

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT HUMAN TRAFFICKING AND
EXPLOITATION (SCOTLAND) ACT 2015
(CONSEQUENTIAL PROVISIONS AND
MODIFICATIONS) ORDER 2016

Tuesday 13 September 2016

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 17 September 2016

© Parliamentary Copyright House of Commons 2016

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: STEVE McCABE

- | | |
|---|--|
| Alexander, Heidi (<i>Lewisham East</i>) (Lab) | † Opperman, Guy (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Anderson, Mr David (<i>Blaydon</i>) (Lab) | † Phillips, Stephen (<i>Sleaford and North Hykeham</i>) (Con) |
| † Bridgen, Andrew (<i>North West Leicestershire</i>) (Con) | † Robinson, Mary (<i>Cheadle</i>) (Con) |
| Bryant, Chris (<i>Rhondda</i>) (Lab) | † Smith, Royston (<i>Southampton, Itchen</i>) (Con) |
| † Crawley, Angela (<i>Lanark and Hamilton East</i>) (SNP) | † Tami, Mark (<i>Alyn and Deeside</i>) (Lab) |
| † Davies, Dr James (<i>Vale of Clwyd</i>) (Con) | † Tomlinson, Michael (<i>Mid Dorset and North Poole</i>) (Con) |
| † Eagle, Maria (<i>Garston and Halewood</i>) (Lab) | |
| † Ellis, Michael (<i>Deputy Leader of the House of Commons</i>) | |
| † Hollinrake, Kevin (<i>Thirsk and Malton</i>) (Con) | Joanna Welham, Peter Stam, <i>Committee Clerks</i> |
| † Jenkyns, Andrea (<i>Morley and Outwood</i>) (Con) | |
| † McLaughlin, Anne (<i>Glasgow North East</i>) (SNP) | |
| † Murray, Ian (<i>Edinburgh South</i>) (Lab) | † attended the Committee |

Fifth Delegated Legislation Committee

Tuesday 13 September 2016

[STEVE McCABE *in the Chair*]

Draft Human Trafficking and Exploitation (Scotland) Act 2015 (Consequential Provisions and Modifications) Order 2016

2.30 pm

The Deputy Leader of the House of Commons (Michael Ellis): I beg to move,

That the Committee has considered the draft Human Trafficking and Exploitation (Scotland) Act 2015 (Consequential Provisions and Modifications) Order 2016.

May I say what a pleasure it is to serve under your chairmanship, Mr McCabe? The draft order was laid before the House on 11 July 2016. If it pleases the Committee, I will briefly put the order in context before setting out what it does. I think that it will be highly uncontroversial, given that there is unlikely to be much air between the parties on the matter, but it is important.

The order is made under section 104 of the Scotland Act 1998, which allows for necessary or expedient changes to legislation in consequence of an Act of the Scottish Parliament. That is what has happened here: the Scottish Parliament has passed an Act and we are seeking to make expedient changes for its operation in England. The order is made in consequence of the Human Trafficking and Exploitation (Scotland) Act 2015, which was passed by the Scottish Parliament on 1 October 2015 and received Her Majesty's Assent on 4 November. The Act consolidates and strengthens the existing criminal law in Scotland against human trafficking and exploitation, and it enhances the status and support for victims of those heinous crimes.

The 2015 Act that was passed by the Scottish Parliament is in six parts, which I will address briefly. Part 1 introduces two new criminal offences: one is a single offence of human trafficking for all types of exploitation; the other is a new offence of slavery, servitude and forced or compulsory labour. Those replace existing criminal offences in Scots law that deal with similar conduct. The maximum penalty of 14 years for human trafficking has now been increased to life imprisonment.

Part 2 provides for the support and assistance to which adult and child victims of human trafficking are entitled. Part 3 deals with the confiscation of property and the proceeds of crime. Part 4 introduces two new prevention and risk orders, as they are called, in Scotland: the trafficking and exploitation prevention orders, and the trafficking and exploitation risk orders. The Act also places a duty on Scottish Ministers to prepare a trafficking and exploitation strategy.

This order updates existing UK legislation to give the Scottish Parliament's 2015 Act full effect; to reflect the new Scottish offences; to ensure that the relevant powers—this is a key point—of UK immigration officers are updated in line with what has happened under the Act in Scotland, so that they are able to detain vehicles,

ships and aircraft when a person or persons have been arrested for the offence of human trafficking; and to reflect the new powers conferred on the police under the 2015 Act, which are welcome.

The proposed changes are consequential and have not raised any objections. For example, the order updates references to existing Scottish offences in relevant legislation applying in other parts of the UK. These changes, which are primarily to the Modern Slavery Act 2015 but also to the Immigration Act 1971 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, will refer to the new single offence of human trafficking and the new offence of slavery, servitude and forced or compulsory labour in Scottish legislation. They will then allow the repeal of existing offences.

The order will enable English and Welsh courts—it applies, of course, to England and Wales—to enforce the two new Scottish trafficking and exploitation prevention and risk orders. That will ensure a joined-up approach and robust enforcement, which is what we all want for such serious offences. It will also implement the policy intention of some aspects of the Modern Slavery Act that relate to Scotland, by ensuring the scope of the UK's independent anti-slavery commissioner's work, and the duty of large companies to report on transparency and supply chains, are both updated so that, in Scotland, these flow from the new Scottish offences.

Finally, the UK and Scottish Governments—Ministers and officials—have been working closely together, as would be expected, to ensure that the order makes the necessary amendments to UK legislation in consequence of the Scottish Parliament's 2015 Act. There is mutual respect here and I believe that the order demonstrates the UK Government's continued and very important commitment to working with the Scottish Government to make the devolution settlement work.

I hope that you will agree, Mr McCabe, that the order is an appropriate use of the powers in the Scotland Act 1998, and that the practical result is very much to be welcomed. I commend the order to the Committee.

2.36 pm

Mr David Anderson (Blaydon) (Lab): It is a pleasure to serve under your chairmanship, Mr McCabe. I welcome the changes made in article 2 of this statutory instrument, which confer similar powers afforded to constables under section 13 of the Human Trafficking and Exploitation (Scotland) Act 2015 to immigration officers not below the rank of chief immigration officer. As far as article 3 is concerned, I accept the consequential modifications to the primary legislation in consequence of the creation of the two new statutory offences that the Minister has spoken about.

I hope that the Minister will be able to calm my fears and those of my Labour colleagues and other MSPs in Holyrood. Their concerns were expressed in a number of amendments that were tabled about the definition of slavery, servitude and forced or compulsory labour. My information from them is that those concerns remain, and I will come back to that in a moment.

I appreciate the will that the Scottish Government have shown to address concerns raised at stage 1—namely, the concern that the word “travel” would require a cross-border element, and that the emphasis on that

word did not align with Scotland's international obligations, including those in the EU trafficking directive, which does not place the same, or similar, emphasis on travel. Thankfully, as a result of these concerns, the Justice Committee asked the Government to look again at the definition to see whether it could be better aligned with international obligations. It also suggested that the Government consider the wording of the definition in relation to the word "travel".

To be fair to the Scottish Government—I will always be fair to the Scottish Government—they took heed of this advice and brought forward amendments at stage 2 to remove the need to establish that a victim's travel had been arranged or facilitated simply to allow this to happen. Instead they reframed the offence to criminalise certain defined and listed relevant actions.

Various amendments tabled by my MSP colleagues—in particular, Jenny Marra MSP—were denied, despite the support of every MSP in the Chamber other than those from the Scottish National party. I hope that amendment 12, in particular, does not come back to haunt the Scottish Government. It would have ensured that section 4 of the Scottish Parliament's 2015 Act, which does not contain any definition of slavery, servitude and forced or compulsory labour, was capable of effectively prosecuting those who exploit children. Good examples that have been raised with me of the crimes that might not be covered include claiming child benefit fraudulently and forcing children to shoplift. I hope that the Minister will allay my fears on that.

The Scottish Government would also have shown an element of compassion if they had accepted amendment 16, which would have required them to publish guidance on the provision of support and assistance to victims of human trafficking offences. Again, that had the support of every MSP in the Chamber with the exception of SNP MSPs.

Overall, the Bill was an important one that had cross-party support at Holyrood. It is fair to say that a variety of amendments, some of which I have mentioned, possibly did not receive the consideration that they should have received at the time. Having raised those concerns, we will not oppose this statutory instrument today.

2.40 pm

Angela Crawley (Lanark and Hamilton East) (SNP): As has been stated, the key provisions of this order ultimately deal with tackling crime as a joint responsibility of the Scottish and UK Governments, incorporating joined-up working and best practice. The fact is that victims of human trafficking and exploitation face horrendous suffering and there is no place for it in modern society. The new legislation to which the order relates will create data protections and increase the maximum penalty for those who perpetrate this serious offence from 14 years to life imprisonment. That sends out an incredibly strong signal that Scotland and the UK is a hostile place for traffickers and that we will not tolerate trafficking and exploitation.

We will continue to work in partnership on international and UK levels. The Scottish Government will always aim to make Scotland a hostile place for traffickers and to identify better and support potential and confirmed victims. I welcome the order.

2.41 pm

Michael Ellis: I very much welcome what the hon. Member for Lanark and Hamilton East said. It is reassuring to see cross-party support on something as important as this—there is very little controversy about the measure, and rightly so. We need to get it right and the authorities in Scotland have clearly worked hard to do so, in consultation with many.

I heard the shadow Minister's representations on definitions and consultations. With regard to wider consultation, the reality is that the Scottish Parliament's 2015 Act was the subject of numerous reports, inquiries and consultations. The Scottish Government drew on the analysis and recommendations in all those reports to inform the Act. I can assure him that they have taken the same approach with this order.

As for the hon. Gentleman's point about the definition of the word "travel", we are content that it is compliant with international obligations. The matters have been perused by the appropriate authorities, and the Scottish Government have indicated to the UK Government that they are content and that it meets international obligations.

Mr Anderson: I accept that the point about travel has been resolved and that the Government acted on the concerns that were raised. The issue was more about the definition of

"slavery, servitude and forced or compulsory labour."

I hope that the Minister or his civil servants will advise that there is a definition in this place that covers the same things in Scotland, but I just wanted to make sure that we do not leave a loophole that could be exploited.

Michael Ellis: I am grateful to the hon. Gentleman for exploring the matter, because clearly it is crucial. Lawyers—I was one before I came to this place—will always look for loopholes where they can find them and definitions have to be very carefully considered and tightly demarcated, otherwise they provide undesirable opportunities to exploit any lacunae that might exist within them. I am very confident that the authorities have considered that carefully and that legal representations have been sought. I am assured that numerous reports, inquiries and consultations have taken place, and I can only assume that they will have included legal representations. I hope that reassures the hon. Gentleman.

Question put and agreed to.

2.45 pm

Committee rose.

