

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 3 – Sexual Offences Etc.

Section 22 – Traffic in prostitution

102. **Section 22** creates new offences of trafficking for the purposes of sexual exploitation. Scots law already contains a range of provisions – in statute and common law – to protect women and men from exploitation and abuse. The new offences have been created to implement the terms of the European Council Framework Decision (FD) on Trafficking in Human Beings which *inter alia* requires the harmonisation of Member States' criminal law and penalties on trafficking.
103. The provisions outlaw the practice of trafficking people for use in the sex industry. It will be an offence to engage in trafficking for the purpose of sexual exploitation (control over an individual for prostitution or involvement in the making or production of obscene or indecent material). The offences apply both cross border (in to and out of the UK) and within the UK. The offences do not have to involve arrival into or departure from the UK (see subsection (4)). The offences will also cover behaviour outwith the UK by British citizens (and others specified in subsection (6)). In that event, proceedings may be brought anywhere in Scotland.
104. The maximum sentence where the case is prosecuted on indictment is 14 years and on summary conviction, imprisonment not exceeding 6 months, a fine or both (subsection (3)).
105. The new offence does not require the Crown to demonstrate that the person who arranged or facilitated the trafficking of an individual for the purpose of involving that individual in prostitution did so for gain because the new offence is directed at trafficking per se. Any consideration of gain will be taken into account in sentencing.
106. Subsection (7) defines material with reference to section 51 of the Civic Government (Scotland) Act 1982. This means that material includes any book, magazine, bill, paper, print, film, tape, disc or other kind of recording (whether of sound or visual images or both), photograph, drawing, painting, representation, model or figure and a photograph includes the negative as well as the positive version. Subsection (7) also defines material as including a pseudo-photograph with reference to section 52 of the 1982 Act and any data capable of conversion into a photograph or pseudo-photograph. This catches a copy of an indecent pseudo-photograph and data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.