

2013 No. 554

POLICE, ENGLAND AND WALES

CRIMINAL PROCEDURE, ENGLAND AND WALES

The Trafficking People for Exploitation Regulations 2013

Made - - - - *10th March 2013*

Laid before Parliament *13th March 2013*

Coming into force - - *6th April 2013*

The Secretary of State is a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to criminal justice.

The Secretary of State makes the following Regulations in exercise of the powers conferred by that section.

Citation, commencement and extent

1. These Regulations—

- (a) may be cited as the Trafficking People for Exploitation Regulations 2013;
- (b) come into force on 6th April 2013;
- (c) extend to England and Wales.

Interpretation

2.—(1) In these Regulations, except in the Schedule,—

“the accused” means a person who is alleged to have committed, or has committed, a human trafficking offence;

“complainant” means a person against or in relation to whom a human trafficking offence is alleged to have been committed, or has been committed;

“human trafficking offence” means—

- (a) an offence under any of sections 57 to 59A of the Sexual Offences Act 2003^(c);

(a) S.I. 2012/2752.

(b) 1972 c. 68. Section 2(2) was amended by section 27 of the Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(c) 2003 c.42. The following amendments are relevant in relation to England and Wales: section 57 of the Sexual Offences Act 2003 was amended by section 31 of the UK Borders Act 2007 (c. 30); and sections 57 to 59 of the Sexual Offences Act 2003 are substituted in relation to England and Wales by section 109 of the Protection of Freedoms Act 2012 (c. 9).

- (b) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(a); and

“relevant chief officer of police” means the chief officer of police for the police area in which an investigation of a human trafficking offence takes place.

(2) In these Regulations, except in the Schedule, any reference to a human trafficking offence is to be taken to include a reference to an offence which consists of—

- (a) attempting or conspiring to commit a human trafficking offence;
- (b) aiding, abetting, counselling or procuring the commission of a human trafficking offence;
- (c) an offence under Part 2 of the Serious Crime Act 2007(b) (assisting or encouraging crime) in relation to a human trafficking offence.

Protection of complainants in criminal investigations

3. Without prejudice to the rights of the accused, and in accordance with an individualised assessment of the personal circumstances of the complainant, the relevant chief officer of police shall ensure that the complainant receives specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible, during an investigation of a human trafficking offence—

- (a) unnecessary repetition of interviews;
- (b) visual contact between the complainant and the accused, using appropriate means including communication technologies;
- (c) unnecessary questioning concerning the complainant’s private life.

Protection of child complainants in criminal investigations

4.—(1) This regulation applies where the complainant is under the age of 18 and without prejudice to regulation 3.

(2) Without prejudice to the rights of the accused, during an investigation of a human trafficking offence, the relevant chief officer of police shall ensure that—

- (a) interviews with the complainant take place without unjustified delay after the facts have been reported;
- (b) interviews with the complainant take place, where necessary, in premises designed or adapted for the purpose;
- (c) interviews with the complainant are carried out, where necessary, by or through professionals trained for the purpose;
- (d) if possible and where appropriate, the same persons conduct all the interviews with the complainant;
- (e) the number of interviews with the complainant is as limited as possible and interviews are carried out only where strictly necessary for the purposes of the investigation;
- (f) the complainant may be accompanied by an adult of the complainant’s choice, unless a reasoned decision has been made to the contrary in respect of that adult.

Amendments to the Youth Justice and Criminal Evidence Act 1999

5. The Schedule (which amends the Youth Justice and Criminal Evidence Act 1999(c)) has effect.

(a) 2004 c. 19. In relation to England and Wales: section 4 was amended by section 31 of the UK Borders Act 2007, by paragraph 7 of Schedule 6 to the Human Tissue Act 2004 (c. 30) and by section 54 of the Borders, Citizenship and Immigration Act 2009 (c. 11) and is amended by section 110 of the Protection of Freedoms Act 2012.

(b) 2007 c. 27.

(c) 1999 c. 23.

Review

6.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review, the Secretary of State must, so far as is reasonable, have regard to how Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA(a) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Home Office
10th March 2013

Mark Harper
Minister of State

(a) OJ L 101, 15.4.2011, p.1.

SCHEDULE

Regulation 5

Amendments to the Youth Justice and Criminal Evidence Act 1999

1. The Youth Justice and Criminal Evidence Act 1999 is amended as set out in paragraphs 2 to 5.
2. In section 17(4) (witnesses eligible for assistance on grounds of fear or distress about testifying), after “sexual offence” insert “or an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004”.
3. In section 25(4)(a) (evidence given in private) after “sexual offence” insert “or an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004”.
4. In section 33 (interpretation etc of Chapter I), after subsection (4) insert—
 - “(5) For the purposes of this Chapter as it applies in relation to a witness who is the complainant in respect of a human trafficking offence, where the age of the witness is uncertain and there are reasons to believe that the witness is under the age of 18, that witness is presumed to be under the age of 18.
 - (6) In subsection (5) “human trafficking offence” means—
 - (a) an offence under section 59A of the Sexual Offences Act 2003;
 - (b) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.”.
5. In section 65 (general supplementary provisions), after subsection (3) insert—

“(4) Subsection (3) is subject to section 33(5) of this Act.”.
6. The reference to an offence under section 59A of the Sexual Offences Act 2003 in section 33(6) of the Youth Justice and Criminal Evidence Act 1999 (as inserted by paragraph 4 of this Schedule) includes a reference to an offence under any of sections 57 to 59 of the Sexual Offences Act 2003.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made as part of the implementation in England and Wales of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA(a).

Regulations 3 and 4 apply where there is a police investigation into a human trafficking offence. These regulations set out measures aimed at the protection of complainants. The measures in regulation 3 are designed to apply in relation to all complainants. Regulation 4 contains specific measures in relation to child complainants.

Regulation 5 and the Schedule amend the Youth Justice and Criminal Evidence Act 1999 (1999 c.23). Those amendments will, in particular, ensure that the complainant in respect of every human trafficking offence is eligible for “special measures” under that Act. Such “special measures” are intended to assist and protect certain categories of witnesses in the giving of evidence in criminal proceedings.

Regulation 6 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review, it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

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(a) OJ L 101, 15.4.2011, p.1.

STATUTORY INSTRUMENTS

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