sets out the circumstances in which an offence can be regarded to have been aggravated by a connection with human trafficking. This relies on proof that the accused was motivated, in whole or in part, by the objective of committing or conspiring to commit the offence of human trafficking. In terms of subsection (3), it is not material to establishing the aggravation whether or not the offence of human trafficking was actually committed by the offender or another person.

32. Subsection (4) provides clarification that corroboration is not needed to prove that an offence is aggravated by a connection with human trafficking activity – evidence from a single source is sufficient. This is consistent with the existing law in relation to both corroboration and statutory aggravations. This position is under review pending further parliamentary scrutiny of the Criminal Justice (Scotland) Bill.

**Section 6: Aggravation involving public official**

33. Section 6 makes similar provision about a statutory aggravation which applies in cases where a public official, acting or purporting to act in the course of official duties, commits the offence of human trafficking.

34. Subsection (4) sets out the steps the court must take when it is libelled in an indictment or specified in a complaint that the offence of human trafficking is aggravated by an abuse of a
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public position and proved that the offence is so aggravated. These are similar to the steps which must be taken in relation to the general aggravation in section 5.

35. Subsection (5) defines those to be considered as a public official for the purposes of section 6, while subsection (6) defines the term “an international organisation” for the purposes of this section.

36. Subsection (7) enables the Scottish Ministers to modify by regulations the definition of who is a public official and the definition of an international organisation. Any such regulations will be subject to the affirmative procedure.

PART 2 – PROTECTION OF VICTIMS

Prosecution of victims

Section 7: Lord Advocate’s guidelines on prosecution of victims of offences

37. Section 7 places a duty on the Lord Advocate to prepare and publish guidelines for prosecutors about the prosecution of suspected or confirmed victims of the offence of human trafficking and the offence under section 4 of the Bill.

38. Subsection (2) sets out that the guidelines must include factors to be taken into account or steps to be taken when deciding whether to prosecute a person who does an act which constitutes an offence having been compelled to do so and that the compulsion is directly attributable to the person being, or appearing to be, a victim of an offence of human trafficking or, as the case may be, under section 4 of the Bill.

39. Subsection (3) provides that the Lord Advocate may, from time to time, revise the guidelines.

Support and assistance for adult victims of human trafficking

Section 8: Duty to secure support and assistance

40. Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings ("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.

41. Section 8 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.

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42. 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.

43. 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)).

44. 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)).

45. Subsection (4) provides a non-exhaustive list of the kind of support and assistance that may be provided under section 8. 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;
- language translation and interpretation;
- counselling;
- legal advice;
- information about other services available to the adult; and
- repatriation.

46. 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)).

47. 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.

48. Subsection (7) defines what is meant by the terms “competent authority” and “the Trafficking Convention” for the purposes of this section.
PART 3 - CONFISCATION OF PROPERTY

Detention and forfeiture

Section 9: Detention of vehicle, ship or aircraft

49. Section 9 sets out the power of a constable to detain a vehicle, ship or aircraft if a person has been arrested for an offence of human trafficking.

50. Subsection (1) describes the circumstances where a police constable may detain a vehicle, ship or aircraft. Subsection (1)(a) provides that a constable may detain a vehicle, ship or aircraft if a person has been arrested for an offence of human trafficking and the constable has reasonable grounds to believe that a forfeiture order would be made if the person arrested were convicted of the offence (subsection (1)(b)).

51. Subsection (2) provides for the duration of the detention of the property. Subsection (2)(a) provides that the vehicle, ship or aircraft may be detained until a decision is taken as to whether or not to begin solemn proceedings against the person arrested for the offence. In circumstances where solemn proceedings have begun, the property may be detained until the person is acquitted (subsection (2)(b)(i)), the person is convicted and a decision is made whether or not to order forfeiture of the property under section 10 (subsection (2)(b)(ii)), or the proceedings are otherwise concluded (subsection (2)(b)(iii)).

52. Subsections (3) and (4) set out the circumstances in which solemn proceedings are to be taken to have commenced and concluded for the purposes of this section.

53. Subsection (5) lists the circumstances in which a person (including the accused) with a relevant interest in the detained property may apply to the sheriff for release of the vehicle, ship or aircraft. Subsection (6) sets out the sheriff’s power to order release subject to satisfactory security being tendered.

54. Subsection (7) provides that the sheriff may impose such other conditions as to the release of the detained property as the sheriff thinks fit.

Section 10: Forfeiture of vehicle, ship or aircraft

55. Section 10 sets out the power of the court to order forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with an offence of human trafficking.

56. Subsections (1) to (3) provides that forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence of human trafficking may be ordered if a person convicted on indictment of that offence, when the offence was committed—

- owned the vehicle, ship or aircraft,
- was a director, secretary or manager of a company which owned it,
- was in possession of it under a hire purchase agreement,
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- was a director, secretary or manager of a company which was in possession of it under a hire purchase agreement,
- in relation to a vehicle, was driving it,
- in relation to a ship or aircraft, was the charterer of it or was acting as captain of it.

57. Subsection (4) makes special provision about cases where a ship or aircraft is to be forfeited, but the offender does not own it and was not a director, secretary or manager of a company which owns it. It provides that, in those circumstances, forfeiture of a ship or aircraft may only be ordered if any one of the tests listed in this subsection is satisfied. Subsection (4)(a) provides that if 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, knew, or ought to have known of the intention to use it in the course of the commission of the offence of human trafficking, then forfeiture of a ship or aircraft may be ordered. Subsection (4)(b) provides that, in the case of a ship (other than a hovercraft), if its gross tonnage is less than 500, then forfeiture of that ship may be ordered. Subsection (4)(c) provides that, in the case of an aircraft, if the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes, then forfeiture of that aircraft may be ordered under this section. Protection is provided for particular categories of owner who, due to the size of the ship or aircraft in question or the circumstances in which it is used for trafficking, do not know or reasonably suspect, or are unlikely to know or reasonably suspect, that the ship or aircraft is being used in that way. There is a greater likelihood that an owner of a vehicle or smaller types of ships or aircraft will have actual or constructive knowledge that their property is being or intended to be used for the purposes of trafficking.

58. Subsection (5) provides that forfeiture cannot be ordered without giving any person claiming an interest in the relevant property the chance to make representations.

Proceeds of crime

Section 11: Proceeds of Crime Act 2002: lifestyle offences

59. Section 11 amends Schedule 4 to the Proceeds of Crime Act 2002 (“2002 Act”) to categorise all trafficking and exploitation offences as lifestyle offences for the purposes of that Act. A conviction of a lifestyle offence triggers assumptions under the 2002 Act that the accused has a criminal lifestyle and that the accused’s property is recoverable as criminal proceeds.

60. Section 11(a) amends Schedule 4 to the 2002 Act, by substituting paragraph 4 thereof with a list of all offences related to trafficking and thus categorising all such offences as lifestyle offences for the purposes of the 2002 Act. Section 11(b) amends the same Schedule, by inserting a new paragraph 4A to provide that an offence under section 4 of the Bill also constitutes a lifestyle offence.
PART 4 – TRAFFICKING AND EXPLOITATION PREVENTION AND RISK ORDERS

 Trafficking and exploitation offences

Section 12: Relevant trafficking or exploitation offences

61. Section 12 provides a list of the relevant trafficking and exploitation offences for the purposes of trafficking and exploitation prevention and risk orders made under the Act. The list includes repealed provisions as orders (other than orders on sentencing) may still be made with reference to convictions under such provisions.

62. Subsection (2) provides that the Scottish Ministers may modify by regulations the offences contained in the list. Under section 37(2) any such regulations are subject to the affirmative procedure.

 Trafficking and exploitation prevention orders

Section 13: Prevention orders on sentencing

63. Section 13 provides that a court may, instead of or in addition to dealing with the person in any other way, make a trafficking and exploitation prevention order (TEPO) on sentencing of an adult.

64. Subsection (1) sets out the three circumstances where the court may make a TEPO against a person on sentencing. The first is conviction of an adult of a relevant trafficking and exploitation offence. The second circumstance is acquittal of such an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (which provides a defence where a person is unable by reason of mental disorder to appreciate the nature or wrongfulness of their conduct). The third circumstance is a finding of unfitness for trial in relation to such an offence under section 53F of that Act (which provides that a person is unfit for trial if it is established on the balance of probabilities that the person is incapable, by reason of a mental or physical condition, of participating effectively in that trial). In relation to the third circumstance there must also be a finding that the adult has done the act constituting the offence.

65. Subsection (3) provides that the court may make a TEPO at its own instance or on the motion of the prosecutor.

66. Subsection (4) provides the test for making a TEPO on sentencing. The court must be satisfied that there is a risk that the person in respect of whom the order is to have effect may commit another offence mentioned in section 12 and that it is necessary to make the prohibitions and requirements in the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the person committed such an offence.

67. Subsection (5) provides a definition of “the court” for the purposes of this section.
Section 14: Prevention orders on application

68. Section 14 provides that the chief constable may apply to a sheriff for a TEPO against an adult.

69. Subsection (2) sets out the appropriate sheriff to whom such an application should be made.

70. Subsection (3) sets out the tests for making a TEPO on application. The sheriff must be satisfied that the person in respect of whom the order is sought is a “relevant offender” (subsection (3)(a)), that since the person first became a relevant offender, the person has acted in a way which means that there is a risk the person will commit a relevant trafficking or exploitation offence (subsection (3)(b)) and it is necessary to make the prohibitions or requirements in the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the person committed such an offence (subsection (3)(c)).

71. Subsection (4) provides that conduct which occurred before this section came into force may be considered when determining whether there is a risk that a person may commit a relevant trafficking offence.

Section 15: Meaning of relevant offender

72. Section 15 defines what is meant by a “relevant offender” for the purposes of section 14.

73. Subsection (2) provides that a person is a relevant offender if any of the court disposals listed in the subsection have been made in the UK in relation to that person and in respect of a relevant trafficking or exploitation offence (as set out in section 12 of the Bill).

74. Subsections (3) to (5) deal with findings of courts and tribunals outside the United Kingdom. Subsection (3) provides that a person is a relevant offender if, under the law of a country outside the United Kingdom, a listed disposal is made in respect of a person in relation to an offence which is equivalent to an offence listed in section 12. Subsections (4) and (5) set out tests for determining whether an offence is equivalent to a relevant offence. In particular, such offences are acts which constitute offences under the law of the country concerned and which would constitute a relevant trafficking or exploitation offence under the law of Scotland if done in the UK, by a UK national or person habitually resident in Scotland or as regards the UK (e.g. by virtue of the fact that travel was arranged into, out of or within the UK).

75. Subsection (6) establishes a mechanism for determining whether an act constituting an offence in a country outside the UK would constitute an offence under the law of Scotland.

76. Subsection (8) provides that, for the purposes of this section, convictions, acquittals, findings and cautions include those which took place before this section comes into force.
Section 16: Contents of prevention orders

77. Section 16 makes provision about the prohibitions or requirements (or both) that may be contained in a TEPO. Each prohibition and requirement in a TEPO is for a fixed period and the order itself is for a fixed period. The order and the prohibitions and requirements may all be for the same period. However, the Bill allows some requirements and prohibitions in the order to be set for a period shorter than that of the order, if that is appropriate.

78. Subsection (2) provides that both the order and any prohibition or requirement in the order must have a specified fixed period of at least five years. The only exception to that requirement relates to a prohibition on foreign travel and an order containing only a prohibition on foreign travel (which is dealt with in section 17) and relates to a period of not more than five years. Subsection (4) provides that a TEPO may prohibit the person in respect of whom the order is made from doing things or require that person to do things. Different prohibitions and requirements may have effect for different periods.

79. Subsection (5) provides that, if the court makes a TEPO in respect of a person already subject to such an order, the earlier order will cease to have effect.

80. Subsection (6) defines what is meant by “the court” for the purposes of the section.

Section 17: Prohibitions on foreign travel

81. Section 17 makes provision about prohibitions on foreign travel in TEPOs.

82. Subsection (1) provides that a prohibition on foreign travel contained in a TEPO, and any TEPO which contains such a prohibition and no other prohibitions or requirements, must be for a fixed period of not more than five years.

83. Subsection (2) defines a prohibition on foreign travel as a prohibition on travelling to countries outside the UK (either by reference to particular countries or generally).

84. Subsection (3)(a) determines that a prohibition on foreign travel varied or renewed by application under section 18 or 19 may be varied or renewed for further fixed periods of no more than five years each time. Subsection (3)(b) requires that an order containing only a foreign travel restriction may be renewed for up to that fixed period.

85. Subsection (4) sets out the requirement on a person in respect of whom a TEPO containing a prohibition on foreign travel to all countries outwith the United Kingdom has been made to surrender at a police station each passport that the person has.

86. Subsection (5) provides that any passport surrendered must be returned as soon as is reasonably practicable after the person ceases to be subject to such a prohibition on foreign travel. Circumstances where this subsection would not apply are provided for at subsection (6); for example, where a passport has already been returned to the relevant authority.
87. Section 18 makes provision about varying, renewing and discharging TEPOs made on sentencing.

88. Subsections (2) to (4) set out general powers in this context. The person in respect of whom the TEPO is made or the prosecutor may apply for variation, renewal or discharge of such a TEPO. That application is to be made to the High Court where that court made the order and to the sheriff otherwise. Subsection (4)(b) makes provision about shrieval jurisdiction in this connection. Where the relevant court receives such an application, it may vary, renew or discharge individual prohibitions or requirements or add new prohibitions or requirements, it may renew the whole order or it may discharge the whole order.

89. Subsection (5) provides that the court must, before making an order under this section, give an opportunity to make representations to the person in respect of whom the order is made, the prosecutor and the chief constable. Subsection (6) provides that, after taking into account any such representations, the court may then make such order as it thinks appropriate.

90. Subsection (7) sets out the tests the court must consider when deciding whether to vary, renew or discharge TEPOs made on sentencing (including by adding new prohibitions or requirements) or any prohibitions or requirements within them. Subsection (7)(a) applies the tests for the making of a TEPO to any variation (including an increase or a relaxation of a requirement or prohibition), renewal or addition. Subsection (7)(b) applies those tests to any discharge of a prohibition or requirement or of an order.

91. Subsection (8) makes it clear that an order varying or renewing a TEPO is subject to the requirements and prohibitions established by sections 16 and 17 in the same way as the original order.

92. Subsection (9) defines “prosecutor” for the purposes of this section.

Section 19: Orders on application: variation, renewal and discharge

93. Section 19 makes provision about the variation, renewal or discharge of TEPOs made on application.

94. Subsections (2) to (4) set out general powers in this context. The person in respect of whom the TEPO is made or the chief constable may apply to the sheriff for variation, renewal or discharge of a TEPO made on application. Subsection (4)(b) makes provision about shrieval jurisdiction in this connection. Where the sheriff receives such an application, the sheriff may vary, renew or discharge individual prohibitions or requirements or add new prohibitions or requirements, renew the order so that the period of the order itself is extended or discharge the whole order.

95. Subsection (5) provides that the sheriff must, before making an order under this section, give an opportunity to make representations to the person in respect of whom the order is made.
and the chief constable. Subsection (6) provides that after taking into account any such representations, the sheriff may then make such an order as the sheriff thinks appropriate.

96. Subsection (7) sets out the tests the sheriff must consider when deciding whether to vary, renew or discharge TEPOs on application (including by adding new prohibitions or requirements) or any prohibitions or requirements within them. Those tests reflect the tests for the making of a TEPO.

97. Subsection (8) provides that when determining an application under this section the sheriff may consider conduct which occurred before this section comes into force.

98. Subsection (9) makes it clear that an order varying or renewing a TEPO is subject to the requirements and prohibitions established by sections 16 and 17 in the same way as the original order.

Section 20: Interim prevention orders

99. Section 20 gives power to a sheriff to make an interim TEPO while the main application under section 14 is being determined. The sheriff may make such an order if the sheriff considers it just to do so (subsection (1)) and such an order may contain prohibitions or requirements (or both) in relation to the person in respect of whom the order is to have effect (subsection (2)). Those prohibitions or requirements may relate to things to be done or not done in any part of Scotland or anywhere outwith Scotland (subsection (3)).

100. Subsection (4) provides that an interim TEPO will only have effect for a fixed period, specified in the order, and will cease to have effect on the determination of an application for a TEPO under section 14 if that fixed period has not expired.

101. Subsection (5) allows for an application to a sheriff in the sheriffdom of the sheriff who made the interim TEPO for variation or discharge of that order. Such an application may be made by the person in respect of whom the order was made or the chief constable.

Section 21: Appeals: prevention orders

102. Section 21 provides for an appeals process in relation to TEPOs and interim TEPOs.

103. Subsection (1) makes provision about TEPOs made on sentencing and any variation or renewal of such a TEPO. These are to be treated as sentences for the purposes of any appeal.

104. Subsections (2), (3) and (4) make provision about appeals in relation to TEPOs made on application, any variation or renewal of such a TEPO and interim TEPOs. The person in respect of whom the order was made or the chief constable may appeal against any of these orders.
These documents relate to the Human Trafficking and Exploitation (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 11 December 2014

Trafficking and exploitation risk orders

Section 22: Risk orders

105. Section 22 provides that the chief constable may apply to a sheriff for a trafficking and exploitation risk order (TERO) against an adult. A TERO differs from a TEPO in that it may be made where a person has not previously been convicted of a trafficking or exploitation offence but the person’s behaviour indicates a risk that others may be at harm as a result of that person committing such an offence and intervention at an early stage is necessary to prevent that harm. A TEPO can only be made where a relevant offence has already been committed.

106. Subsection (2) sets out the appropriate sheriff to whom an application for such an order may be made.

107. Subsection (3) sets out the tests for making a TERO. The sheriff may only make an order if satisfied that the person in respect of whom the order is sought has acted in a way which means that there is a risk the person may commit a relevant trafficking or exploitation offence (subsection (3)(a)) and it is necessary to make the prohibitions or requirements in the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the person committed such an offence (subsection (3)(b)).

108. Subsection (4) provides that in assessing those tests the sheriff may consider conduct which occurred before this section comes into force.

Section 23: Contents of risk orders

109. Section 23 makes provision about the prohibitions or requirements (or both) that may be contained in a TERO. Each prohibition and requirement in a TERO is for a fixed period and the order itself is for a fixed period. The orders and the prohibitions or requirements may all be for the same period. However, the Bill allows some requirements and prohibitions in the order to be set for a shorter period, if that is appropriate.

110. Subsection (2) provides that both the order and any prohibition or requirement in the order must have a specified fixed period of at least two years. However, this does not apply to a prohibition on foreign travel or to an order that contains a prohibition on foreign travel and no other prohibitions or requirements. Such a prohibition (or an order containing only such a prohibition) must be for a fixed period of no more than five years under section 24(1)).

111. Subsection (4) provides that a TERO may prohibit the person in respect of whom the order is made from doing things or require that person to do things. Different prohibitions and requirements may have effect for different periods.

112. Subsection (5) provides that if the sheriff makes a TERO in relation to a person already subject to such an order, the earlier order will cease to have effect.
Section 24: Prohibitions on foreign travel

113. Section 24 makes provision about prohibitions on foreign travel contained in a TERO.

114. As noted above, subsection (1) provides that a prohibition on foreign travel contained in a TERO, and any TERO which contains such a prohibition and no other prohibitions or requirements must be for a fixed period of not more than five years.

115. Subsection (2) defines a “prohibition on foreign travel” as a prohibition on travelling to countries outwith the UK (either by reference to particular countries or generally).

116. Subsection (3)(a) determines that a prohibition on foreign travel varied or renewed under section 25 may be varied or renewed for further fixed periods of no more than five years each time. Subsection (3)(b) requires that an order containing only a foreign travel restriction may be renewed for up to that fixed period.

117. Subsection (4) sets out the requirement on a person in respect of whom a TERO has been made containing a prohibition on foreign travel to all countries outwith the United Kingdom to surrender at a police station each passport that the person has. Subsection (5) provides that any passport surrendered must be returned as soon as is reasonably practicable after the person ceases to be subject to a prohibition on foreign travel to all countries outwith the United Kingdom. Circumstances where this subsection would not apply are provided for at subsection (6); for example, where a passport has already been returned to the relevant authority.

Section 25: Variation, renewal and discharge of risk orders

118. Section 25 makes provision about the variation, renewal or discharge of TEROs.

119. Subsections (1) to (3) set out general powers in this context. The person in respect of whom the TERO is made or the chief constable may apply to the sheriff for variation, renewal or discharge of a TERO. Subsection (3) makes provision about shrieval jurisdiction in this connection. Where the sheriff receives such an application, the sheriff may vary, renew or discharge individual prohibitions or requirements or add new prohibitions or requirements, renew the whole order or discharge the whole order.

120. Subsection (4) provides that the sheriff must, before making an order under this section, give an opportunity to make representations to the person in respect of whom the order is made and the chief constable. Subsection (5) provides that after taking into account any such representations, the sheriff may then make any order the sheriff considers appropriate.

121. Subsection (6) sets out the tests the sheriff must consider when deciding whether to vary, renew or discharge TEROs (including by adding new prohibitions or requirements) or any prohibitions or requirements within them. Subsection (6)(a) applies the tests for the making of a TERO to any variation (including an increase or a relaxation of a requirement or prohibition), renewal or addition. Subsection (6)(b) applies those tests to any discharge of a prohibition or requirement or of an order.
Section 26: Interim risk orders

122. Section 26 provides that a sheriff may make an interim TERO while the main application under section 22 is being determined. The sheriff may make such an order if the sheriff considers it just to do so (subsection (1)) and such an order may contain prohibitions or requirements (or both) in relation to the person in respect of whom the order is to have effect (subsection (2)). Those prohibitions or requirements may relate to things to be done or not done in any part of Scotland or anywhere outwith Scotland (subsection (3)).

123. Subsection (4) provides that an interim TERO will only have effect for a fixed period, specified in the order, and will cease to have effect on the determination of the main application if that fixed period has not already expired.

124. Subsection (5) allows for an application for variation or discharge of an interim TERO (or a requirement or prohibition in the order) to be made to a sheriff in the sheriffdom of the sheriff who made the interim order by the person in respect of whom the order was made or the chief constable (subsection (6)).

Section 27: Appeals: risk orders

125. Section 27 provides for an appeals process in relation to TEROs and interim TEROs and any order varying or renewing such a TERO or interim TERO. The person in respect of whom the order was made or the chief constable may appeal against any of these orders.

Offences and supplementary provision

Section 28: Offences

126. Section 28 makes provision about breach of TEPOs and TEROs.

127. Subsections (1) and (2) provide that a person commits an offence if that person does anything which the person is prohibited from doing by an order or fails to do anything which the person is required to do by a TEPO or a TERO or an interim TEPO or TERO.

128. Subsection (3) makes provision about penalties in relation to these offences. A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory minimum (or both). On conviction on indictment that person is liable to imprisonment for a term not exceeding five years or a fine (or both).

Section 29: Enforcement of other UK orders

129. Section 29 provides that the Scottish Ministers may modify, by regulations, the list of orders at section 28(2) so that a breach of those orders in Scotland constitutes an offence under section 28(1). The orders which may be added are “relevant UK orders”. Those are described in subsection (2) as orders under the law of England and Wales or Northern Ireland which appear to the Scottish Ministers to be equivalent or similar to TEPOs, TEROs or interim TEPOs or TEROs.
Section 30: Interpretation of Part 4

130. Section 30 defines certain terms used in Part 4.

PART 5 - STRATEGY AND REPORTING

Section 31: Trafficking and exploitation strategy

131. Section 31 places a duty on the Scottish Ministers to prepare a trafficking and exploitation strategy. The strategy under this section is a strategy which sets out such actions, arrangements and outcomes as the Scottish Ministers consider appropriate in relation to the conduct which constitutes an offence under this Act.

132. Subsection (3) lists some of the matters which may be set out in the strategy, though that list is not exhaustive. Those matters include, for example, training and awareness raising in relation to the detection and prevention of the conduct which constitutes an offence of human trafficking or an offence under section 4.

Section 32: Review and publication of strategy

133. Subsection (1) of section 32 provides that the strategy prepared under section 31 must be reviewed by the Scottish Ministers every three years. Following a review, the Scottish Ministers are required by subsection (2) to prepare a report on the review, including an assessment of the extent to which the strategy has been complied with, and may prepare a revised strategy. If a decision is taken following such a review not to prepare a revised strategy, the Scottish Ministers must set out their reasons for that decision.

134. Subsection (4) places a duty on the Scottish Ministers to consult with those likely to have an interest in the strategy before preparing or reviewing the strategy. Those likely to have an interest include, but are not limited to, businesses, support agencies, faith based groups etc..

135. Subsection (5) requires the Scottish Ministers to publish and lay before the Scottish Parliament each strategy and report prepared under this section.

Section 33: Duty to co-operate on strategy

136. Section 33 provides that Scottish public authorities, as specified in regulations that may be made by the Scottish Ministers, must provide such information and assistance as the Scottish Ministers may reasonably require and otherwise co-operate with the Scottish Ministers in the preparation or review of the strategy. A specified public authority could include, for example, Police Scotland and local authorities.

Section 34: Duty to notify and provide information about victims

137. Section 34 places a duty on specified Scottish public authorities to notify the chief constable of the Police Service of Scotland about a person who is, or appears to be, a victim of
an offence under section 1 or section 4. This duty would not affect any other general right to report information relating to crime.

138. Subsection (2) requires that a notification relating to an adult is anonymised and does not include any information that identifies the adult or enables the adult to be identified, unless the adult consents to that data being provided.

139. Subsection (3) provides that the Scottish Ministers may by regulations specify the Scottish public authorities who are to be subject to this duty and may make provision about the information to be included in the notification. The regulations will be subject to the negative procedure.

PART 6 – FINAL PROVISIONS

Section 35: Offences by bodies corporate etc.

140. Section 35 provides that where an offence under the Bill was committed by a body corporate or a Scottish partnership or other unincorporated association and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a relevant individual or someone purporting to be acting in the capacity of a relevant individual, that individual, as well as the body corporate, partnership or unincorporated association, commits the offence and is liable to be proceeded against and punished accordingly.

141. Subsection (2) defines what is meant by a “relevant individual” for the purpose of this section.

Section 36: Interpretation

142. Section 36 defines certain terms for the purposes of the Bill; for example, the definition of “travel”.

Section 37: Regulations

143. The Scottish Ministers are given various powers under this Bill to make regulations. Section 37 provides for the parliamentary procedure which is to be applicable in relation to each of those powers.

Section 38: Ancillary provision

144. Section 38 provides that the Scottish Ministers may make regulations containing such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, the provisions of the Bill.
Section 39: Minor and consequential amendments

145. Section 39 introduces the schedule, which makes minor amendments and amendments consequential on the provisions of the Bill. Given their replacement in Part 1 of the Bill, the schedule repeals the current offences in relation to human trafficking (section 22 of the 2003 Act and section 4 of the 2004 Act) and slavery, servitude and forced or compulsory labour (section 47 of the 2010 Act).

Section 40: Crown application

146. Section 40(1) provides that none of the provisions made by or under the Act are capable of making the Crown criminally liable. In accordance with subsection (2), enforcement of offences against the Crown is to be done by the Scottish Ministers or any other public body or office-holder with responsibility for enforcing the provision applying to the Court of Session for a civil declarator of non-compliance. This provision does not apply to persons in the public service of the Crown.

Section 41: Commencement

147. Section 41 provides that sections 36, 37, 38, 40, 41 and 42 of the Bill come into force on the day after Royal Assent. All other provisions are to come into force on a day appointed by regulations made by the Scottish Ministers.
FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Human Trafficking and Exploitation (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 11 December 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The purpose of the Bill is to consolidate and strengthen the existing criminal law against human trafficking and exploitation and enhance the status and support provided to victims. Bill provisions are in the following Parts—

   **Part 1 (Offences)** includes provision on the creation of a single offence of human trafficking for all types of exploitation of both adults and children; establishes statutory aggravators of human trafficking for use with other crimes; and reframes the current standalone offence of slavery, servitude and forced or compulsory labour.

   **Part 2 (Protection of victims)** includes provision on prosecutorial guidelines for the prosecution of victims and provision about the support and assistance to which adult victims are entitled.

   **Part 3 (Confiscation of property)** includes provision on detention and forfeiture of property and proceeds of crime.

   **Part 4 (Trafficking and exploitation prevention and risk orders)** includes provision on two new preventive orders, the trafficking and exploitation prevention order and the trafficking and exploitation risk order.

   **Part 5 (Strategy and reporting)** includes provision on the trafficking and exploitation strategy and the duty on specified Scottish public authorities to notify and provide information about victims.

   **Part 6** contains general and ancillary provisions.

3. This Financial Memorandum considers the financial implications of each of the elements of the Bill, where relevant.

BACKGROUND

4. Before considering the financial implications associated with the specific provisions within the Bill, it is important to consider both the current estimated extent of human trafficking in Scotland and existing activity by public bodies and others in response to this issue.
Extent of human trafficking in Scotland

5. Human trafficking is, by its nature, a hidden crime. The National Referral Mechanism (NRM) is the process set up by the UK Government to identify and support victims of trafficking in the UK. The NRM is also the mechanism by which the UK Human Trafficking Centre collects data about potential victims of trafficking. Information about suspected child and adult victims of human trafficking is referred by relevant “first responder” organisations, such as the police and third sector bodies, for example, Migrant Help and the Trafficking Awareness Raising Alliance (TARA). Referrals relate to victims trafficked from outside and within the UK. The table below summarises the most recent available information on NRM referrals from first responder organisations in Scotland.

Table 1: Recent referrals from first responders in Scotland of potential child and adult human trafficking victims to the National Referral Mechanism

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults</td>
<td>67</td>
<td>77</td>
</tr>
<tr>
<td>Children</td>
<td>29</td>
<td>22</td>
</tr>
<tr>
<td>Total</td>
<td>96</td>
<td>99</td>
</tr>
<tr>
<td>% of all UK Referrals</td>
<td>8%</td>
<td>6%</td>
</tr>
</tbody>
</table>


6. Various reports confirm that the number of victims referred through the NRM is likely to be a significant underestimate of the actual number of potential victims of trafficking. For example, the Equality and Human Rights Commission Inquiry into Human Trafficking in Scotland (2011), noted “estimates of identified potential victims do not reflect what is likely to be a much greater number of unidentified victims.”

7. The UK National Crime Agency (NCA) Strategic Assessment of the Nature and Scale of Human Trafficking in the UK aims to provide an indication of the nature and scale of human trafficking beyond the number of referrals to the NRM. The assessment is produced using intelligence held by the NCA, the NRM and intelligence information collected from agencies such as Police Scotland, the Home Office, Gangmasters’ Licensing Authority and non-government organisations. The assessment removes information of potential victims referred to the NRM who have received a negative “reasonable grounds” or “conclusive decision” (i.e. it has been confirmed that they are not victims of trafficking) or duplicate information about individuals (i.e. the same person has been referred more than once or by more than one agency), to show a total number of “unique potential victims of trafficking”. The NCA Assessment for 2013 indicated that there were significantly more unique potential victims of human trafficking identified across the UK than the numbers referred to the NRM, even excluding those that received a negative decision, and that the number of unique victims was increasing.

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2 http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human_Trafficking_in_Scotland/_inq
ury_into_human_trafficking_in_scotland-full-report.pdf
Table 2: Comparison of recent UK referrals to the National Referral Mechanism and the National Crime Agency Strategic Assessment of the Scale of Human Trafficking

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referred to NRM</td>
<td>778</td>
<td>1,095</td>
<td>+41%</td>
</tr>
<tr>
<td>NCA Assessment: No. of Unique Potential Victims Identified</td>
<td>2,255</td>
<td>2,744</td>
<td>+22%</td>
</tr>
</tbody>
</table>

Source: National Crime Agency Strategic Assessment of the Nature and Scale of Human Trafficking in the UK

8. For Scotland, the NCA Assessment for 2013 identified 55 unique potential victims of human trafficking compared with 99 referrals to the NRM. It is not known why, in contrast to the position in England and Wales, the NCA Assessment for Scotland is lower than the NRM referrals, although it will exclude potential victims who received a negative conclusive decision and duplicate referrals. However, these numbers must be treated with significant caution. There remains strong conviction amongst law enforcement bodies and victims organisations that there are more victims of trafficking than are identified and that, even once identified, victims are often unwilling to engage with authorities or identify themselves as having been trafficked. For the purpose of this Financial Memorandum, the Scottish Government has accepted the NCA assessment that there are likely to be between two and three times as many potential victims of trafficking as are currently identified through the NRM. This assessment is based on the Scottish Government’s best understanding of the hidden nature of this crime and the known reluctance of some victims to identify their trafficked status or to engage with public authorities.

Criminal justice response to human trafficking and exploitation

9. There have been relatively few prosecutions and convictions for human trafficking offences under existing criminal justice legislation—

- The Criminal Justice (Scotland) Act 2003 ("the 2003 Act") provides for offences of trafficking for the purposes of exploitation by way of prostitution.
- The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act") provides for offences of trafficking for labour and other forms of exploitation.
- The Criminal Justice and Licensing (Scotland) Act 2010 ("the 2010 Act") amended and extended the 2003 and 2004 Acts and created a standalone offence of holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour.

10. The first successful convictions for human trafficking in Scotland were in 2011, under section 22 of the 2003 Act for trafficking for the purposes of prostitution. During 2013, a total of four people were convicted of human trafficking offences - one person under section 22 of the 2003 Act and three people under section 4 of the 2004 Act for trafficking for forced marriage.

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5 http://www.legislation.gov.uk/asp/2003/7
6 http://www.legislation.gov.uk/ukpga/2004/19
These documents relate to the Human Trafficking and Exploitation (Scotland) Bill (SP Bill 57)
as introduced in the Scottish Parliament on 11 December 2014

The average custodial sentence length for those convicted of trafficking offences was 847 days
(just under two years and four months), as well as any confiscation order imposed.

11. Although the number of convictions for trafficking offences has been small, police and
the Crown Office and Procurator Fiscal Service (COPFS) have confirmed that, even though it is
not possible to always prove the trafficking offence where a credible suspicion exists, people
suspected of involvement with trafficking can and often are prosecuted and convicted for other
crimes, such as crimes associated with prostitution, forced marriage, immigration offences and
drugs offences, etc.

12. Police Scotland has established a dedicated National Human Trafficking Unit to enhance
the police response to human trafficking, through awareness raising, intelligence gathering,
training and providing divisions with advice and specialist knowledge. The COPFS has
appointed dedicated expert fiscals to prosecute human trafficking offences.

Support for victims of trafficking

13. The Scottish Government currently allocates direct grant funding to non-government
organisations to provide and facilitate immediate support and assistance to the adult victims of
human trafficking. This support can include immediate safe accommodation, psychological
support, assistance in accessing medical treatment, material assistance, interpretation and
translation and assistance either with repatriation or securing longer-term access to mainstream
services and support, such as welfare benefits and housing. The provision of support and
assistance is not conditional on the potential victim being willing to participate in the criminal
justice process. Under the NRM, victims of trafficking are guaranteed “a recovery and reflection
period”, to recover from their experience, escape the influence of those alleged to have trafficked
or exploited them, and consider whether to engage with authorities. The Council of Europe
Convention on Action Against Trafficking in Human Beings provides for a reflection period of
at least 30 days for all trafficked victims when there are reasonable grounds to believe that the
person concerned is a victim. The current minimum recovery and reflection period in Scotland
and the rest of the UK is 45 days.

14. In 2013-14, total grant funding of £723,000 was provided by the Scottish Government
towards the costs of ensuring immediate support and assistance for the adult victims and
potential victims of trafficking in Scotland. This funding was provided through two non-
government organisations—

- the TARA Service, which works with women aged 18 years and over across
  Scotland where there are concerns that they have been trafficked for commercial
  sexual exploitation; and
- Migrant Help, a UK-wide organisation providing support and advice services to
  migrants, including new asylum claimants, refugees, EU nationals, etc.

15. Support for the child victims of trafficking is co-ordinated by local authorities as part of
their child protection arrangements, and in line with the policy intention that children remain

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8 http://www.coe.int/t/dghl/monitoring/trafficking/docs/convntn/CETS197_en.asp

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children first and that their needs should be treated accordingly. The Scottish Government has produced a toolkit for agencies working with children and young people to ensure that staff are able to identify trafficked children and make appropriate referrals so that victims can receive protection and support. The toolkit is designed to be used in conjunction with National Child Protection Guidance,\(^9\) which was first published in 2010 and refreshed in 2014, and other relevant national and international guidance. Information about current expenditure on child victims of trafficking is not recorded separately from information about wider expenditure on child protection services.

**Lord Advocate guidance on prosecution policy**

16. In his letter of 21 January 2013 to the Scottish Parliament European and External Relations Committee,\(^10\) the Lord Advocate set out the current arrangements for fiscals considering the prosecution of a confirmed or potential victim of human trafficking where it is believed or claimed that the crime was committed as a direct consequence of the person’s trafficked status. The letter set out the basis for the current Lord Advocate’s guidance to prosecutors, including the presumption against the prosecution of a credible trafficking victim for crimes that arise as a consequence of the victim’s trafficked status.

**Human trafficking strategic approach, awareness raising and training**

17. The first Scottish Human Trafficking Summit was hosted by the Cabinet Secretary for Justice in October 2012. The summit brought together key law enforcement, public, private and third sector organisations with an interest in human trafficking. Following the summit, a number of strategic collaborative actions were agreed and progressed, including with reference to awareness raising and training for frontline staff, data collection and analysis, identification, care and support for both child and adult victims of trafficking and enhancing enforcement.

18. One specific workstream related to awareness raising and training of front-line staff likely to come into contact with trafficking victims or potential instances of trafficking. Following the summit, Police Scotland, with support from the Scottish Government and others, prepared, published and circulated widely an awareness raising leaflet – *Reading the Signs*\(^11\) – to assist police officers and staff in other front line posts in identifying the signs of potential trafficking. The Scottish Government also participated with the UK Government in a UK-wide public awareness raising campaign about modern slavery and trafficking.

19. In addition to general awareness raising, specific training material was prepared for key front-line staff. For example, all police officers were required to undertake an e-learning course on human trafficking. A special leaflet for health workers was prepared and circulated by NHS Health Scotland. An e-learning module for health workers about their role in identifying and

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\(^9\) [http://www.scotland.gov.uk/Publications/2014/05/3052](http://www.scotland.gov.uk/Publications/2014/05/3052)

\(^10\) [http://www.scottish.parliament.uk/S3_EuropeanandExternalRelationsCommittee/General%20Documents/LetterfromTheLordAdvocate.pdf](http://www.scottish.parliament.uk/S3_EuropeanandExternalRelationsCommittee/General%20Documents/LetterfromTheLordAdvocate.pdf)

These documents relate to the Human Trafficking and Exploitation (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 11 December 2014

responding to victims of trafficking was made available through the National Gender Based Violence and Health Programme.12

IMPACT OF SPECIFIC PROVISIONS

PART 1 - OFFENCES

Single trafficking offence

20. The Bill establishes a new single offence of human trafficking for all types of exploitation for both adults and children, replacing existing separate criminal offences (see paragraph 9 above). As noted above, to date there have been relatively small numbers of prosecutions under existing trafficking offences.

21. The maximum penalty for conviction on indictment for the single trafficking offence will be life imprisonment, compared with a maximum of 14 years for the current separate offences. Although it will be for the court to decide how to sentence people convicted under the new single offence in any given case, it is likely that the availability of a higher maximum sentence will have cost implications for the Scottish Prison Service (SPS).

Revised slavery, servitude and forced labour offence

22. The Bill will also repeal and replace the existing exploitation offence within section 47 of the 2010 Act, which criminalises holding someone in slavery or servitude or requiring them to perform compulsory or forced labour. The offence will be revised and strengthened to allow the court to consider, in assessing whether a person has been a victim of an offence, the victim’s characteristics such as age, physical or mental illness, disability or, where relevant, family relationships. The maximum penalty for the offence will be increased from 14 years for the current offence to life imprisonment for a conviction on indictment.

Statutory aggravators

23. The Bill makes provision for statutory aggravators which apply in cases where an accused person commits an offence connected with human trafficking and for when the offence is committed in connection with the accused’s position as a public official. The court must take the aggravation into account in determining the appropriate sentence if it is proved that the offence is aggravated in this way. The statutory aggravator is not anticipated to have any substantial financial implications for public, private or third sector bodies, or for individuals.

Costs on the Scottish Administration

24. Consolidating and clarifying the existing criminal law on trafficking and exploitation, alongside other measures arising from the Bill and the trafficking and exploitation strategy, including training and awareness raising and support for victims, should increase the potential for successful investigations, prosecutions and convictions of human trafficking and exploitation offences. There have been six successful prosecutions for a specific trafficking offence to date in Scotland, with an average custodial sentence length of two years and four months, against a

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12 http://www.gbv.scot.nhs.uk/
maximum possible sentence of 14 years. The maximum number of prosecutions in any one year was four individuals in two separate cases.

25. Police and prosecutors already have in place specialist resources for investigating and prosecuting human trafficking and exploitation offences and these provisions will not add to these costs. Law enforcement agencies have confirmed that, whilst the number of prosecutions for specific trafficking offences has been low, where victims are identified but are unwilling to testify, individuals suspected of trafficking and exploitation will be prosecuted in court for other related offences. The Lord Advocate has identified that “If we don’t have the evidence [to prosecute for a specific human trafficking offence], we prosecute for fraud, ID theft, or asylum and immigration offences.”

26. The Scottish Government does not anticipate, therefore, significant additional cost implications for law enforcement agencies or courts, as cases will often proceed with a trafficking offence alongside or in place of other related offences. For the same reason, the Scottish Government does not anticipate significant additional cost on the Scottish Legal Aid Board (SLAB). However, if it is assumed that the number of successful trials proceeding in any single year doubles from two to four, there would be some additional costs on the COPFS, the Scottish Court Service (SCS) and SLAB, based on the average unit costs for cases proceeded either through Sheriff Court Solemn procedure or through the High Court. These estimated costs, depending on whether cases are proceeded through the High Court or Sheriff Court solemn procedure, are illustrated in the table below.

<table>
<thead>
<tr>
<th></th>
<th>Average prosecution costs per procedure (COPFS)</th>
<th>Average court costs per procedure (SCS)</th>
<th>Average legal aid costs per procedure (SLAB)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheriff Court solemn procedure (£000)</td>
<td>£4.9</td>
<td>£1.9</td>
<td>£1.6</td>
</tr>
<tr>
<td>High Court (£000)</td>
<td>£55.6</td>
<td>£9.0</td>
<td>£13.5</td>
</tr>
<tr>
<td>Estimated average costs of 2 additional trial procedures / 4 accused per annum (£000)</td>
<td>£9.9-£111.2</td>
<td>£3.8-£18.0</td>
<td>£6.4-£54.0</td>
</tr>
</tbody>
</table>

Source: costs of the Criminal Justice System in Scotland Dataset (2013)

27. There will also be costs to the SPS, both through any increase in the number of successful convictions for trafficking and exploitation offences and an anticipated increase in the average length of custodial sentence for these crimes. It is not possible to know for certain the total

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13 http://www.dailyrecord.co.uk/news/scottish-news/only-three-successful-prosecutions-brought-4457684
number of future convictions or what sentencing decisions might be taken by courts in individual cases.

28. The table below illustrates the potential cost implications of either maintaining or increasing the current maximum number of convictions in any individual year from four to eight convictions. For the purpose of the calculation it is assumed that the average custodial sentence length for trafficking and exploitation offences will increase from two years and four months (classified as a short-term sentence) to over four years (classified as a long-term sentence), as increasing the maximum sentence to life imprisonment is anticipated to increase the average sentence for a trafficking offence. The estimated average annual cost of a prison place, based on SPS figures, is £42,500. Taking account of the current early release arrangements for long-term prisoners and the overlapping of individual sentences would result in an estimated increase of 8 to 21 total prison places each year after four years – i.e. with an additional four people receiving custodial sentences each year and released by the Parole Board at the halfway point of their sentence or automatically at the two-thirds point. The total costs to the SPS will be within a range of £340,000 to £890,000. These costs will fit within the overall budget costs to the SPS. As at 17 October 2014, there were 7,731 people in custody in Scotland. An additional 21 places accounts for 0.3% of the total prison population.

Table 4: Estimated range of costs to the Scottish Prison Service from increasing the number and average length of successful prosecutions for trafficking offences

<table>
<thead>
<tr>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Prison places</td>
<td>0-4</td>
<td>4-12</td>
<td>8-17</td>
</tr>
<tr>
<td>Additional Cost (£000)</td>
<td>£0-£170</td>
<td>£170-£510</td>
<td>£340-£720</td>
</tr>
</tbody>
</table>

Table 5: Estimated range of combined costs for trial procedures and prison places

<table>
<thead>
<tr>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Cost (£000)</td>
<td>£20-£353</td>
<td>£190-£693</td>
<td>£360-£900</td>
</tr>
</tbody>
</table>

Costs on other bodies, individuals and businesses

29. There will be no new costs falling on other bodies, individuals and businesses as a consequence of these sections, but see the section below with reference to victim support.

Costs on local authorities

30. There will be no new costs falling on local authorities as a consequence of these specific sections.

PART 2 - PROTECTION OF VICTIMS

*Duty on the Lord Advocate to publish guidance about the prosecution of credible trafficking and exploitation victims who have committed offences*

Costs on the Scottish Administration

31. As noted above, the Lord Advocate already prepares and publishes guidance to fiscals about the prosecution of credible victims of human trafficking for crimes committed as a direct
These documents relate to the Human Trafficking and Exploitation (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 11 December 2014

consequence of their trafficking status. The requirement to publish such guidance would, in future, be statutory. However, there will be no new costs on the Scottish Government or the COPFS as a consequence of placing the requirement for the Lord Advocate to issue this guidance on a statutory basis.

**Costs on other bodies, individuals and businesses**

32. There will be no new costs falling on other bodies, individuals and businesses as a consequence of these sections.

**Costs on local authorities**

33. There will be no new costs falling on local authorities as a consequence of these sections.

*Ensure the rights of victims to access and support*

34. The Bill will place a statutory duty on the Scottish Ministers to secure the provision of relevant immediate support and recovery services for adult victims of trafficking, subject to an assessment of need. The Bill will specify those victims or potential victims entitled to support and the minimum time periods during which such services should be provided. Specifically, the Bill will require Ministers to provide support and assistance based on each individual’s assessed needs during the recovery and reflection period (currently 45 days), during which the individual’s trafficking status is determined. The Bill specifies minimum support and assistance that should be considered as part of the assessment, including access to housing, treatment, interpretation services, etc. The Scottish Ministers have the flexibility to provide support and assistance outwith the specified reflection and recovery period, where this is considered appropriate.

35. As noted above, the Scottish Ministers already provide grant funding totalling £723,000 to third sector organisations to assist identified adult potential victims of trafficking. Provision of support to adult victims will be placed on a statutory basis. The number of adult potential victims of trafficking referred through the NRM during 2013 was 77, although not all of these will have requested assistance or received the full range of support services. It is assumed that other actions arising from the Bill, including the single offence and publication of the trafficking and exploitation strategy, will result, over time, in an increase in identified victims and requests for assistance and support.

**Costs on the Scottish Administration**

36. The Scottish Government anticipates that improved awareness raising and training of front-line staff will result in an increase in the number of victims identified over time. It is not possible to know how quickly this improvement will be achieved. However, between 2012 and 2013 the number of potential identified victims across the UK identified through the NCA strategic assessment and NRM increased by 22% and 41% respectively. Given the need for awareness raising and training to impact, the Scottish Government does not anticipate a similar scale of increase in the immediate term, but the Government considers it reasonable to anticipate a possible increase of between 10% and 20% per annum in the overall number of requests for assistance and support each year over the next four years. Assuming a similar mix of needs as
current victims, the increased costs to the Scottish Government, on top of existing funding, would range between £290,000 to £580,000 per annum by year four.

Table 6: Estimated range of costs increases for victim support and assistance (£000)

<table>
<thead>
<tr>
<th>Additional Cost (£000)</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£0-£140</td>
<td>£140-£280</td>
<td>£220-£430</td>
<td>£290-£580</td>
</tr>
</tbody>
</table>

Costs on other bodies, individuals and businesses

37. There will be no additional costs on other public bodies, individuals or businesses associated with these specific provisions. There will be no direct additional costs falling on third sector organisations as a consequence of the specific provisions. It is likely, however, that all or part of the additional funding identified above will be directed by the Scottish Government through relevant third sector organisations with the expertise to provide immediate support and protection to victims.

Costs on local authorities

38. The Bill creates no new legislative requirements for the delivery of children’s services, recognising that this already exists. It is, therefore, not anticipated that the Bill will result in any quantifiable additional costs on local authorities or other public bodies as a result of support for child victims. Child victims of trafficking are supported as part of the Getting It Right for Every Child (GIRFEC) approach: any child, whether identified as trafficked or not, will be assessed on the basis of its needs. It is anticipated that as a consequence of the strategy (for which the Bill provides), that more children may be identified as trafficked. It is noted, however, that various reports, including most recently the UK Government’s NRM Review Report, have found that children who are already receiving support from relevant authorities in the UK are often not identified as trafficked victims, because of lack of awareness of the referral process. It may be that actions arising from the development of the strategy and dialogue with stakeholders will give rise to additional activity or costs with reference to child victims of trafficking, but these are not known and cannot be estimated at this time.

PART 3 - CONFISCATION OF PROPERTY

39. The Bill will provide police with powers to detain the property, such as cars, boats, etc. of a person arrested for a trafficking offence. This power will be exercised at the time of arrest and is not expected to impose any additional costs on the police or others.

Costs on the Scottish Administration

40. There will be no additional costs on the Scottish Government as a result of these provisions. Individuals can apply to the court to have vehicles, ships or aircraft released from detention. This will be considered as part of the overall case and will not add to the costs to the criminal justice system.

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15 https://nrm.homeoffice.gov.uk/
Costs on other bodies, individuals and businesses

41. There will be no additional costs on other public bodies, individuals or businesses, including Police Scotland, as a result of these specific provisions.

Costs on local authorities

42. There will be no additional costs on local authorities as a result of these specific provisions.

PART 4 - TRAFFICKING AND EXPLOITATION PREVENTION AND RISK ORDERS

Introduce new measures to disrupt and prevent trafficking and exploitation

43. The Bill will introduce two new civil orders and associated interim orders to assist in preventing trafficking and exploitation: Trafficking and Exploitation Prevention Orders (TEPOs) and Trafficking and Exploitation Risk Orders (TEROs). Where an individual has been convicted of a trafficking or exploitation offence or an offence with a statutory trafficking aggravator, a TEPO may be imposed by a court where there is a risk that that individual may commit a further human trafficking offence and it is necessary to make the order to protect people from the physical or psychological harm which might occur if such an offence were committed. The TEPO will prevent the individual from engaging in activities described in the order. Where a person has not been convicted of a trafficking or exploitation offence, but a court considers that the person presents a significant risk of harm to others through the individual committing a trafficking or exploitation offence, the court can impose a TERO restricting specific activities or imposing requirements. These orders will be civil, but breach of an order will constitute a criminal offence with a maximum penalty of five years in prison available to the court.

44. The Bill will categorise the trafficking and exploitation offences as lifestyle offences in order to automatically trigger provisions within the Proceeds of Crime Act 2002 (“the 2002 Act”). The definition of an offence as a “lifestyle offence” allows for proceedings under the 2002 Act to confiscate assets or monies from the individual convicted of the offence.

Costs on the Scottish Administration

45. The purpose of TEPOs and TEROs is to prevent criminal activity associated with trafficking and exploitation from arising. There will be some cost implications for law enforcement organisations which will need to monitor the terms of any order imposed by the courts. However, these will be offset by the savings made from being able to intervene at an early stage of criminality if an order has been breached. For the equivalent civil orders within the UK Modern Slavery Bill, the UK Government has estimated potential net savings of between £130,000 and £1,090,000 per annum. The Scottish Government has not incorporated any savings for the purpose of Scottish legislation, but expects the costs of implementing TEPOs and TEROs and detention powers to be at least cost neutral for the Scottish Administration and other public bodies.
46. The Bill will give courts powers to impose a TEPO at the time of sentencing. There will be no immediate additional costs for the courts or COPFS associated with TEPOs imposed as part of sentencing. The Chief Constable of Police Scotland will also be able to apply to the court for a TEPO to be imposed on a relevant offender, previously convicted of a trafficking offence. There will be costs to Police Scotland in making the application and to the SCS and to SLAB in considering the application. As there have been only six previous convictions for trafficking offences in Scotland, the Scottish Government expects the number of applications for TEPOs for previous convictions to be small, one-off, and will not add to the overall costs of the criminal justice system. The Chief Constable of Police Scotland can also apply to the court for a TERO against an individual where it is considered that that individual is likely to commit a trafficking offence.

47. Looking at the equivalent costs for similar civil orders, e.g. Sexual Offences Prevention Orders, the total costs to the SCS, the COPFS and SLAB of applying for a TERO or post-sentencing TEPO are estimated at between £1,000 and £6,000 per order. It is not possible to know how many TEPOs or TEROs might be applied for, but assuming a number half the level of the estimated maximum number of potential convictions for trafficking offences each year (four to eight) would give estimated costs of between £2,000 (2 x £1,000) and £24,000 (4 x £6,000) per annum.

48. There will be costs to Police Scotland in monitoring TEPOs and TEROs, whether imposed at the time of sentence or by application, but this will sit alongside Police Scotland’s existing crime prevention and investigative responsibilities and is not expected to add to manpower costs.

49. In addition to the costs of imposing and monitoring TEPOs and TEROs, there will be costs associated with prosecuting a breach of a TEPO or TERO. Analysis in England and Wales indicates that breaches of equivalent Serious Crime Prevention Orders are relatively low. Assuming one breach per annum, the total combined costs to the COPFS, the SCS and SLAB would be between £8,400 and £78,100, per annum (see the combined costs for either sheriff court or High Court procedures set out in Table 3 above). Assuming a maximum sentence of five years, the costs to the SPS for additional prison places would be between £85,000 and £127,500 per annum (i.e. the £42,500 average costs of a prison place times either two or three places depending on whether offenders are released early at the halfway or two-thirds point of their sentence).

50. It is important to remember, however, that the purpose of TEPOs and TEROs is to prevent further trafficking and exploitation offences occurring. A TEPO or TERO will only be imposed where a court considers that there is a credible risk of an individual committing such a crime. Any costs associated with the imposition and breach of TEPOs and TEROs needs to be offset against the potential costs of prosecutions. If each TEPO or TERO prevents the costs of a conviction for an offence as set out in Part 1 above, the costs to the Scottish Administration would be at least cost neutral, in terms of saved court and prison places expenditure.
Costs on other bodies, individuals and businesses

51. There will be no costs on other bodies, businesses or other individuals as a consequence of these sections.

Costs on local authorities

52. There will be no new costs on local authorities as a consequence of these sections.

PART 5 - STRATEGY AND REPORTING

Ensure a strategic, cross-agency approach to tackling trafficking

53. The Bill places a duty on the Scottish Ministers to prepare, publish and regularly review and update a trafficking and exploitation strategy, to assist in ensuring a co-ordinated and strategic approach to this issue. The provisions place a duty on Ministers to consult with such organisations and individuals as they consider to have a relevant interest in the issues of human trafficking and exploitation. The Bill places a duty on relevant public bodies, to be named in regulations, to assist in the preparation and review of the strategy.

54. The Bill will place a duty on relevant public authorities to provide anonymised data about potential human trafficking and exploitation victims to Police Scotland.

Costs on the Scottish Administration

55. Activity arising from these provisions within the Bill will build on the activity and current resources already committed to this area of work.

56. Based on similar activities, the estimated additional costs to the Scottish Ministers of preparing and reviewing a trafficking and exploitation strategy will be approximately £25,000 every three years. Alongside the preparation and publication of the strategy, the Scottish Ministers would also propose to support additional awareness raising and training activity to build on the existing awareness raising and training activity already undertaken by relevant organisations, including the NHS, Police Scotland and COPFS. Consideration would be given to how best to co-ordinate these resources alongside existing expenditure and activity. For the purposes of the Financial Memorandum, and based on current activity, additional costs on top of existing activity are estimated at approximately £100,000 to £250,000 per annum over the first four years of the Bill. This is based on the best estimated costs of preparing and publishing publicity and guidance material averaged over a number of years. The exact costs will depend on decisions taken in dialogue with stakeholders as part of the preparation of the strategy.

57. The Scottish Government anticipates that the costs to relevant public authorities of providing anonymised data about potential human trafficking victims to Police Scotland will be marginal. Costs to Police Scotland of collating this data will form part of their existing intelligence gathering activity.
Costs on other bodies, individuals and businesses

58. There will be some costs on other bodies, individuals and businesses in engaging with the Scottish Ministers in the preparation and publication of the Strategy. For business and individuals this will be voluntary depending on their willingness to engage. For public bodies, their level of engagement will depend on the relevance of the issue of trafficking and exploitation to their work and their potential contribution to combating this behaviour. Any additional costs are expected to fit within or sit alongside their existing responsibilities, for example, with reference to promoting and ensuring equalities and the application of human rights obligations.

Costs on local authorities

59. There will be costs on local authorities associated with engaging in the preparation and review of the trafficking and exploitation strategy and in awareness raising and training of front-line staff. The additional costs should be marginal on top of the existing guidance and activity already in place with reference to the identification and support of potential child victims of trafficking. The aim will be to minimise costs for other front-line local authority staff by adapting the general awareness raising and training materials described above.

SUMMARY

60. The table below provides a summary of the costs of each element of the Bill as described above:

<table>
<thead>
<tr>
<th>Table 7: Summary table of costs for each aspect of the Bill (£000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clarifying &amp; Strengthening the Criminal Law – Para. 28</td>
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<tr>
<td></td>
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<tr>
<td>Year 1</td>
</tr>
<tr>
<td>Ensure the rights of victims to access and support - Para 36</td>
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<tr>
<td></td>
</tr>
<tr>
<td>Year 1</td>
</tr>
<tr>
<td>Introduce new measures to disrupt and prevent trafficking</td>
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<tr>
<td></td>
</tr>
<tr>
<td>Year 1</td>
</tr>
<tr>
<td>Ensure a strategic, cross agency approach to tackling trafficking – Para 56</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Year 1</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

The Scottish Government considers that the overall costs are at least cost neutral – see paragraphs 45 to 50
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 11 December 2014, the Cabinet Secretary for Justice (Michael Matheson MSP) made the following statement:

“In my view, the provisions of the Human Trafficking and Exploitation (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 11 December 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Human Trafficking and Exploitation (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”