

The sentencing of offences involving modern slavery and human trafficking in Scotland

Literature review

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INTRODUCTION

This report has been prepared for the Scottish Sentencing Council to assist with the preparation of guidelines related to offences involving modern slavery and human trafficking. It begins by setting out the legal framework in Scotland as it relates to these offences, as well as analogous offences which are likely to be relevant to prosecution and sentencing in this context. Thereafter, the sentencing framework in Scotland is discussed, with reference to available data on prosecutions and disposals, reported case law and unreported cases. Discussion of the equivalent landscape in England and Wales follows and is useful to consider given the recent development of sentencing guidelines in this area. The fourth and final section of the report considers this topic from a socio-legal perspective and in particular examines the experiences of victims (the term victim is most commonly used in law and in this report, the term victim refers to both ‘victims’ and ‘survivors’).

In terms of methodology, the review synthesises key implications from the evidence base to assist work on the effectiveness of sentencing. The review engages the research literature on sentencing and perspectives of sentencing in a number of domains. It examined relevant academic and library databases, including Westlaw, LexisNexis, HeinOne, JStor, PubMed, Scopus, Google Scholar, Open grey, and The British Library’s catalogue. The review also examined government sources for reports and publications (such as the House of Commons Justice Committee) and other reputable sources of citations such as SSRN. This search was guided by keywords and terms initially derived from the Scottish Sentencing Council project specification. The search covered materials up to January 2025.

Addendum: Additional information provided by COPFS post publication

COPFS has provided clarification on their data. This is set out below.

- COPFS data is drawn from a live operational database and is subject to change. Charges may be amended, added, or removed during the life of a case. As such, caution should be exercised when consulting this data; its intended function in this review is to be merely indicative of the criminal justice landscape.
- For solemn proceedings, data is at charge level. Between 2015/16 and 2024/25, 530 solemn-level charges were reported to COPFS. Of these, 270 were marked for court, and 37 resulted in conviction as of 31 January 2025 (approximately 14%). Approximately 15% of charges have not yet reached a conclusion; 24% of charges were marked as “not separately actioned.” 15% of charges have no decision yet.
- Data provided in Appendix D is at charge level and the data provided in Appendix B is at the individual level. This affects comparisons and means that the data on Page 14 (commented on by Footnote 53) refers to charges, not individuals.
- The conclusion of the report refers to solemn convictions. In total, there were 38 convictions between 2015-16 and 2024-25: 37 solemn and one summary.

Definitions

- ‘No action’ data refers to charges in which no prosecutorial action was taken against the individual before any court proceedings were raised.
- ‘No decision’ means that a prosecutorial decision has not yet been made on those charges.
- ‘No Further Action’ is a marking decision made by the prosecutor to discontinue a case after a previous marking to take action i.e. after court proceedings have been raised. It is also worth noting that an individual may be convicted of more than one charge, and a charge may involve more than one individual.
- “Not separately actioned” means no action was taken on the trafficking charge itself, but prosecution proceeded on other charges.
- A direct measure is an alternative to raising court proceedings and still constitutes prosecutorial action.

Procedure for non-prosecution of victims of human trafficking

While an individual may indicate they are a victim of trafficking or exploitation, the onus is not on them to do so. Instead, there is an obligation on prosecutors—and on police prior to reporting to COPFS—to carefully consider any indications that the individual may have been trafficked or exploited. These considerations should be made, where possible, at the outset and prior to any prosecution commencing. If a case proceeds to trial, the individual may rely on common law defences such as coercion and necessity.

1.0 The Legal Framework in Scotland

1.1 Statutory offences

The Human Trafficking and Exploitation (Scotland) Act 2015 (herein after 'the 2015 Act') introduced two statutory offences: (i) human trafficking (section 1) and (ii) servitude and forced or compulsory labour (section 4).

The offence of human trafficking is committed where a person takes a 'relevant action' with a view to exploiting another person.¹ A relevant action can include the following actions in relation to another person: recruitment; transportation or transfer; harbouring or receiving; exchange or transfer of control; arrangement or facilitation of the aforementioned actions.² The offence can be committed intentionally or in circumstances where the accused knew or ought to have known that exploitation is likely.³ Four types of exploitation are provided for under section 3 of the Act: slavery, servitude and forced or compulsory labour; prostitution or sexual exploitation; removal of organs; securing services or benefits.

The offence of servitude and forced or compulsory labour is committed if-

- (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is so held, or
- (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform such labour.

In determining whether the offence has been committed, circumstances which render the complainant vulnerable must be considered for example, their age, family relationship or health.⁴ Consent of the complainant does not preclude an offence from having been committed.⁵ This section of the Act is to be read in accordance with Article 4 of the European Convention of Human Rights which offers protection from slavery and forced labour.⁶

Offences arising under section 4 can be further aggravated by the fact that it is committed against a child⁷ and/or involves the abuse of a public position.⁸ The 2015 Act also provides a general aggravation which can be attached to any offence libelled in indictment or specified on complaint, where there is a connection to human trafficking.⁹

¹ Section 1(1).

² Section 1(2).

³ Section 1(4).

⁴ Section 4(3).

⁵ Section 4(4).

⁶ Section 4(2).

⁷ Section 6.

⁸ Section 7.

⁹ Section 5(1).

The 2015 Act repealed the offence of ‘traffic in prostitution’ contained under section 22 of the Criminal Justice (Scotland) Act 2003.¹⁰ However, a number of existing criminal law offences remain relevant in the prosecution of modern slavery and human trafficking.

1.2 Analogous offences

Prior to the introduction of the 2015 Act, actions amounting to slavery were likely to have been prosecuted under the common law offence of abduction. The essential feature of abduction has been described as the “deprivation of the victim’s personal freedom”.¹¹ It need not be accompanied by assault, although it is not unlikely that an assault charge would accompany any charge of abduction arising. Recent case law related to sentencing of abduction cases also shows that it is not uncommon for abduction charges to arise in the context of sexual offences.¹² It has been suggested that unlawful detention without any element of carrying off would also be criminal.¹³ The common law offence of abduction remains a relevant common law offence which might be utilised in the context of modern slavery and human trafficking, although is less likely to be utilised following the introduction of the 2015 Act. In the case of *McPhee*, discussed in more detail below, the libels involved charges of both assault and abduction in addition to charges under the 2015 Act, evidencing that there may be circumstances where both are used alongside one another.¹⁴ In *McPhee*, the abduction charge related to a single incident of being abducted from a homeless hostel and did give rise to a conviction.

Modern slavery related offences might also give rise to conviction for the common law offence of assault, the common law offence of fraud, and the statutory offence of ‘threatening or abusive behaviour’.¹⁵ The offence of forced marriage may also be relevant.¹⁶ At the time of writing, there have been no convictions for the offence of ‘forced marriage or forced civil partnerships’ in Scotland.¹⁷

It is worth noting that in a number of other jurisdictions, forced marriage has been included as a form of modern slavery in terms of the scope of the criminal law. The International Labour Organisation also recognise forced marriage as a form of modern slavery.¹⁸

¹⁰ Schedule 2.

¹¹ Chalmers, J. and Leverick, F., 2017. *The Criminal Law in Scotland* (vol 2; 4th edn). Edinburgh: W.Green. at para 33.51.

¹² See for example, *HM Advocate v Nawshowani* 2024 J.C. 371; *NS v HM Advocate* 2025 HCJAC 24.

¹³ Chalmers, J. and Leverick, F., 2017. (n 13) .

¹⁴ *McPhee v HM Advocate* [2019] HCJAC 8

¹⁵ Criminal Justice and Licensing (Scotland) Act 2010, section 38.

¹⁶ Anti-social Behaviour, Crime and Policing (Scotland) Act 2014, section 122.

¹⁷ For the most in-depth and up-to-date discussion of forced marriage in Scotland, see Carruthers, J. and Belton, F., 2024. *Combating Forced Marriage: Strengthening Protection in Scots law*. Edinburgh: Scottish Government.

¹⁸ International Labour Organisation., 2022. *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. Available at: <
https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40ipec/documents/publication/wcms_854795.pdf > [Last Accessed 14 February 2025].

Due to the link between human trafficking and sexual exploitation of women, analogous offences are likely to include those contained in the Sexual Offences (Scotland) Act 2009 and/or those related to prostitution.

In Scots law, prostitution is not itself a crime, but ‘soliciting and importuning’ by a prostitute is an offence.¹⁹ As Chalmers recognises, the legal position relating to clients seeking the services of prostitutes was less clear before the introduction of the Prostitution (Public Places) (Scotland) Act 2007.²⁰ Whilst ‘kerb-crawling’²¹ could give rise to a charge of breach of the peace, such conduct might have faced problems meeting the criteria for the offence following *Smith v Donnelly*.²² Section 1 of the 2007 Act states:

1 Offences relating to prostitution

(1) A person (“A”) who, for the purpose of obtaining the services of a person engaged in prostitution, solicits in a relevant place commits an offence.

(2) For the purposes of subsection (1) it is immaterial whether or not—

(a) A is in or on public transport,

(b) A is in a motor vehicle which is not public transport,

(c) a person solicited by A for the purpose mentioned in that subsection is a person engaged in prostitution.

(3) A person (“B”) who loiters in a relevant place so that in all the circumstances it may reasonably be inferred that B was doing so for the purpose of obtaining the services of a person engaged in prostitution commits an offence.

(4) For the purposes of subsection (3) it is immaterial whether or not—

(a) B is in or on public transport,

(b) B is in a motor vehicle which is not public transport.

(5) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

¹⁹ Civil Government (Scotland) Act 1982, section 46. Liable under summary conviction only.

²⁰ Chalmers, J., 2010. *The New Law of Sexual Offences in Scotland*. Edinburgh: W.Green. at para 3.02.

²¹ Kerb-crawling is the term generally used to describe the act of soliciting a prostitute from a motor vehicle (driven at slow speed) or from within the vicinity of a motor vehicle.

²² “Conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community”, 2002 J.C. 65, at para 17. *Smith v Donnelly* considered the scope of breach of the peace in the context of concerns that the common law offence was incompatible with Article 7 of the European Convention of Human Rights which relates to reasonable certainty regarding the law (‘no punishment without the law’). The appeal was refused but the scope of the offence was clarified.

Whether something can ‘reasonably be inferred’ for the purposes of this offence may depend on factors such as the time of day, the accused’s behaviour at that time or at other places around that time.²³

‘Procuring’ is also an offence under section 7 of the Criminal Law (Consolidation) (Scotland) Act 1995 and might have a transnational element.²⁴ Section 8 of the Criminal Law (Consolidation) (Scotland) Act 1995 criminalises ‘abduction and unlawful detention’ where the context is detaining a woman against her will for the purposes of her having unlawful sex with men, or a particular man, or in a brothel.²⁵ The common law offence of abduction may also be relevant in this context.

Those with parental responsibilities over a child under the age of 16 may be guilty of an offence under sections 10 of the Criminal Law (Consolidation) (Scotland) Act 1995 (‘seduction, prostitution, etc., of girl under 16’) or section 12 (‘allowing child to be in a brothel’).

Offences contained under section 11 of the Criminal Law (Consolidation) (Scotland) Act 1995 (‘Trading in prostitution and brothel-keeping’) might also be relevant in this context, but to male accused persons only. Under section 11(1)(a), a male person can be guilty of an offence of knowingly living on the earnings of prostitution (either wholly or in part). If convicted on indictment, this can give rise to imprisonment for a term not exceeding seven years or a fine (or both) and if convicted under summary procedure may be liable to a term of imprisonment not exceeding 12 months or a fine not exceeding the statutory maximum, or both.²⁶ The second offence contained within section 11 of the Act is where a male solicits or importunes in a public place for immoral purposes.²⁷ Where there is a conviction for this offence on indictment, the accused is liable to a period of imprisonment not exceeding two years, to a fine, or to both and if convicted under summary procedure, to imprisonment for a period not exceeding 12 months or to a fine, or both.²⁸

An equivalent offence relating to living off earnings of a male prostitute is contained under section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995 (‘Living on earnings of another from male prostitution’).

Drug-related offences are also likely to arise in the context of both trafficking and slavery, especially those contained in the Misuse of Drugs Act 1971. These offences include, in particular, restriction or importation and exportation of controlled drugs,²⁹ restriction of

²³ Chalmers, J., 2010. (n 20) at para 3.03.

²⁴ Criminal Law (Consolidation) (Scotland) Act, section 7(1)(b).

²⁵ *Ibid*, section 8(3).

²⁶ *Ibid*, section 11(1A)(a).

²⁷ *Ibid*, at section 11(1)(b).

²⁸ *Ibid*, section 11(1A)(b).

²⁹ Misuse of Drugs Act 1971, section 3.

production and supply of controlled drugs,³⁰ restriction of possession of controlled drugs,³¹ and restriction of cultivation of cannabis plant.³²

1.3 Defences available to victims of human trafficking

Section 8 of the 2015 Act conferred obligations upon the Lord Advocate to issue and publish guidance on the prosecution of a person who appears to be a victim of human trafficking or a victim of an offence under section 4 of the 2015 Act. The resulting instructions recognise the hidden nature of human trafficking and modern slavery. It is stated that the offences most likely to be committed by a victim in the process of trafficking or exploitation are those related to immigration and the possession of false identity documents.³³ The offences most likely to be committed as a consequence of trafficking include shoplifting, being concerned in the sale and supply of drugs, theft by housebreaking, benefit fraud and offences related to sexual exploitation.³⁴

There is a strong presumption against prosecuting victims under the ages of 17 and 18 where there is “credible and reliable information to support” the fact that they are:

1. a victim of human trafficking and exploitation and
2. the offending took place in the course of or as a consequence of being the victim of human trafficking or exploitation.³⁵

Where an adult has committed an offence, a prosecutor must satisfy themselves on the balance of probabilities that the person has been the victim of trafficking or modern slavery.³⁶ The factors to be taken into account when deciding to prosecute include:

- Whether the offence was such that it can clearly be linked to human trafficking or exploitation.
- Whether the role played in the offending by the accused was one consistent with being a victim of human trafficking or exploitation.
- Whether there is information supporting that violence, threats, abduction or coercion were used towards the accused.

³⁰ Ibid, section 4.

³¹ Ibid, section 5.

³² Ibid, section 6.

³³ Crown Office and Procurator Fiscal Service., 2024. *Lord Advocate's instructions for non-prosecution of victims of human trafficking*. Available at: <<https://www.copfs.gov.uk/publications/lord-advocate-s-instructions-non-prosecution-of-victims-of-human-trafficking/html/>> [Last accessed 17 February 2025]. at para 6.

³⁴ Ibid.

³⁵ Ibid, at para 17.

³⁶ Ibid, at para 36.

- Whether there is information supporting that the accused was in a position of vulnerability and that those involved in the trafficking or exploitation had abused this position of vulnerability.
- Whether the adult is deemed to be particularly vulnerable because of the presence of any additional vulnerability.
- Whether there is information that supports that the accused was in fear of the individuals involved in human trafficking or exploitation.
- Whether there have been offences committed in the same or similar circumstances which have already been established as being linked to human trafficking or exploitation.³⁷

Additional context is given on what it means to be compelled and what is meant by ‘compulsion’:

When considering whether an adult victim of human trafficking and exploitation has been compelled to commit an offence, it is important to note that the types of compulsion which a victim of human trafficking or exploitation may experience are not necessarily all linked to the actions of a trafficker or exploiter. In addition to behaviour such as direct threats made by a trafficker or exploiter to the victims themselves or their families or friends, victims of human trafficking may also be compelled by the circumstances in which they find themselves or their own beliefs or culture. A broad approach should be taken when considering whether an adult victim of human trafficking and exploitation has been compelled to commit an offence.³⁸

The compatibility of the Scottish approach with the European Convention of Human Rights (under the Human Rights Act 1998) was considered in *Van Phan*.³⁹ Van Phan had been convicted of offences under the Misuse of Drugs Act 1971, in particular the cultivation of cannabis. His position was that he had been removed from Vietnam by persons unknown and transported to Scotland, via Russia and France. Upon arriving in the UK, he said he was kept in the flat where he was found and had been assaulted when he asked to leave the property. He claimed to have been locked in the property for two and a half months at the time of his arrest. A Home Office investigation concluded that he had not been trafficked, noting inconsistencies in his statements and concluding that he was not a credible witness.⁴⁰ On appeal, it was argued that the absence of a statutory defence within the 2015 Act was incompatible with EU law and in particular Article 2 of Directive 2011/36/EU of the European Parliament and Council on preventing and combating human trafficking and protecting victims of trafficking. It was held that the Scottish position was not a breach of EU law and that the “existence of a statutory defence in other UK jurisdictions was irrelevant to the

³⁷ Ibid, at para 40.

³⁸ Ibid, at para 38.

³⁹ *Van Phan v HM Advocate* 2018 J.C. 195. Declarations of incompatibility are set out in section 4 of the Human Rights Act 1998.

⁴⁰ Ibid, at para 12.

compatibility of the 2015 Act with EU law”.⁴¹ On the accessibility of the common law defence of coercion, it was commented that the defence was available to the charges Van Phan faced and that:

It will always be a matter of facts and circumstances whether a person was truly coerced (or compelled) to commit a crime by virtue of genuinely anticipated and unavoidable violence.⁴²

There is currently no record kept of how criminal defences operate in practice⁴³, but coercion and necessity would appear to be infrequently placed before the courts for consideration, in all contexts.

⁴¹ Ibid, at para 33.

⁴² Ibid, at para 42.

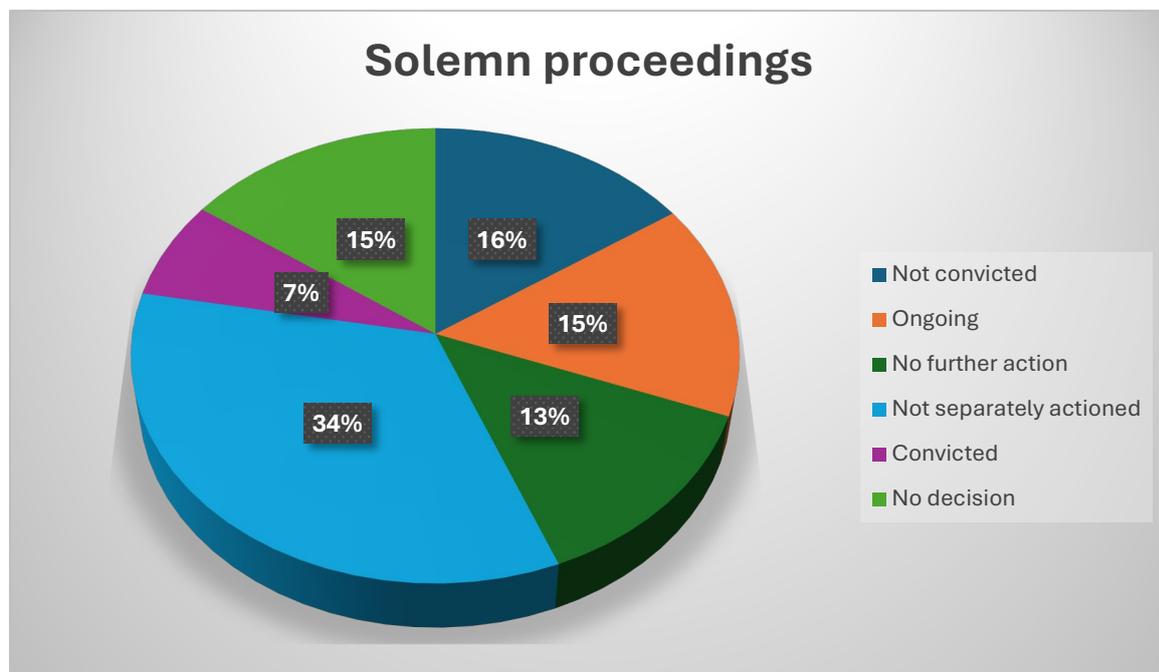
⁴³ McPherson, R., 2022. An empirical study of criminal defences. 4 *Criminal Law Review* 307-318.

2.0 Sentencing Framework in Scotland

2.1 Proceedings and convictions

On request from the authors in January 2025, the Crown Office and Procurator Fiscal Service (COPFS) provided the following data related to prosecutions and charges arising under the 2015 Act. The data provided related to proceedings for section 1 and 4 offences and all offences containing the human trafficking aggravation under the Act. Separate data was not available on aggravations and offences and so the data presented below represents all proceedings of this type.

Figure 1: Solemn proceedings arising under the Human Trafficking and Exploitation (Scotland) Act 2015 from 2015-16 to 2024-25⁴⁴



In total, 530 actions under solemn procedure were taken against accused under the 2015 Act between 2015-16 and 2024-25, with 37 convictions arising in total across the same period.⁴⁵ This accounts for a conviction rate of 6.9% which is very low compared to the conviction rates for other offences being charged under solemn procedure, even sexual

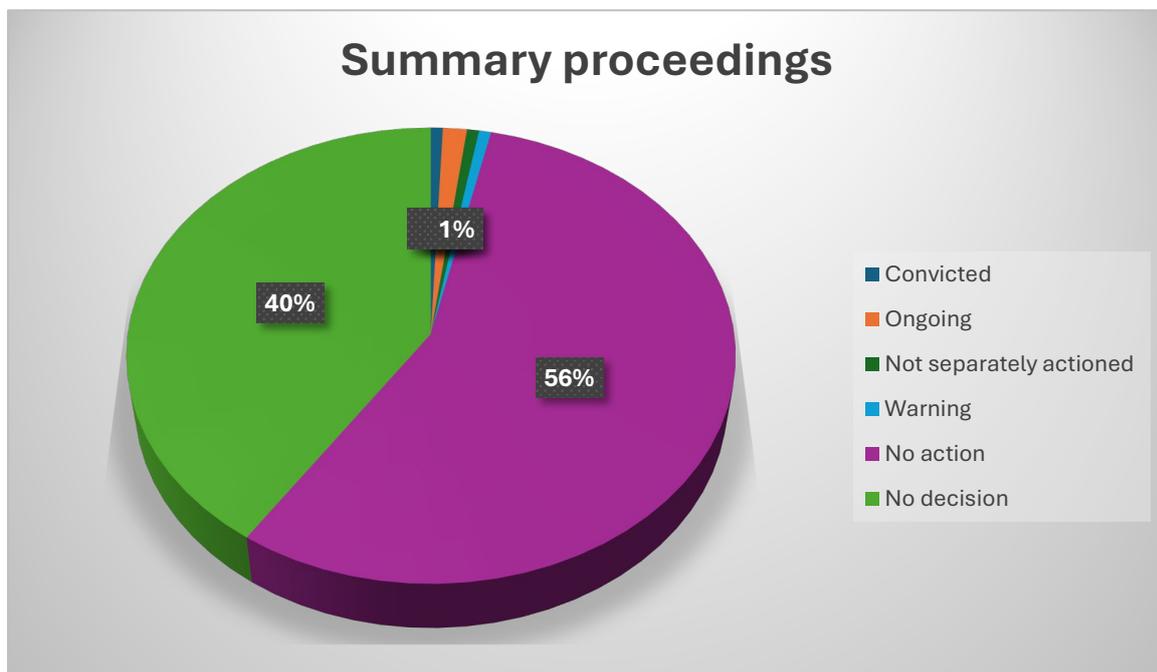
⁴⁴ The terms 'Not separately actioned', 'No decision' and 'No further action' were those provided by COPFS with the data, without further explanations as to what these terms might mean in practice. There is, therefore, a lack of clarity as to what proceedings, if any, might be expected, which is significant given the consequences which might be expected to arise from such proceedings. As such, this data, whilst indicative of the landscape to some extent, should be treated with caution.

⁴⁵ COPFS advise that 'Not separately actioned' refers to cases where no action was taken against the charge but prosecution in court was taken against the accused. COPFS further advise that "some of the libel in the charge may have been incorporated into the charge that was actioned".

offences.⁴⁶ COPFS reported 653 actions taken against accused in total (that is to say, under both solemn and summary procedure), evidencing that most action is taken under solemn procedure. The full table relating to both solemn and summary proceedings is available in Appendix A.

The remaining actions taken against accused under summary procedure are shown in Figure 2, below:

Figure 2: Summary proceedings arising under the Human Trafficking and Exploitation (Scotland) Act 2015 from 2015-16 to 2024-25



In most summary proceedings, no further action is taken or there is no decision. Between 2015-16 and 2024-25 there has been one summary conviction and one further case where a direct measure (warning) was issued. This accounts for a conviction rate of under one per cent, which is significantly lower than other conviction rates for offences heard under summary procedure. Scottish Government Criminal Proceedings data indicates that across all categories, crimes have a conviction rate of at least 82% between the period 2013-14 and 2022-23.⁴⁷

The low conviction rate and high number of cases which have been subject to no further action in this context suggest that there is a particular complexity to cases of this nature.

⁴⁶ For discussion of conviction rates in this area see: McPherson, R., Burgess, N., Gormley, J. and Tata, C., 2021. *Sexual offences involving rape literature review*. Edinburgh: Scottish Sentencing Council.

⁴⁷ Scottish Government., 2024. *Criminal Proceedings in Scotland, 2022-23*. Available at: <[Supporting documents - Criminal Proceedings in Scotland, 2022-23 - gov.scot](https://www.gov.scot/supporting-documents/criminal-proceedings-in-scotland-2022-23)> [Last accessed 19 June 2025]. at Table 4c. Data relating to individual categories and crimes is also provided. Although data does not appear to be published relating to conviction rates for summary and solemn procedure.

This might be linked to the fact that accused persons are likely to be operating in gangs, meaning it can be difficult to evidence the role each person has played, particularly in trafficking cases. There may also be a trans-national element to the offending which means that offenders are convicted in other jurisdictions. Investigations are likely to be long and complex. They will be further exacerbated by victim who are scared to testify against the abusers, who may have language barriers, and who may have an uncertain immigration status. Any one of these issues renders a victim vulnerable. Proceeding in victimless prosecutions is difficult, especially given the need for essential facts to be corroborated in Scots law.⁴⁸ Proceedings are likely to be rendered more complex by the involvement of the National Referral Mechanism (NRM). This point will be returned to in section 4 below.

As part of this research, a request was made by the authors to COPFS to find out the total number of accused in each case identified. The results from this request are contained within Appendix B. It shows that in some single cases there have been up to 12 accused persons. Current criminal proceedings data (relating to all criminal offences) makes it difficult to ascertain how many people are accused in a single case, meaning it is difficult to draw conclusions from the data in Appendix B. However, it is likely that offences in this context and human trafficking in particular are likely to involve a network of people. As such, developing guidelines may wish to consider the interaction between the doctrine of art and part liability and sentencing those who play roles of differing significance within a network.⁴⁹

The proceedings discussed above were actioned in every Sheriffdom in Scotland, with Glasgow having the highest number of proceedings for offences (190). Dundee experienced the second highest number of proceedings (138). It is noteworthy that in 2020-21, 86 proceedings were recorded in Glasgow with total numbers of proceedings across all Sheriffdoms peaking in 2021-22. Full details are shown in Appendix C.

This data suggests a possible link between Covid-19 and reported trafficking type behaviour. Such a link is further supported by research undertaken elsewhere. The United Nations consider that victims of trafficking were less likely to be identified during Covid-19⁵⁰ and research by Coxen et al. suggests that the pandemic increased the number of people vulnerable to being exploited and becoming sex trafficking victims.⁵¹ In 2020, Police Scotland reported that, despite the restrictions in place as a result of Covid-19, 84 women

⁴⁸ *Lord Advocate's Reference (No 1 of 2023)* [2023] HCJAC 40.

⁴⁹ The issue of conspiracy arises in several appeal cases related to the Modern Slavery Act 2015 in England and Wales. See for example: *R. v Capitaio (Basky)* [2022] EWCA Crim 893; *R. v Swailes (Peter)* [2022] EWCA Crim 540; *R. v Nixon (Omorie Tevon-Te)* and Ismail (Itman) [2021] EWCA Crim 575; *R. v Rooney (Martin Senior)* [2019] EWCA Crim 681; *R. v Egeresi (Laszlo)* [2019] EWCA Crim 675.

⁵⁰ United Nations Office on Drugs and Crime. *Impact of the Covid-19 Pandemic on Trafficking in Persons*. Available at: <https://www.unodc.org/documents/Advocacy-Section/HTMSS_Thematic_Brief_on_COVID-19.pdf> [Last accessed 24 February 2025].

⁵¹ Coxen, J. O., Castro, V., Carr, B., Bredin, G. and Guikema, S., 2023. COVID-19 Pandemic's Impact on Online Sex Advertising and Sex Trafficking. *Journal of Human Trafficking*, 1–18. <https://doi.org/10.1080/23322705.2023.2215362>

victims of trafficking and exploitation had been identified that year, noting that there were likely higher numbers of unidentified victims.⁵²

A request was made by the authors to find out the age and sex of the accused in cases arising under the 2015 Act. This information was provided, as set out in Appendix D and shows proceedings against 653 individuals in total.⁵³ Between 2016-17 and 2024-25, a total of 142 women had proceedings brought against them for offences under the 2015 Act or offences aggravated by human trafficking under the 2015 Act.⁵⁴ This accounts for 21.7% of all accused. Most women accused were between 31 and 40 years of age at the time of being accused.

During the same period, 504 men had proceedings brought against them for offences under the Act and offences aggravated by human trafficking under the 2015 Act. This accounts for 77% of all accused. Most male accused were aged between 21 and 30 (172) or 31 and 40 (170) at the time of proceedings being brought.

2.2 Statutory penalties and disposals

Where convictions arise under summary procedure for either sections 1 or 4 of the 2015 Act, the statutory maximum sentence is imprisonment for a term not exceeding 12 months or a fine (or both).⁵⁵ Where convictions for either offence arise under indictment, the maximum penalty is life imprisonment or a fine (or both).⁵⁶

Data provided to the authors by COPFS included data related to sentencing. Where there were convictions under the Act, 95% of disposals were reported as either imprisonment or a community payback order, as Figure 3 below shows:

⁵² Police Scotland., 2020. *84 women sexually exploited by trafficking gangs in Scotland*. <<https://www.scotland.police.uk/what-s-happening/news/2020/november/84-women-sexually-exploited-by-trafficking-gangs-in-scotland/>> [Last accessed 28 February 2025].

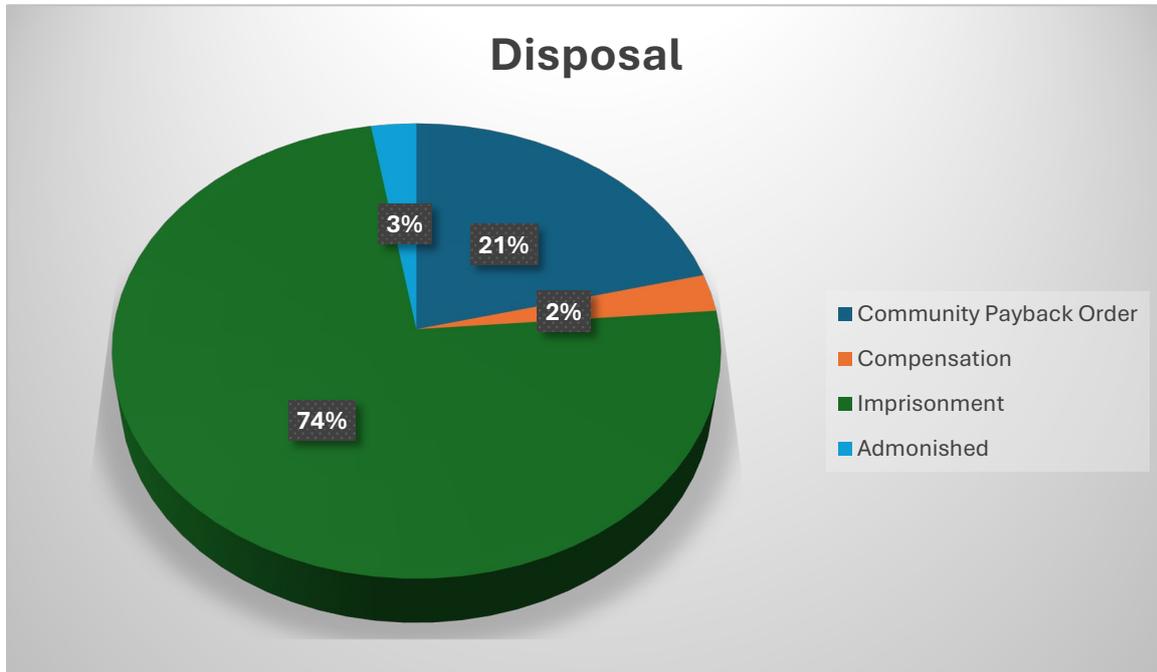
⁵³ The fact that the total number of people proceeded against is the same as the total number of actions would suggest that the data reflects only one of these variables. It is also not entirely clear how the data provided by COPFS presented in Appendix B (which suggests c. 350 individuals accused over 7 years) relates to that presented in Appendix D (which suggests 653 individuals). As such, the authors would advise caution when consulting this data; its intended function in this review is to be merely indicative of the criminal justice landscape.

⁵⁴ For seven individuals, data on sex and age was not recorded.

⁵⁵ Sections 1(6) and 4(5).

⁵⁶ Ibid.

Figure 3: Disposals for convictions arising under the Human Trafficking and Exploitation (Scotland) Act 2015 from 2016-17 to 2024-25



As Figure 3 above shows, 74% of convictions arising under the 2015 Act have given rise to a sentence of imprisonment, which is not surprising since most proceedings were occurring under solemn procedure.

The Scottish Courts and Tribunal Service (SCTS) also provided data relating to the disposals under the 2015 Act for sections 1, 4 and 32 or those charges with a trafficking aggravator. The data is provided in Table 1 below:

Table 1: Disposals for cases involving a charge of section 1, 4, or 32 of the Human Trafficking and Exploitation (Scotland) Act 2015 or charges with a trafficking aggravator under the 2015 Act⁵⁷

Count of Disposals on Case Charges by Financial Year	2017/18	2018/19	2019/20	2022/23	2023/24	2024/25	Disposal Total
Community Payback Order		1	1		2	3	7
Compensation			4				4
Electronic Monitoring Order					2		2
Electronic Monitoring Order - Pre July 2024					3		3
Forfeiture Order					1		1
Restriction of Liberty Order					2		2
Trafficking and Exploitation Prevention Order	2		3	14		8	27
Serious Crime Prevention Order		2				2	4
Confiscation Order			2		2		4
Sexual Offences Act 2003 Certification		2				4	6
Timetable for Confiscation Order		4	2				6
Imprisonment	2	4	2	15	1	10	34
Fine						1	1
Year Total	4	13	14	29	13	28	101

Over the data period, it can be seen that imprisonment and Trafficking and Exploitation Prevention Orders are the most numerous disposals.⁵⁸ The fine disposal pertained to the single summary case in the dataset. 64 disposals pertained to male offenders and the other 34 to female offenders. While most disposals related to males, female offenders received 16 of the 34 disposals of imprisonment and males the other 18. “Crimes associated with prostitution” accounted for 49 disposals. The next largest category was “other violence” and this accounted for 37 disposals and was the largest.⁵⁹ Twenty-eight disposals (13 of which

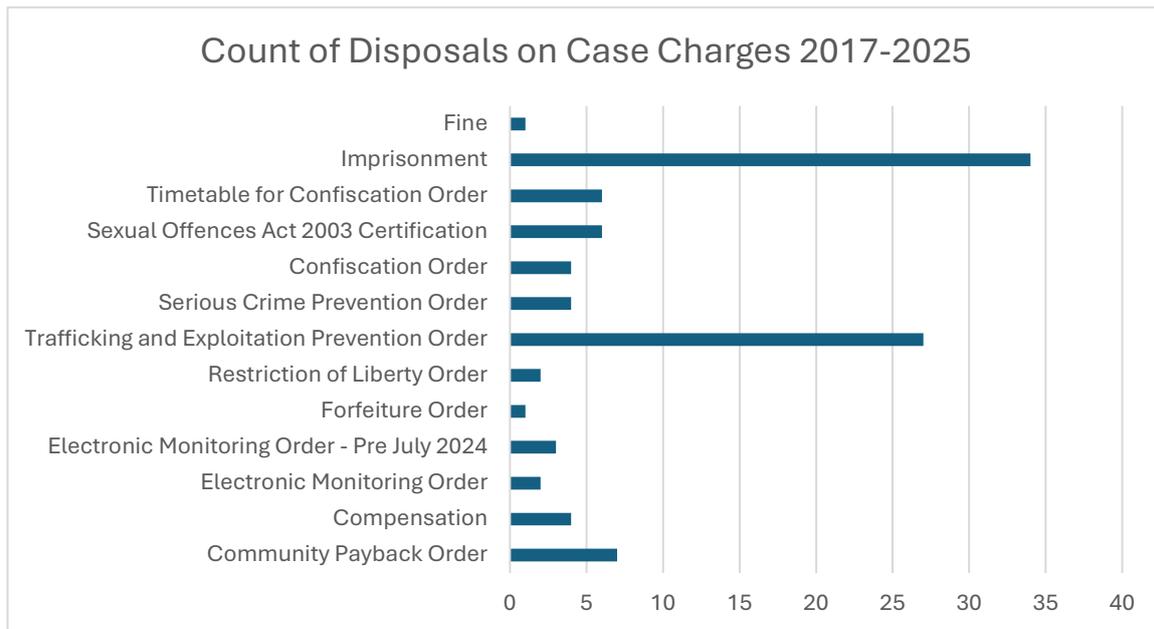
⁵⁷ The Scottish Courts and Tribunals Service advise that they use a live operational case management system for the processing of court business. The information held on the system is structured for these operational needs, rather than for statistical reporting or research purposes. The information SCTS provided is based on the best information available from the case management system as of 26th February 2025. The term ‘Timetable for Confiscation order’ has not been defined by SCTS. SCTS confirm that the data provided is at charge level where a disposal has been applied to either the main Human Trafficking charge or a charge with a Trafficking Aggravator present.

⁵⁸ Trafficking and Exploitation Prevention Orders can be issued on other charges such as ‘Aliens and Immigration’ Offences or ‘Cruel and unnatural treatment of an adult’ offences but these are not included in this data.

⁵⁹ These categories refer to the ‘top 38’ previously used by the Scottish Government in their criminal proceedings (now top 50). These relate to charge codes which are mapped to crime codes. The crime code list is split into nine crime and offence groups. The first six are referred to as crimes and the remaining three as offences. The nine crime and offence groups are split into 50 crime and offence categories, referred to as the ‘top 50’ categories, that are used in the presentation of recorded crime data. These ‘top 50’ categories along with the main types of crimes and offences included in each of the ‘top 50’ categories.

were imprisonment) for “crimes associated with prostitution” were for female offenders and 21 (8 of which were imprisonment) were for male offenders. Three disposals pertained to “rape and attempted rape” and these were all for male offenders. The count of disposals on cases charged between 2017 and 2025 is shown in Figure 4 below:

Figure 4: Count of Disposals on Case Charges 2017-2015⁶⁰



Whilst such data is helpful and illuminates the landscape of proceedings, convictions and sentencing in this area to some extent, the limitations of sentencing data should also be noted. Particular limitations of note concern how multiple convictions are captured and the fact that separate data related to offences under the Act and offences aggravated by human trafficking were not reviewed by the authors as part of this review on the basis that such data is not easily extracted. Concerns relating to the specificity of data are not unique to the context of modern slavery and are not unique to the Scottish landscape. The importance of detailed criminal justice data collection is recognised widely⁶¹ and has been formally incorporated into recent legislation on domestic abuse.⁶² Improved data collection and recording practices in this area would be beneficial to a range of stakeholders, including the Scottish Sentencing Council.

⁶⁰ SCTS confirmed that this data relates to 101 charges consisting of 14 distinct cases and 23 distinct accused, meaning it accounts for multiple disposals in a single case.

⁶¹ Tata, C., 1997. Conceptions and representations of the sentencing decision process. 24(3) *Journal of Law and Society* 395; Tata, C., and Hutton, N. (2003) Beyond the Technology of Quick Fixes: Will the judiciary act to protect itself and shore up judicial independence? 16(1) *Federal Sentencing Reporter*.

⁶² Domestic Abuse (Scotland) Act 2018, section 14. Section 38 of the 2015 Act also places reporting obligations on statutory authorities which has led to increased data in this area, some of which is available through the Scottish Government’s annual reports related to section 38 of the Act.

Overall, while this aggregate data does not provide details on the specifics of the cases coming before the court, it may suggest some interesting trends in the cases so far. One notable trend is the range of orders utilised by the court in disposing of cases of this type. It may be that sentencers would welcome direction from the Council on the use of ancillary orders in this context.

2.3 Ancillary protection orders

Under the 2015 Act, provision can be made for trafficking and exploitation prevention and risk orders. Risk orders can be sought as part of preventative measures. These can be pursued by the chief constable and will be passed by a sheriff who is satisfied that:

- (a) there is a risk that the adult may commit a relevant trafficking or exploitation offence, and
- (b) each prohibition or requirement in the order is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an offence.⁶³

The recent case of *Sir Iain Livingstone QPM v Kevin Booth*⁶⁴ considered an application made for a risk order under section 26 of the 2015 Act. The details of the alleged behaviour was particularly harrowing and was contained within an appendix of the judgment. The harrowing nature of the case was further reflected by the Court in the final line of the judgment:

This judgment may be primarily concerned with the legal issues before the court, but it is important not to lose sight of the human suffering giving rise to this case.⁶⁵

In considering the imposition of the order under section 26 of the Act, Sheriff Watson noted that he found it helpful to “divide the process into four questions”:

- i. Has it been proved that the defender has committed acts of human trafficking and exploitation?
- ii. If so, does foreign travel form an integral and necessary part of the defender's proven human trafficking and exploitation?
- iii. Is there a risk of this conduct continuing, and if so, what is the level of this risk?
- iv. Are the measures sought by the pursuer necessary and proportionate to addressing the determined risk?⁶⁶

⁶³ Section 26(3).

⁶⁴ [2025] SC WCK 8, 2025 WL 00594698.

⁶⁵ *Ibid*, para 102.

⁶⁶ *Ibid*, at para 72.

The Court found the imposition of a worldwide travel ban to be proportionate and necessary in the circumstances, finding travel to be integral to the defender's trafficking and exploitation activities. It is likely that this case, and Sheriff Watson's approach to section 26, will be referred to in future decision-making.

Prevention orders can be made as part of sentencing. Where there is a conviction under section 4, the court can make a trafficking and exploitation prevention order where it is satisfied that:

- (a) there is a risk that the adult in respect of whom the order is to have effect may commit a relevant trafficking or exploitation offence, and
- (b) each prohibition or requirement in the order is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an offence.⁶⁷

At the time of writing, the fifth annual progress report on the Scottish Government's Trafficking and Exploitation Strategy is being prepared but has not yet been published. This report will contain additional data relating to proceedings in this area and the use of ancillary orders under the 2015 Act. The Scottish Government has previously reported that no orders were made under Part 4 of the 2015 Act in 2020-21 and as a measure to tackle this, the same report suggests that public awareness on the issue of human trafficking and exploitation is needed.⁶⁸ The third annual progress report noted that in the period 2019 to 2020, five people were made subject to Trafficking and Exploitation Prevention Orders.⁶⁹ No orders were made under Part 4 of the 2015 Act in the period 2018-19⁷⁰ and two orders were made in the period 2017-18.⁷¹ This data evidences that the use of orders has not increased the longer the 2015 Act has been in force. This can be contrasted with orders such as non-harassment orders which have increased in use annually following the passing of section 1 of the Domestic Abuse (Scotland) Act 2018 and section 1 of the Abuse Behaviour and Sexual Harm (Scotland) Act 2016,⁷² both of which invite the court to consider the passing of a protection order in sentencing.

⁶⁷ Section 17(4).

⁶⁸ Scottish Government., 2022. *Trafficking and Exploitation Strategy: fourth annual progress report-2020 to 2021*. Available at: < [Section 5 - Trafficking and exploitation strategy: fourth annual progress report - 2020 to 2021 - gov.scot](#)> [Last accessed 1 March 2025]. at part 5.

⁶⁹ Scottish Government., 2021. *Trafficking and Exploitation Strategy: third annual progress report-2019 to 2020*. Available at: < [Trafficking and exploitation strategy: third annual progress report - gov.scot](#)> [Last accessed 1 March 2025]. at part 5.

⁷⁰ Scottish Government., 2020. *Trafficking and Exploitation Strategy: second annual progress report-2018 to 2019*. Available at: < [Trafficking And Exploitation : Strategy – Second Annual Progress Report](#) > [Last accessed 1 March 2025]. at p 42.

⁷¹ Scottish Government., 2019. *Trafficking and Exploitation Strategy: first annual progress report-2018 to 2019*. Available at: < [Human Trafficking and Exploitation Strategy: first annual progress report - gov.scot](#)> [Last accessed 1 March 2025]. at part 6.

⁷² For data on the use of non-harassment orders in this context see; McPherson, R., Gormley, J. and Wheate, R., 2022. *The sentencing of offences involving domestic abuse in Scotland*. Edinburgh: Scottish Sentencing Council. at Table 9. The data in Table 9 was provided by SCTS as part of the work commissioned by the Scottish Sentencing Council at that time.

The use of civil protection orders is now an important tool in sentencing and one that has been especially utilised in the context of legal responses to domestic abuse. The process of civil protection orders becoming criminalised when breached and civil protection orders being used by criminal courts as part of sentencing has been described as a 'hybridisation' of civil and criminal law. This hybrid response to legal responses to coercive and controlling behaviour has been experienced across the UK.⁷³ In the context of forced marriage, protection orders have also been introduced,⁷⁴ although imposition of these will occur through separate civil proceedings and not as part of sentencing under section 122 of the Anti-social behaviour, Crime and Police (Scotland) Act 2014 (since there have been no convictions under section 122).

Discussing the use of ancillary orders to respond to modern slavery in England and Wales, Padfield has argued that some may be underutilised:

As is true for all serious offenses, the focus of sentencers is on imprisonment and on confiscation orders, rather than on the needs of victims. Compensation or reparation to the victim seems to get low priority, despite the facts that reparation to the victim is one of the statutory purposes of sentencing.⁷⁵

She recognises that confiscation orders are commonly used in England and Wales, but suggests these may impact intermediaries rather than primary offenders.⁷⁶ Thus, future guideline development in this area may wish to consider ways to mitigate these risks where possible.

As will be discussed below, the Sentencing Council of England and Wales (SCEW) provide guidance on the sentencing of breached prevention orders in the context of modern slavery. Any guidelines developed by the Scottish Sentencing Council in this context, may similarly wish to include guidance related to the separate offence of breaching an order issued under the 2015 Act. Guidelines developed by the Scottish Sentencing Council may also seek to inform the construction of orders at sentencing stage. Recent research on non-harassment orders has demonstrated that there can be inconsistency in how such orders are drafted, when they are utilised and the duration for which they are passed.⁷⁷ In drafting guidelines for any offences/offence types in which civil protection orders are likely to be utilised as part of sentence, it has been suggested there may be a role for the Council to play in offering guidance on these points.⁷⁸

⁷³ Bates, L. and Hester, M., 2020. No longer a civil matter? The design and use of protection orders for domestic violence in England and Wales. 42(2) *Journal of Social Welfare and Family Law* 133-153. See also McPherson, R., Gormley, J. and Wheate, R., 2022. (n 72).

⁷⁴ Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011, section 1.

⁷⁵ Padfield, N., 2024. Modern Slavery Prosecutions in England and Wales: A Critical Analysis. Chapter in *The Palgrave Handbook on Modern Slavery*. M.K. Kapardis, C. Clark, A. Warria and M. Dion, (eds). Switzerland: Springer. at p 311.

⁷⁶ *Ibid*, at p 311.

⁷⁷ McPherson, R., 2023. Prosecuting and sentencing domestic abuse in Scotland. Chapter in *Research Handbook on Domestic Violence and Abuse*, V. Bettinson, A. Speed, K. Richardson and M. Burton, (eds.), Edward Elgar; McPherson, R., 2022. Unintended consequences of non-harassment orders: child contact decision-making. 44(4) *Journal of Social Welfare and Family Law* 495-511.

⁷⁸ *Ibid*.

2.4 Sentencing appeals

At the time of writing, there are few reported sentencing appeal cases arising under the 2015 Act. There are two recent reported appeal cases dealing with modern slavery, the first of which is *McPhee v HM Advocate*.⁷⁹ The case involved charges arising under section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 ('slavery, servitude and forced or compulsory labour'), later repealed by the 2015 Act. Lord Carloway presided over the appeal against conviction, which also considered the appeal of co-accused John Miller at the same time.⁸⁰ The appeal itself, which was refused, considered a number of evidential points including the admissibility of mixed statements. McPhee was convicted of 14 charges arising between 1993 and 2016 relating to his treatment of people who worked for him. Many of these people had been homeless at the time he met them and suffered from mental health problems and/or addiction issues. It is noted in the judgement that:

The appellant succeeded in making people do as he wished because of his reputation for violence and, in some cases, a feeling of helplessness in the complainers.⁸¹

In respect of charge 22, an extended sentence of 12 years' imprisonment was imposed, with a custodial term of ten years. It is noted that "There were a variety of lesser periods of imprisonment imposed on the remaining charges."⁸²

Miller's appeal for his conviction under section 4 of the 2015 Act dealt more specifically with the context of slavery itself. The appellant argued that a misdirection had arisen on the basis of what constituted servitude. It was held that:

(1) where a person was forced to live under another's control on that person's property, held against his will and forced to carry out work for little or no money, he was kept in a state of servitude.

(2) what mattered was not that the complainer could not leave but rather that he was compelled to come back, live on the site and perform the required labour, and the jury's deletion of the words "refuse to allow him to leave" was not fatal where the person considered that he had no option but to stay or that, if he left, as had occurred, he would be found and brought back

His appeal against conviction was refused but his appeal against sentence was allowed. A sentence of seven years' imprisonment was quashed and substituted for one of six years' imprisonment. The accused's previous convictions and propensity for violence were considered alongside the complainer's "mental instability as a vulnerability"⁸³ by the trial judge at the point of sentencing. In considering the appeal against sentence, the Court noted

⁷⁹ [2019] HCJAC 8.

⁸⁰ *Miller v HM Advocate* 2019 J.C. 61.

⁸¹ *McPhee v HM Advocate* [2019] HCJAC 8, at para 2.

⁸² *Ibid*, at para 3.

⁸³ *Miller v HM Advocate* 2019 J.C. 61, at para 26.

that a period of imprisonment was inevitable for a charge that involved keeping another man in servitude for a period of two months. However, it was also acknowledged that the complainer enjoyed “relative freedom of movement” and that there existed a lack of evidence about whether the appellant was aware of the complainer’s mental problems.⁸⁴ The Court cited Lord Judge CJ in *Attorney-General’s Reference (Nos 2, 3, 4 and 5 of 2003)*:

Sentences in this class of case must make clear, not merely that the statutory minimum wage should not be undermined, but much more important, that every vulnerable victim of exploitation will be protected by the criminal law, and they must also emphasise that there is no victim, so vulnerable to exploitation, that he or she somehow becomes invisible or unknown to or somehow beyond the protection of the law. Exploitation of fellow human beings in any of the ways criminalised by the legislation represents deliberate degrading of a fellow human being or human beings. It is far from straight forward for them even to complain about the way they are being treated, let alone to report their plight to the authorities so that the offenders might be brought to justice. Therefore when they are, substantial sentences are required, reflective, of course, of the distinctions between enslavement, serfdom, and forced labour, but realistically addressing the criminality of the defendants.

In 2015, Shamsul Arefin was convicted of eight offences of human trafficking under the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (later repealed by the 2015 Act and Modern Slavery Act 2015). The charges related specifically to facilitating the arrival of four men to the UK with the intention to exploit them and for arranging or facilitating travelling of these same men within the UK (with the same intention). Arefin was the owner of a hotel in Argyll and recruited the men from Bangladesh by way of a newspaper advert, ostensibly to work in his restaurant. His appeal against conviction related to the application of the Moorov doctrine to establish a sufficiency of evidence. He also appealed against his sentence of three years’ imprisonment. It was submitted that a sufficient weight had not been given to the context of the offences, the appellant’s personal circumstances (which included his wife’s illness and mobility issues) and the delay between the initial investigation by the Home Office and his conviction, five years later.⁸⁵ He also submitted that the trial judge had erroneously relied upon the *Attorney General’s Reference (Nos 37, 38 and 65 of 2010)*,⁸⁶ which attracted a higher starting point for the sentence. In considering these points, the Court noted that the delay in proceedings had been taken into account by the sheriff in sentencing and noted that:

The offences here were callous, deliberate and planned for the purposes of gain. As a result, considerable hardship was suffered by the complainers and no doubt their families.⁸⁷

⁸⁴ Ibid, para 27.

⁸⁵ *Arefin v HM Advocate* [2016] S.C.L 464, at para 16.

⁸⁶ [2010] EWCA 2880. Here the Court of Appeal of England and Wales (criminal division) provided guidance on the factors required for consideration when sentencing the offence of trafficking persons for the purpose of exploitation contained under section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

⁸⁷ Ibid, at para 23.

His previous convictions, which included an assault against his wife and two sexual offences against hotel employees, were also emphasised by the Court. The appeals against both conviction and sentence were refused with it being held that a sentence of three years' imprisonment was not excessive in the circumstances.

The small number of reported Scottish cases makes it difficult to draw generalisations about the accepted parameters of sentencing in this area. It is also difficult to comment on the 'typical' features of cases going before the Scottish courts in this context. As such, it is helpful to look to socio-legal research on slavery and trafficking in Scotland in order to contextualise the landscape. This will be returned to in Section 4 below. Information related to unreported cases - that is to say those cases not subject to appeal and so not subject to legal reporting,⁸⁸ is also especially helpful in contexts where there are a limited number of reported cases.

2.5 Unreported cases

The first conviction for human trafficking occurred in 2011, prior to the introduction of the 2015 Act. A man and woman were sentenced at Glasgow Sheriff Court to 44 months and 18 months' imprisonment respectively after pleading guilty to offences under section 22(1)(a)(i) of the Criminal Justice (Scotland) Act 2003 ('Traffic in Prostitution etc.') (subsequently repealed by the 2015 Act).⁸⁹

Thereafter, a number of cases have gone before the Scottish courts relating to prosecutions for offences committed both before and after the introduction of the 2019 Act. One such case is that of *Gombar* (and others). Although sentenced in 2019, this case involved convictions for offences taking place before the introduction of the 2015 Act.⁹⁰ *Gombar* was convicted of a number of charges under the Asylum and Immigration (Treatment of Claimants etc) Act 2004, charges under the Sexual Offences (Scotland) Act 2009 and a number of charges relating to section 47 of the Criminal Justice and Licensing (Scotland) Act 2010. He was sentenced to a period of 12 years' imprisonment and all four accused in the case were made subject to trafficking exploitation and prevention orders for a period of five years. In sentencing, Lord Beckett reflected on the co-operation that had been needed with Slovakian police forces to prosecute this case and the complexity of prosecuting offences of this type. He also emphasised the harm that had been caused to the victims within the case when

⁸⁸ Typically, only cases which are subject to appeal are reported as case law in law reports, thereafter functioning as a source of law in the future. Criminal cases tend only to be reported where the court elucidates principles which may help establish precedent. See Scottish Council of Law Reporting., *What makes a case reportable in Session Cases*. Available at: <www.scottishlawreports.org.uk/resources/what-makes-a-case-reportable-in-session-cases/> [Last accessed 19 June 2025].

⁸⁹ Glasgow Law Practice News., 2011. *First Scottish human trafficking conviction*. Available at: <<https://www.theglasgowlawpractice.co.uk/first-scottish-human-trafficking-conviction/>> [Last accessed 28 February 2025]. For discussion of offences related to prostitution, see section 1 above.

⁹⁰ *HM Advocate v Gombar and others.*, 2019, Unreported.

sentencing all four to long periods of imprisonment (against a background where all had either no or relatively minor previous convictions):⁹¹

Such crimes are utterly repugnant. They involve the degradation of other humans, treating them as if they were objects or animals to be transported and sold for exploitation. In this case the court heard of the sale of women for the purpose of sham marriages which I infer were intended to circumvent immigration control. The court also heard of women being sexually exploited and coerced into prostitution. This was done to women who were pregnant in two instances, and for at least part of the time that it went on, those involved must have known of the fact of pregnancy. The women involved came from impoverished circumstances with little prospect of employment. They were induced to travel, accompanied by you Mr Gombar or your associates, and they were deceived into thinking that employment and a good life was awaiting them in this country. It was not. They spoke little or no English and were dependent on their traffickers. Once in Glasgow they were controlled, kept in situations of at least psychological confinement and in some instances physical confinement. Their identity cards were removed from them. All of this led most of them to feel entirely helpless, which allowed their exploitation to continue. You intended that this should be the position and brought it about in your selection of victims and the way that you treated them.

There have also been a number of cases related to charges arising under the 2015 Act which have not been subject to appeal, and hence legal reporting, but have been reported in the media. The unreported case of *HM Advocate v Joyce* demonstrates that allegations of modern slavery can arise in other serious contexts, including murder. Here, Joyce was convicted of murder but charges under the 2015 Act were withdrawn.⁹² It was initially alleged that the deceased had been kept in a state of servitude prior to his death by Joyce and his co-accused (the co-accused being acquitted of all charges).

The Scottish Judiciary has issued two recent sentencing statements in relation to matters heard by Lord Scott and Lady Poole. In 2024, Lord Scott sentenced Mananchaya Wanitthanawet to 9 years' imprisonment after she was convicted of human trafficking of two women.⁹³ A trafficking and exploitation prevention order was also issued by the court, to last five years from the date of release from prison. In his sentencing statement he recognised the particular difficulties that victims of trafficking may face due to issues such as their language and immigration status. A *cumulo* sentence of 21 months' imprisonment was issued to her co-accused, Cameron Wilson. Neither accused had previous convictions and it was recognised that Wanitthanawet also had a background which involved prostitution.

Also in 2024, Lady Poole sentenced three members of a gang, two of who had been involved in trafficking and one who had been involved in brothel keeping. Qin Huang was

⁹¹ Gombar had a previous conviction for fraud but the other three accused (sentenced to periods of eight years and six months, seven and nine years' imprisonment) all have no previous convictions.

⁹² BBC News. 2024. *Man faces life sentence for 'abhorrent' murder*. Available at: <https://www.bbc.co.uk/news/articles/c1mlq2dyp8do> [Last accessed 24 January 2025].

⁹³ *HM Advocate v Wanitthanawet.*, 2024. Unreported.

sentence to eight years' imprisonment and Xiao Min was imprisonment for eight years and six months (both involved headline sentences of ten years).⁹⁴ Both pled guilty to trafficking women between London and Glasgow. Neither had previous convictions, but Lady Poole emphasised the seriousness of the offence of human trafficking and the aggravations in respect of links with organised crime. Serious crime prevention orders were also issued to all three offenders.

⁹⁴ *HM Advocate v Qin Huang, Xiao Min & Guolei Huan*, 2024. Unreported. Guolei Huan received a sentence of four years and three months for the offence of brothel keeping having performed the role of 'minder' to the prostitutes and escorting them to properties where sexual service would be provided by them,

3.0 Sentencing framework in England and Wales

This section sets out the sentencing framework for modern slavery and human trafficking offences in England and Wales. In doing so, it discusses the Sentencing Council for England and Wales' (SCEW) definitive guidelines for offences under the Modern Slavery Act 2015 (hereinafter the MSA).

An important caveat for this section is that, at the time of the review, an independent sentencing review is underway in England and Wales. This independent sentencing review is undertaking a comprehensive re-evaluation of the sentencing framework in England and Wales in light of issues around prison places “where the country has more prisoners than prison places”.⁹⁵ The review is expected to be published in the Spring of 2025 and the outcomes of this are currently unknown. However, given the remit of the independent sentencing review, it may have implications for sentencing a range of offences. Additionally, the Crime and Policing Bill looks set to introduce two new offences relevant to the context of this report: “cuckooing” (a form of exploitation where criminals take control of a vulnerable person’s home without consent to conduct illegal activities such as drug dealing) with a maximum sentence of five years’ imprisonment; and child exploitation with a maximum sentence of ten years’ imprisonment. There may also be new prevention orders (breach of which has a maximum sentence of ten years’ imprisonment).⁹⁶

3.1 The legal framework

The MSA expressly makes “provision about slavery, servitude and forced or compulsory labour and about human trafficking, including provision for the protection of victims”.⁹⁷ In doing so, it has consolidated other offences.⁹⁸ The offences to be considered in this section are:

- Slavery, servitude and forced or compulsory labour (section 1)
- Human trafficking (section 2)
- Committing offence with intent to commit a human trafficking offence (section 4)
- Breach of a Slavery and Trafficking Prevention Order/ Breach of a Slavery and Trafficking Risk Order (section 30)

⁹⁵ Independent Sentencing Review., 2025. *History and Trends in Sentencing*. Available at: <<https://www.gov.uk/government/publications/independent-sentencing-review-history-and-trends-in-sentencing>> [Last accessed 24 February 2025].

⁹⁶ Home Office., 2025. *Child criminal exploitation and cuckooing to be criminal offences*. Available at: <<https://www.gov.uk/government/news/child-criminal-exploitation-and-cuckooing-to-be-criminal-offences>> [Last accessed 24 February 2025].

⁹⁷ Introductory text. Available at: <<https://www.legislation.gov.uk/ukpga/2015/30/introduction>> [Last accessed 24 February 2025].

⁹⁸ However, Padfield notes that many offences that may constitute trafficking or slavery are still prosecuted under other legislation such as the Asylum and Immigration (Treatment of Claimants) Act 2004. Padfield, N., 2024. (n 75) at p 310.

Sentences are set out in sections 5 and 6 of the MSA, and this includes life sentences.⁹⁹ Sections 8–10 concern reparations to victims where there has been a confiscation order.¹⁰⁰ Sections 14–22 and 23–29 provide for protective orders: Slavery and Trafficking Prevention Orders (STPOs); and Slavery and Trafficking Risk Orders (STROs). Other relevant orders include restraining orders¹⁰¹, confiscation orders;¹⁰² and a forfeiture order.¹⁰³

Consequently, the sentencing of these offences entails consideration of a wide range of disposals. While the range of disposals can help to ensure an effective sentence, it also means the decision is complex. As such, it is fortunate that the SCEW has produced sentencing guidelines. This sentencing guidance will be discussed below.

3.2 Sentencing guidance

The SCEW produces detailed guidelines to aid sentencers. Guidelines for modern slavery offences came into effect on 1 October 2022. Overall, sentencing levels have been set in such a way that they “are high, reflecting the inherently serious harm that modern slavery causes, directly to victims and to society as a whole.”¹⁰⁴

Similar to the current Scottish offence-specific guidelines, the SCEW guidelines operate through a step-based process to take account of the culpability and harm of an offence and an array of aggravating and mitigating factors. However, the SCEW offence-specific guidelines vary from the Scottish offence-specific guidelines produced so far in a number of regards. For example, there are different compliance requirements for the SCEW guidelines, the SCEW guidelines make use of “starting points”, and there are differences in the available disposals.¹⁰⁵ Thus, while the SCEW guidelines can be informative, caution should be exercised when considering the SCEW guidelines in terms of the Scottish context.

⁹⁹ The Modern Slavery Act 2015 increased the maximum sentences available from 14 years to life imprisonment.

¹⁰⁰ Slavery and Trafficking Reparation Orders require the person against whom it is made to pay compensation to the victim of a relevant offence for any harm resulting from that offence.

¹⁰¹ See section 360 of the Sentencing Act 2020.

¹⁰² See the Proceeds of Crime Act 2002 (as amended by the Modern Slavery Act 2015, section 7).

¹⁰³ See section 11 of the Modern Slavery Act 2015.

¹⁰⁴ Sentencing Council of England and Wales., 2021. *Modern Slavery Offences Guidelines: Response to Consultation*. Available at: <<https://www.sentencingcouncil.org.uk/publications/item/modern-slavery-offences-guidelines-response-to-consultation/>> [Last accessed 24 February 2025]. at p 2.

¹⁰⁵ Gormley, J., Roberts, J., Pina-Sánchez, J. Tata, C. and Veiga, A., 2022. *The Methodological Challenges of Comparative Sentencing Research* Edinburgh: Scottish Sentencing Council.

3.2.1 Slavery, servitude and forced or compulsory labour and human trafficking

The offences under sections 1 and 2 of the MSA can cover a wide range of criminal conduct. For example, the MSA explicitly requires consideration of all the circumstances with regard to determining whether a person is held in slavery or servitude.¹⁰⁶ Similarly, the definition of exploitation under section 3 can also capture a wide variety of circumstances. While a detailed analysis of the elements of the offence is beyond the scope of this report, it is worth emphasising that the MSA offences can cover a diverse range of harms and circumstances. Thus, sentencing MSA offences can entail the consideration of many diverse and complex matters.

Indeed, the most substantial SCEW guideline for present purposes concerns the offences under sections 1 and 2 of the MSA (hereinafter the slavery and trafficking guideline).¹⁰⁷ The reason for a single guideline covering two offences is that:

In practice, the offences of trafficking and slavery or forced labour are frequently sentenced together, and judges often use the same factors for both offences, so the Council proposed one offence-specific guideline covering both the section 1 and section 2 offences, with the same culpability and harm factors, and the same aggravating and mitigating factors.

Thus, one approach to preparing offence-specific guidelines in this area is to have a single guideline to cover closely related offences. In the SCEW consultation, all respondents were content with this approach.¹⁰⁸ The other two SCEW guidelines (concerning sections 4 and 30 of the MSA) are less detailed but they direct attention to comparable offences to aid the sentence decision-making process.

The slavery and trafficking guideline share the key elements expected based on other SCEW offence-specific guidelines such as the step-based structure.¹⁰⁹ However, it is worth highlighting the sentencing ranges and the factors the guideline considers. Reflecting the diversity of harms and culpability that may be caught within sections 1 and 2 of the MSA, the category ranges in the SCEW guideline span from a high-level community order to 18 years' custody.¹¹⁰ Given this range, the factors used to determine the starting point and category range are vital.

¹⁰⁶ Section 1(3) of the Modern Slavery Act 2015 states that “in determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances.” Examples are provided in the Modern Slavery Act section 1(4).

¹⁰⁷ Sentencing Council of England and Wales., 2021. *Definitive Guideline - Slavery, Servitude and Forced or Compulsory Labour/ Human Trafficking*. Available at: <<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/slavery-servitude-and-forced-or-compulsory-labour-human-trafficking/>> [Last accessed 24 February 2025].

¹⁰⁸ Sentencing Council of England and Wales., 2021. (n 104) at p 6.

¹⁰⁹ Ashworth, A. and Roberts, J.V. , 2013. *Sentencing Guidelines: Exploring the English Model*. Oxford: Oxford University Press.

¹¹⁰ Step 5 on “Dangerousness” highlights considerations around life sentences and extended sentences.

The Step 1 factors for harm and culpability and the aggravating and mitigating factors are likely to be of interest to those developing guidance for various jurisdictions as many of the factors will be encountered transnationally. Again, partially reflecting the complexity of sentencing these offences, there are a broad range of factors. For space reasons, these factors will not be listed here in full. However, it is noted that they cover issues salient to these offences. For example, the culpability factors include those pertaining to the use or threat of violence (physical and sexual) towards victims or their families.

Similarly, the harm factors are varied and include those pertaining to physical and psychological harms; adverse impacts on the victim's daily life after the offending has ceased; and deception or coercion into sexual activity. Given the nature of the offences (which may include large-scale operations), the guideline also notes that, "if the offence involved multiple victims or took place over a significant period of time sentencers may consider moving up a harm category or moving up substantially within a category range." Since offences may span years and/or cover multiple victims, this point potentially adds useful detail.¹¹¹ Moreover, the guideline also takes care to highlight some of the challenges to assessing harm in this context and cautions that:

The nature of the relationship between offender and victim in modern slavery cases may mean that the victim does not recognise themselves as such, may minimise the seriousness of their treatment, may see the perpetrator as a friend or supporter, or may choose not to give evidence through shame, regret or fear. A victim's apparent consent to their treatment should be treated with caution.

The guideline also notes that the lack of a Victim Personal Statement should not indicate there has been no harm.

Overall, the SCEW has gone to significant efforts to balance the complex interplay of factors that determine a sentence. Indeed, one point to note from the detailed work of the SCEW is the need for caution in selecting factors to ensure sentences are neither too severe (e.g. as too many aggravating factors might lead to) nor too lenient. Yet, this is not simple. For instance, the SCEW was cautious about inherently elevating the seriousness of certain types of exploitation because (1) the legislation does not provide for this, and (2) it may result in a downgrading of other types of exploitation.¹¹² Additionally, factors may be linked in complex ways such that treating them as more serious may have unintended consequences if care is not taken. For example:

The Council recognised some risks with flatly categorising any offending involving a victim under 18 in a higher harm or culpability category. From transcripts analysed, it appeared that a great many of the cases which involve child victims also involved offenders who themselves were very young adults. This is likely to be true in many county lines cases where those offenders may also have been the victims of

¹¹¹ Note that an aggravating factor is also listed as "offending took place over a long period of time (in the context of these offences, this is likely to mean months or years) where not taken into account at step 1"

¹¹² Sentencing Council of England and Wales., 2021. (n 104) at pp 16-17.

exploitation. There is also the possibility that where a victim is just over 18 the courts will not reflect appropriately on their vulnerability if asked to make a stark categorisation based on the age of the offender.¹¹³

Thus, any jurisdiction seeking to produce guidelines on these (or similar) offences may well wish to learn from the SCEW experience with guideline factors.

3.2.2 Committing offence with intent to commit a human trafficking offence

A brief guideline has been created to deal with offences under section 4 of the Act. Due to its brevity, the guideline can be quoted in full:

The starting point and range should be commensurate with that for the preliminary offence actually committed but with an enhancement to reflect the intention to commit a human trafficking offence. The enhancement will vary depending on the nature and seriousness of the intended trafficking offence, the seriousness of the preliminary offence, and the extent to which the offender was themselves the victim of modern slavery, pressure, coercion or intimidation, but up to 2 years' custody is suggested as a suitable enhancement. Sentencers should also take into account the totality of offending (see the Totality guideline) in particular where the preliminary offence or other modern slavery offences are to be sentenced alongside the section 4 offence.¹¹⁴

This guideline is largely self-explanatory. It essentially operates to modify the approach to sentencing for other offences (for which there may already be an offence-specific guideline) with an increased sentence. The overall effect could, loosely, be likened to an aggravation.

The reference to the totality guideline is particularly noteworthy given that Scotland does not have a guideline on this matter.¹¹⁵ Moving forward, the Scottish Sentencing Council may wish to consider whether or not it would be preferable to introduce a general guideline on this.

¹¹³ Ibid, at p 21.

¹¹⁴ Sentencing Council of England and Wales., 2021. *Definitive Guideline - Committing Offence with Intent to Commit a Human Trafficking Offence*. Available at: <<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/committing-offence-with-intent-to-commit-a-human-trafficking-offence/>> [Last accessed 27 February 2025].

¹¹⁵ Sentencing Council of England and Wales., 2023. *Definitive Guideline - Totality*. Available at: <<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/totality/>>. [Last accessed 27 February 2025]. The totality guideline applies when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence.

3.2.3 Ancillary orders

Given the nature of the offences covered by the slavery and trafficking guideline, various orders may prove to be an effective way to reduce the risks of reoffending and hold offenders accountable. Therefore, the guidance in Step 7, which highlights ancillary orders, could be important in this context and something other jurisdictions may wish to consider (e.g. guidelines may provide clarity to the public about ancillary orders and their benefits, which may not otherwise be well understood).

The courts have clarified the principles to be considered when making an STPO under the MSA section 14. These principles are set out in *R v Wabelua*, which concerned young men sentenced for trafficking offences.¹¹⁶ The SCEW sought to include reference to these principles in its guidelines.¹¹⁷

In *R v Wabelua* the court set out eight points, and some aspects of these will be highlighted.¹¹⁸ Section 14(2) states an order can only be made if the court is satisfied that “there is a risk that the defendant may commit a slavery or human trafficking offence.” The court may consider all the information before it – including previous convictions and compliance (or non-compliance) with prior orders. Importantly, the court can consider the risk of both physical and psychological harm that reoffending may cause to people generally or to specific people.¹¹⁹ Since breach of an STPO risks serious criminal penalties, the order must be clear, and the risk must “be real, not remote” and “sufficient to justify the making of such an order”.¹²⁰ The individual requirements of the order must also be necessary, and the court should consider other measures that will provide safeguards (including the sentence imposed and the ability of the police to apply for an order in the future). Regard should also be had to “any adverse effect of the order on the defendant’s rehabilitation and the realities of life in an age of electronic means of communication”.¹²¹

Overall, the explanation of the STPO principles in the guideline may provide an accessible way to help various groups understand the operation of a complex area of law.

¹¹⁶ *R v Wabelua* [2020] EWCA Crim 783.

¹¹⁷ Sentencing Council of England and Wales., 2021. (n 104) at p 24.

¹¹⁸ *R v Wabelua* [2020] EWCA Crim 783, at para 36 (a-h).

¹¹⁹ For comment on some considerations relevant to specific victims, see *R (on the application of Dragoi) v Secretary of State for Justice* [2024] EWHC 60 (Admin).

¹²⁰ *R v Wabelua* [2020] EWCA Crim 783, at para 36.

¹²¹ *Ibid.*

3.2.4 Breach of orders issued under the MSA

Although protective orders under the MSA are civil orders, it is an offence to breach them. Accordingly, the SCEW has created a short guideline to assist in sentencing these offences.¹²² The SCEW states that:

In sentencing an offence under section 30, a court is entitled to use, and may be assisted by, a guideline for an analogous offence subject to differences in the elements of the offences and the statutory maxima. Depending on the nature of the particular slavery and trafficking risk, an analogous offence may be one or more of the following:

Breach of a sexual harm prevention order

Breach of a criminal behaviour order

The court will also wish to consider the General guideline.

Thus, the SCEW guidelines suggest that breach of an STRO or STPO may be analogous to breach of a SHPO or breach of a criminal behaviour order. A draft of the guideline suggested that breach of a disqualification from acting as a director could also be a relevant offence, but this was removed following comments that it may not be an apt comparator.¹²³

Accordingly, sentencers are directed to consider the sentencing guidelines for two offences, but others may be relevant depending on the circumstances of the case.¹²⁴

For context, breach of a sexual harm prevention order (SHPO) has a guideline range from a Band B fine to a custodial sentence of four years and six months.¹²⁵ The starting points range from a mid-level community order to a custodial sentence of three years. Breach of a criminal behaviour order has a guideline range from a Band B fine to a custodial sentence of four years. The starting points range from a medium-level community order to a custodial sentence of two years.¹²⁶ Both guidelines note the same factors concerning culpability: Culpability A is “Very serious or persistent breach”; Culpability B is “deliberate breach falling between A and C”; and Culpability C is a “minor breach” or “breach just short of reasonable excuse.” The harm criteria are similar, although the guideline for breach of a SHPO focuses

¹²² Sentencing Council of England and Wales., 2021. *Definitive Guideline - Breach of a Slavery and Trafficking Prevention Order/ Breach of a Slavery and Trafficking Risk Order*. Available at: <<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/breach-of-a-slavery-and-trafficking-prevention-order-breach-of-a-slavery-and-trafficking-risk-order/>> [Last accessed 27 February 2025].

¹²³ Ibid, at pp 7–8.

¹²⁴ An alternative approach for guidance on the MSA section 30 offence, and one suggested by some in the consultation, was to have a bespoke offence-specific guideline or more detail (e.g. providing more guidance on what comparable offences might be). However, given the low volumes of these offences and that others were in favour of the current approach, this was not acted on. Sentencing Council of England and Wales., 2021. (n 104) at p 7.

¹²⁵ On fines and band levels see the SCEW website: <https://sentencingcouncil.org.uk/explanatory-materials/fines-and-financial-orders/approach-to-the-assessment-of-fines/2-fine-bands/>

¹²⁶ A conditional discharge cannot be imposed.

on the degree of harm caused or risked,¹²⁷ whereas the guideline for breaching a criminal order concerns harm caused and continuing risk.¹²⁸ Category 2 harms in both guidelines concern cases falling between Categories 1 and 3. Both guidelines set out aggravating and mitigating factors to aid the selection of a sentence at Step 2. For example, targeting an individual an order was made to protect or a breach shortly after the order was given may be aggravating factors at sentencing and a breach after a long period of compliance may be a mitigating factor.

3.3 Offenders who are victims of trafficking

A factor potentially relevant to sentencing that is worth highlighting is that, in some cases, those who commit offences discussed here will themselves have been victims of modern slavery and/or trafficking. Such cases can raise questions for sentencing for a range of reasons.¹²⁹ The slavery and trafficking guidelines note in Step 1 that a Category C culpability factor (the lowest category) is being “engaged by pressure, coercion or intimidation, or has been a victim of slavery or trafficking related to this offence.” There is also a mitigating factor in Step 2 that the “offender has been a victim of slavery/trafficking in circumstances unrelated to this offence.” Importantly, the factor considered at Step 1 in the SCEW guidance is likely to have a greater impact on the sentence than a factor at Step 2. This is because the Step 1 factors help determine the offence category, while Step 2 factors likely impact the sentence selection within this category.

Thus, if Scotland develops guidelines in this area (or other areas), it may wish to give consideration to this complex (and ongoing) debate.

¹²⁷ The Category 1 factor is that the “breach causes or risks very serious harm or distress” and the Category 3 factor is that the “breach causes or risks little or no harm or distress.”

¹²⁸ The Category 1 factors are that the “breach causes very serious harm or distress” or the “demonstrates a continuing risk of serious criminal and/or anti-social behaviour.” The Category 3 factors are that the “breach causes little or no harm or distress” or “demonstrates a continuing risk of minor criminal and/or anti-social behaviour.”

¹²⁹ Zaibert, L., Roberts, J.V. and Ryberg, J. (eds) 2025. *Responding to the Culpable State: Is Sentence Mitigation Appropriate?*. Hart Publishing; Gerry, F., Pagano, R. and Chaynee Hodgetts., 2022. *Disorganised Crime: Legal and Evidential Challenges of Raising a Modern Slavery Defence*. 12 *Criminal Law Review* 961.

4.0 The socio-legal context

4.1 Experiences of slavery and trafficking in Scotland

In a context which includes under-reporting of offences, low conviction rates and (relatedly) few reported sentencing appeal cases, it is especially helpful to use socio-legal research to inform understandings about the how the problem is experienced by victim-survivors.

Modern slavery and human trafficking can impact a diverse range of victims in a multitude of ways.¹³⁰ For example, human trafficking may be for sexual exploitation, forced labour, or organ removal.¹³¹ The House of Lords Report has noted that:

Criminal exploitation involves a person being exploited into committing activities including pick-pocketing, shop-lifting, drug trafficking or cultivation, begging, fraud, and sham marriage. The most common form is “county lines” whereby victims, mostly UK-based children, are exploited to sell drugs in rural areas by traffickers based in cities. They are frequently recruited online, such as through social media. The second most common form of criminal exploitation is thought to be cannabis cultivation. Other forms are rarer.¹³²

Yet, different types of exploitation may be more commonly experienced by different sub-groups of victims. For example, data suggests that males are mostly victimised by criminal or labour exploitation. Females most commonly report sexual exploitation.¹³³

Significant information related to unreported modern slavery cases in Scotland is available from information published by Unseen - the anti-slavery charity which runs the Modern Slavery Helpline. In 2018, the charity published a report relating to calls received by the anonymous helpline. They report that between the helpline’s launch in 2016 and June 2018, they received 172 calls, and 82 cases of human trafficking and exploitation reported. This accounted for 297 potential victims.¹³⁴

In the period 2017, when 134 calls were recorded, a peak was noted in September during the Scottish Government’s human trafficking awareness campaign which included an advert

¹³⁰ Centre for Social Justice and Justice and Care., 2024. *Criminal Exploitation: Modern Slavery by Another Name*. Available at: <https://www.centreforsocialjustice.org.uk/wp-content/uploads/2024/02/CSJ-JC_Criminal_exploitation.pdf> [Last accessed 27 February 2025].

¹³¹ For example, see the Modern Slavery Act 2015, section 3 (on the meaning of exploitation); *R v Iyamu* [2018] EWCA Crim 2166 (on sexual exploitation); and *R v Zielinski* [2017] EWCA Crim 758 (on forced labour). See also Judiciary of England and Wales., 2023. *Sentencing Remarks of Mr Justice Johnson Central Criminal Court, 5 May 2023 in R v Obeta and Others*. Available at: <<https://www.judiciary.uk/wp-content/uploads/2023/05/R-v-Obeta-and-others-sentencing-remarks.pdf>> [Last accessed 27 February 2025].

¹³² House of Lords., 2024. *The Modern Slavery Act 2015: Becoming World-Leading Again* Available at: <<https://publications.parliament.uk/pa/ld5901/ldselect/ldmodslav/8/8.pdf>> [Last accessed 27 February 2025]. at para 11.

¹³³ Ibid, at para 10.

¹³⁴ Unseen., 2018. *Modern Slavery in Scotland*. Available at: <<https://www.unseenuk.org/wp-content/uploads/2021/10/Modern-Slavery-in-Scotland.pdf>> [Last accessed 6 February 2025]. at p 3.

shown on STV.¹³⁵ Potential victims were identified in 19 of Scotland's Council areas with 'Lanarkshire' and 'Strathclyde' experiencing the highest number of potential victims.¹³⁶ Labour exploitation account for 61% of the cases reported to the charity and sexual exploitation 17% of all cases.¹³⁷ The industry with the highest number of labour exploitations was car washes, supporting findings made in their 2017 annual assessment.¹³⁸

Most of the potential victims identified by the charity were male (52.5%) and adults (over the age of 18) (68.3%).¹³⁹ The most prevalent age bracket was 25-34 followed by 18-24.¹⁴⁰

Twenty-six different nationalities were identified, the most common of which was Romanian, followed by Vietnamese.¹⁴¹ Most child victims were also Romanian, but thereafter Scottish. Where children were the victims of exploitation, it was most commonly through selling goods or begging on the street. However, child exploitation also included car washes, nail bars, work in private and in hospitality and in one case, brothel work.¹⁴²

The Helpline made 78 referrals on cases of human trafficking and exploitation including 63 referrals to Police Scotland, meaning that some of these cases are included in the criminal statistics presented in this report. However, in an area where underreporting of crime is recognised, this data is especially important and illuminating as to the landscape of modern slavery and human trafficking in Scotland.

Section 38 of the 2015 Act places a duty on specified statutory authorities to inform the Police about a person they suspect is a victim of trafficking or an offence under section 4 of the Act. The National Referral Mechanism (NRM) is one way in which referrals can be raised.¹⁴³ Investigations do not arise from the NRM, instead this is the national framework (co-ordinated by the Home Office) through which victims are supported. Referrals are made by 'first responders' and thereafter, the relevant authority would consider the case. Additionally, it is recognised that:

Although not its primary purpose, the NRM is the only significant mechanism for accruing and processing data about trafficking and exploitation in the UK.¹⁴⁴

¹³⁵ Ibid, at p 6.

¹³⁶ Ibid, at p 8.

¹³⁷ Ibid, at p 9.

¹³⁸ Ibid.

¹³⁹ Ibid, at p 12.

¹⁴⁰ Ibid, at p 13.

¹⁴¹ Ibid.

¹⁴² Ibid, at p 14.

¹⁴³ Home Office., 2024. *National referral mechanism guidance: adult (Northern Ireland and Scotland)*. Available at: <<https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/national-referral-mechanism-guidance-adult-northern-ireland-and-scotland>> [Last accessed 28 February 2025].

¹⁴⁴ Scottish Government., 2020. *Human Trafficking and Exploitation (Scotland) Act 2015 section 38: consultation analysis*. Available at: <<https://www.gov.scot/publications/consultation-report-section-38-human-trafficking-exploitation-scotland-act-2015-duty-notify-provide-information-victims/>> [Last accessed 28 February 2025].

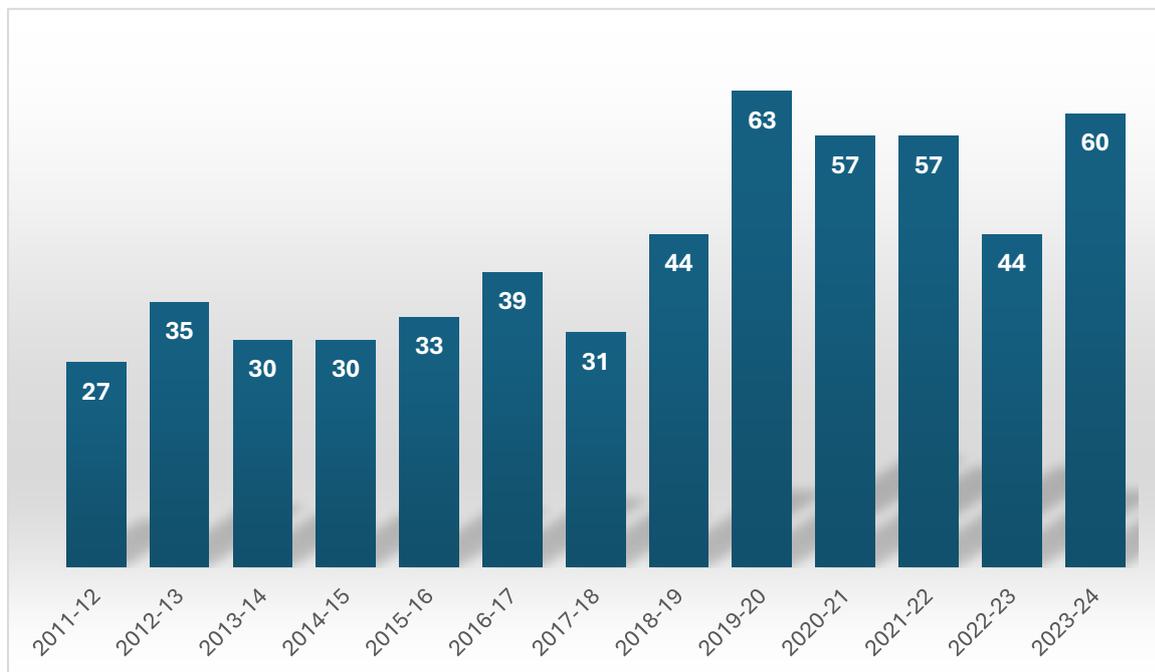
In 2020, the Scottish Government published the following statistics related to the number of trafficking referrals made to the NRM:

Table 1: Trafficking referrals made to the NRM between 2014 and 2019¹⁴⁵

Year	Female			Male			Total
	Adult	Minor	Age not recorded	Adult	Minor	Age not recorded	
2019	120	44	10	218	112	8	512
2018	67	22		108	31		228
2017	63	24		81	39		207
2016	54	21		49	26		150
2015	52	19		51	23		145
2014	48	14		38	11		111
2013	52	13		25	9		99

TARA (Trafficking Awareness Raising Alliance) is an advocacy group which supports women in Scotland who are victims of sex trafficking. TARA was established in 2004 to provide support to adult women who had been trafficked for the purposes of sexual exploitation.¹⁴⁶ The number of new referrals made to TARA between the period 2011-12 and 2023-24 is shown in Figure 5 below:

Figure 5: Number of new referrals made to TARA 2011-12 to 2023-24¹⁴⁷



¹⁴⁵ Ibid.

¹⁴⁶ TARA website. Available at: <<https://www.tarascotland.org.uk/>> [Last accessed 28 February 2025].

¹⁴⁷ This information was provided to Rachel McPherson by Ann Fehilly of ASSIST in a personal communication on 28 February 2025.

This data shows a peak in referrals during the time of Covid-19. It also demonstrates a significant increase in referrals between 2022-23 and 2023-24.

TARA provided additional detail to the research team for the purposes of this report. This data demonstrates both the complexity of proceedings involving the NRM and the potential risk of criminalisation faced by victims of trafficking. The following case study occurred in Scotland over a 25-month-period:

A referral was made to TARA whilst the accused was on remand for charges relating to cannabis cultivation. During that time, Police Scotland made a referral to the NRM and recognised grounds for a decision were granted. Thereafter, the accused was bailed to the TARA safehouse until asylum accommodation could be sourced. Later, the accused was advised by their defence agent that no decision could be made on the case due to the NRM and the need to wait for the Home Office to make a 'confirmed decision ground' related to trafficking. The case was continued on that basis with the accused not being required to attend hearings at that time. During the eighth month, the Sheriff sought to admonish the accused due to lack of information. The defence agent expressed a view at that time that the case would have been dropped had there been a confirmed decision ground established. Following conviction, a new immigration lawyer was instructed. When a positive confirmed decision ground was issued, that solicitor sought to have the conviction quashed. Another new solicitor was then instructed to raise the appeal, which was lodged, and successful.

This case study demonstrates the problems that might be faced by vulnerable persons accused of criminality in the context of trafficking and the complexity of investigations and proceedings which involve national bodies.

This data is especially important in a landscape where there are recognised problems related to under-reporting, the identification of vulnerable victims and a low number of convictions, as the data from COPFS presented in part 2 of this report shows.

4.2 Impact and perceptions of sentencing

Victims are varied in their views regarding criminal justice responses and sentencing and so generalisations as to what they seek from a sentence should be caveated in light of this. However, amongst other considerations, the communication of sentences to victims can be important.¹⁴⁸ It is likely these considerations also apply to this offence as, for example, keeping victims updated may be significant. For instance, it has been argued that:

It is common for modern slavery offenders to threaten their victims that nothing will happen if they try to report their crime because they have the police in their pocket.

¹⁴⁸ Gormley, J. 2024. *Reconceptualising the Effectiveness of Sentencing: Four Perspectives*. Sentencing Council of England and Wales. Available at: <https://www.sentencingcouncil.org.uk/publications/item/reconceptualising-the-effectiveness-of-sentencing-four-perspectives/> [Last accessed 27 February 2025].

When suspected exploiters are released on bail during the course of investigations, this can undermine the confidence and trust of victims and local communities who see the perpetrators back on their streets, apparently living life as normal. These concerns and fears are intensified after a trial if a perpetrator is given a suspended sentence, released from prison on early schemes, or just returns to the same community after serving their sentence — especially if police are not informed and are not able to advise victims of the release.¹⁴⁹

Thus, while the actual disposal is important, there may be other considerations around victims' experience of their case and of sentencing. It is important that victims feel that the harm done to them has been validated, that the offender has been held to account, and that they have been listened to. As part of this, victims need to understand sentencing and have a sense of meaningful participation to enable them to have confidence in the sentence.¹⁵⁰ However, sentences (including ancillary/protective orders) may not always be fully explained and/or fully understood by victims. If so, then these sentences may have less ability to provide victims with a sense of security and an understanding that offenders have been appropriately held accountable.

Research undertaken with victims in other jurisdictions may inform policy development in this area in Scotland. For example, the US department of Justice commissioned research to examine how survivors and stakeholders perceive justice in human trafficking cases.¹⁵¹ The study explored the following questions:

1. What are human trafficking survivors' experiences with legal and social service providers, and the criminal and civil justice systems?
2. What are human trafficking survivors' perceptions of justice in their case?
3. What are human trafficking stakeholders' perceptions of justice?
4. What alternative forms of justice may human trafficking survivors desire?¹⁵²

Only 24% of those who participated in the study defined justice in terms of incarceration and concerns were voiced about the lack of rehabilitation and education experienced by

¹⁴⁹ Centre for Social Justice and Justice and Care (n 130) at p 78.

¹⁵⁰ STPOs and STROs are intended to be flexible and can be complex as they may lead to a wide range of restrictions being imposed. See Home Office., 2017. *Guidance on Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders under Part 2 of the Modern Slavery Act 2015*. Available at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610015/110417_-_statutory_guidance_part_2_-_GLAA_updates-_Final.pdf> [Last accessed 27 February 2025].

¹⁵¹Hussemann, J., Owens, C., Love, H., Yu, L., McCoy, E., Flynn, A. and Woods, K., 2018. *Bending Towards Justice: Perceptions of Justice among Human Trafficking Survivors*. Office of Justice Programs' National Criminal Justice Reference Service. Available at:

<<https://www.ojp.gov/ncjrs/virtual-library/abstracts/bending-towards-justice-perceptions-justice-among-human-trafficking>> [Last accessed 2 March 2023].

¹⁵² Ibid, at p 5.

offenders during imprisonment, and the risk that their behaviour would be normalised.¹⁵³ A lack of accountability was also expressed given that often it is communities who facilitate abuse related to trafficking, rather than one individual (who may still be able to play a part even when in prison).¹⁵⁴ Participants instead perceived justice as being related to their sense of autonomy and empowerment.¹⁵⁵

Survivors found justice in accomplishing their goals, such as supporting their families, accessing education, finding employment, and accomplishing other self-defined milestones. Others described justice in terms of understanding their rights as a survivor, advocating for better laws on human trafficking, working in victim service provision roles, and/or engaging in survivor leadership.¹⁵⁶

Criminal justice stakeholders, on the other hand, viewed justice as being linked to holding traffickers accountable through state prosecution.¹⁵⁷ They also recognised the importance of providing support systems to victims especially as a way to prevent them from engaging in prostitution in the future.¹⁵⁸ Interestingly though, “criminal justice stakeholders recognised that the criminal justice system’s defined metrics of success are largely incompatible with survivors’ wants and needs.”¹⁵⁹ The report makes seven recommendations for improved practice in this area:

- 1) adopting a compassionate, trauma-informed approach to support compassionate and respectful treatment of human trafficking survivors by law enforcement;
- 2) increasing diversity among law enforcement;
- 3) improving training for criminal justice actors on issues related to human trafficking, including training focused on identifying trafficking, responding to trafficking, and respecting survivors;
- 4) ending the criminalization of survivors, including arresting survivors for crimes related to their victimization experiences and leveraging charges against survivors to secure participation in the prosecution of traffickers;
- 5) incorporating alternative forms of justice when appropriate, including increasing opportunities for survivors to support each other through survivor support and social groups, and opportunities to engage in public awareness efforts and the reform of policy and practice;

¹⁵³ Ibid, at p 10.

¹⁵⁴ Ibid, at p13.

¹⁵⁵ Ibid, at p 14.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid, at p 15.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid, at p 16.

- 6) investing resources in prevention and rehabilitation programming for traffickers; and
- 7) improved monitoring of traffickers who are incarcerated to ensure they are not continuing to engage in trafficking while incarcerated.¹⁶⁰

It is also helpful to consider how criminal justice responses, including sentencing, are perceived by the public more broadly. Here, the work of Herzog provides insight. Herzog, whose expertise lies in researching public perceptions of seriousness, has examined perceptions of sentencing in cases involving the trafficking of women for prostitution.¹⁶¹ Despite the seriousness of trafficking for prostitution/sexual exploitation, Herzog notes that legal responses are mostly perceived to be characterised by “leniency and indifference—which was a view affected by gender-role attitudes. Public perceptions of seriousness were also impacted by the country the woman was trafficked from and her history of prostitution. Where women with a history of prostitution were trafficked from Eastern Europe, participants were more likely to ascribe higher levels of seriousness and punishment to the offending. Equivalent public perceptions research has not been carried out in the UK but might be helpful to develop a fuller view of public knowledge and understanding in this area and particular areas where it might be useful to communicate sentencing decisions.

4.3 Reoffending

There is limited data upon which to evaluate the impact of the 2015 Act and MSA on offending given the variety of the factors at play. Critical analyses of the MSA have welcomed many of the provisions (some noting it was “groundbreaking in its inception”) but cautioned that the landscape of offending is complex and evolving.¹⁶² Indeed, even if the legal framework is working well (e.g. in terms of legal definitions), the investigation and prosecution of offending poses challenges.¹⁶³

In part, the MSA was intended to serve denunciatory purpose as well as “ensure that perpetrators receive suitably severe punishments for modern slavery crimes”.¹⁶⁴ The (then) Home Secretary Theresa May stated:

¹⁶⁰ Ibid, at pp 22-23.

¹⁶¹ Herzog, S., 2008. The Lenient Social and Legal Response to Trafficking in Women: An Empirical Analysis of Public Perceptions in Israel. 24(3) *Journal of Contemporary Criminal Justice*, 314-333.

¹⁶² Independent Anti-Slavery Commissioner., 2025. *Strategic Plan 2024-2026*. Available at: <https://www.antislaverycommissioner.co.uk/media/s0gjtqbx/e03284260_iasc-strategic-plan-24-26_web-accessible_v2.pdf> [Last accessed 27 February 2025]; Gerry, F., Pagano, R. and Hodgetts, C. 2022. (n 129); Ramage, S., 2015. *Slavery in Britain: To the Modern Slavery Act 2015*. 226.

¹⁶³ Middleton, B., Antonopoulos, G.A. and Papanicolaou, G., 2019. The Financial Investigation of Human Trafficking in the UK: Legal and Practical Perspectives'. 83 *The Journal of Criminal Law* 284; Haughey, C., Karmy-Jones, R. and Padfield, N., 2019. Slavery in the UK Today. 9 *Criminal Law Review* 745.

¹⁶⁴ House of Lords., 2024. (n 132) at para 17.

The presence of modern slavery in today's society is an affront to the dignity and humanity of every one of us. The Modern Slavery Act 2015 is an historic milestone.

This landmark legislation sends the strongest possible signal to criminals that if you are involved in this vile trade you will be arrested, you will be prosecuted and you will be locked up. And it says to victims, you are not alone - we are here to help you.¹⁶⁵

Such denunciatory effects are hard to quantify, but have been argued as vital.¹⁶⁶

In terms of the impact on offending, official data has limits in terms of providing meaningful insight into the effects of the MSA.¹⁶⁷ One issue is that the NRM may underestimate the true number of offences. Indeed, despite the Act, modern slavery offences continue, with some estimating significant numbers of victims and the recent House of Lords Report estimating 130,000 victims in the UK.¹⁶⁸

It is not clear to what extent the MSA has impacted offence detection rates or impacted offending rates.¹⁶⁹ Indeed, the Independent Anti-Slavery Commissioner (IASC) has argued that "there is little evidence about what works to prevent modern slavery and individuals from becoming exploited, and it is particularly important we learn more about this."¹⁷⁰ For example, these offences may be committed by different types of offenders and can be linked to serious organised crime.¹⁷¹ For serious organised crime, distinctive strategies may be used:

Since its inception in 2015, Project INVIGOR – a Government funding programme that supports investment and development in UK Government and overseas capabilities to address organised immigration crime – has been involved in more than 1,400 arrests both in the United Kingdom and overseas with, on conviction, sentences collectively amounting to more than 1,300 years in prison being imposed. In the year leading up to March 2023, the NCA achieved a total of 237 disruptions

¹⁶⁵ Home Office., 2025. *Historic law to end Modern Slavery passed*. Available at: <[https://www.gov.uk/government/news/historic-law-to-end-modern-slavery-passed#:~:text=A%20landmark%20Bill%20to%20help,today%20\(Thursday%2026th%20March\).&text=The%20Modern%20Slavery%20Act%202015,trafficking%20in%20the%2021st%20century](https://www.gov.uk/government/news/historic-law-to-end-modern-slavery-passed#:~:text=A%20landmark%20Bill%20to%20help,today%20(Thursday%2026th%20March).&text=The%20Modern%20Slavery%20Act%202015,trafficking%20in%20the%2021st%20century)> [Last accessed 27 February 2025].

¹⁶⁶ Padfield (n 75) at p 312.

¹⁶⁷ National Audit Office., 2017. *Reducing Modern Slavery*. Available at: <<https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>> [Last accessed 27 February 2025].

¹⁶⁸ House of Lords., 2024 (n 132). See also Independent Anti-Slavery Commissioner., 2025. (n 167) at pp 14–16.

¹⁶⁹ National Audit Office., 2017. (n 167).

¹⁷⁰ Independent Anti-Slavery Commissioner., 2025. (n 162) at p 18.

¹⁷¹ Serious and organised crime has been defined as "individuals planning, coordinating and committing serious offences, whether individually, in groups and/or as part of transnational networks." On this see HM Government., 2023. *No Place to Hide: Serious and Organised Crime Strategy 2023-2028*. Available at: <https://assets.publishing.service.gov.uk/media/65798633254aaa0010050bdc/SOC_Strategy_23-28_V9_Web_Accessible.pdf> [Last accessed 27 February 2025].

against the threat from organised immigration crime, leading more than 90 investigations into the highest harm people smuggling groups.¹⁷²

In terms of sentencing impacts, the evidence in favour of marginal deterrent effects from sentencing is generally limited, and more information is needed about if/how/when deterrent effects may arise in this context.¹⁷³

In terms of data, the CPS has reported that:

Over the last five full financial years ending March 2023 there were 1,303 offences across 300 CPS cases under Sections 1 and 2 of the Modern Slavery Act 2015.

Unfortunately, detailed data on these cases is difficult to obtain as:

The CPS does not hold prosecution outcomes data by specific offence or by circumstances of the offence (servitude, sexual exploitation etc.). To search for this information would require a manual review of CPS cases, at disproportionate cost.¹⁷⁴

Similarly, commentators have criticised the available sentencing data:

Published data on sentencing is incomplete and difficult to decipher. Data on sentences for those convicted for modern slavery offences alongside other more serious offences (for which a longer sentence is imposed) or for other offences altogether cannot be identified in the published data tables. It is also unclear whether data tables are updated when sentences are amended after an appeal. Data for those prosecuted for conspiracy to commit modern slavery — which CPS policy suggests is likely in all cases involving multiple offenders and multiple victims — has to be extracted separately and are not counted as modern slavery offences. Not only that, but the descriptions of these offence codes refer only to forced labour, slavery and servitude with no mention of sexual exploitation or human trafficking which raises the possibility that some conspiracy offences are not included.¹⁷⁵

Consequently, available data provides little insight into the potential deterrent effects of sentencing for these offences or the impacts on reoffending. However, although beyond the

¹⁷² Ibid at para 49.

¹⁷³ Gormley, J., Hamilton, M. and Belton, I. 2022. *The Effectiveness of Sentencing Options on Reoffending*. Available at: <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Effectiveness-of-Sentencing-Options-Review-PUBLISHED-FINAL.pdf>> [Last accessed 27 February 2025]; Gormley, J. 2024. (n 148).

¹⁷⁴ Crown Prosecution Service., 2023. *Prosecution data for offences under the Modern Slavery Act (2015) 2018-2023*. Available at: <<https://www.cps.gov.uk/foi/2023/prosecution-data-offences-under-modern-slavery-act-2015-2018-2023>> [Last accessed 27 February 2025].

¹⁷⁵ Centre for Social Justice and Justice and Care., 2023. *Slavery at Home: a new bill to tackle slavery in Britain*. Available at: <<https://www.centreforsocialjustice.org.uk/wp-content/uploads/2023/02/Slavery-at-Home-a-new-bill-to-tackle-slavery-in-Britain.pdf>> [Last accessed 27 February 2025] at page 16.

scope of sentencing, it is worth briefly noting that the potentially low prosecution rates could hinder the deterrent capability of MSA offences in terms of absolute deterrence.¹⁷⁶

While data is sparse and more research is needed, it has been suggested that:

Due to the often lucrative nature of modern slavery crimes, the confiscation of assets provision and the forfeiture provisions are appropriate not only for preventing criminals from benefitting from their crimes but also for quelling any future criminal activity, using assets that are already established.¹⁷⁷

Additionally, the use of orders to prevent reoffending or offending has been noted positively:

The orders, taken together, are very useful tools in the prevention of modern slavery offences and have been used by enforcement authorities and courts since the commencement of the Act. They are particularly effective as preventative measures with contravention being a separate offence. The orders activate the Act's practical effectiveness and allow for vital preventative measures to be taken.¹⁷⁸

Information on re-offending in this context is available from other jurisdictions. For example, the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children has reported a high recidivism rate among sexual exploitation offenders within the Netherlands, with over a third (36%) of domestic sexual exploitation offenders reoffending within two years.¹⁷⁹ This is high compared to other offences (where recidivism rates tend to be estimated at 26%). It was found that within five years of a conviction, 28% of domestic sexual exploitation offenders commit a property offence, 12% commit a drug offence and almost one in ten commit another human trafficking offence.¹⁸⁰ The National Rapporteur notes that there is no specific rehabilitation programme for this group of offenders.¹⁸¹

In their written submission to the United Nations Office on Drugs and Crime regarding reducing re-offending in this context, the Global Alliance Against Traffic in Women highlighted a number of key points:

- Action to prevent reoffending is hampered by oversimplified stereotypes about who is a typical offender.

¹⁷⁶ House of Lords., 2024 (n 132) at para 129.

¹⁷⁷ Barclay, C. and Foster, S. 2017. The Modern Slavery Act 2015: Good Intentions and Sending out the Right Message. 22 *Coventry Law Journal* 1, 3.

¹⁷⁸ Ibid at p 6.

¹⁷⁹ National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children., 2023. *Human Trafficking Offenders Monitoring Report 2017-2021*. Available at: <<https://www.dutchrapporteur.nl/publications/reports/2023/08/23/human-trafficking-offenders-monitoring-report-2017-2021---summary>> [Last accessed 2 March 2025]. at p 5.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

- Efforts to prevent trafficking re-offending must be gender sensitive and address the specific factors that lead women to engage in trafficking activities.
- In some cases, imprisonment and financial penalties can harm efforts to prevent reoffending in light of the socioeconomic factors which cause the initial offending.
- Strict border controls do not prevent (re)offending and can in fact increase the risk of further trafficking activities.¹⁸²

The first two of these issues relate to the role women play in offending in this context. The fourth point relates to the third: imprisonment is said to exacerbate socio-economic factors that often cause the initial offending. The group suggest that the Australian model of viewing socio-economic constraints as mitigation in sentencing could be a way to address this.¹⁸³

In sum, more UK data is needed to examine the impact of sentences in this complex area of offending. There are plausible theoretical arguments for why sentences can be an important aspect in securing positive outcomes such as reduced offending, protection for victims, etc. However, the offending landscape is complex and sentencing is just one part of this. For example, Mantouvalou argues that the MSA does not address structural injustices that lead to exploitation:

...the current approach to exploitation in law mainly identifies individual wrongdoers, and often misses the role of institutions that create structural injustice. The idea regularly promulgated is that there are evil traffickers, for instance, on the one hand, and that the state seeks to protect the victims of these traffickers, on the other. However, the state itself may have a role in establishing conditions for exploitation.¹⁸⁴

Similarly, Padfield argues that:

Future victimization is probably more likely to be avoided by better education - for professionals on the law and ethics of applying harsh laws to vulnerable people, and for the public on the need for greater vigilance and to pay more for many goods and services. It may be that making businesses review their supply chains is more

¹⁸² Global Alliance Against Traffic in Women., 2022. *Summary of information relevant to promising practices in reducing reoffending in the context of trafficking in human beings*. Available at: <https://www.unodc.org/documents/justice-and-prison-reform/ReducingReoffending/Global_Alliance_Against_Traffic_in_Women_-_UNODC_Reducing_Reoffending_Submission.pdf> [Last accessed 2 March 2025].

¹⁸³ Ibid, at p 3.

¹⁸⁴ Mantouvalou, V. 2018. Legal Construction of Structures of Exploitation. Chapter in H. Collins, G. Lester and V. Mantouvalou (eds), *Philosophical Foundations of Labour Law*. Oxford: Oxford University Press. at p 189; Mantouvalou, V. 2018. The UK Modern Slavery Act 2015 Three Years On. 81 *The Modern Law Review* 1017. See also Centre for Social Justice and Justice & Care., 2024. *At What Cost? Exploring the Impact of Forced Labour in the UK*. Available at: <<https://www.centreforsocialjustice.org.uk/library/at-what-cost>> [Last accessed 27 February 2025].

“effective” than prosecution, which is always a case of “shutting the stable door after the horse has bolted.” Or, putting the matter another way, prevention is better than prosecution.¹⁸⁵

Matters such as these go beyond the scope of this review but are noted here to contextualise the complexity of the area.¹⁸⁶ Sentencing may have an important role to play, but it is not the only element in securing positive outcomes.¹⁸⁷

¹⁸⁵ Padfield (n 75) at p 312.

¹⁸⁶ A detailed analysis of matters such as the Illegal Migration Act (2023) and national referral mechanism are beyond the scope of this review.

¹⁸⁷ Kapardis, M.K. and Clark, C., 2024. Modern Slavery: The Hot Potato for Organizations in the Absence of Global Coordinated Action. Padfield (n 75).

5.0 Cross jurisdictional dimensions

As noted, human trafficking and modern slavery offences are diverse and need not cross borders. However, some significant offences have a key cross-jurisdictional component and/or links to serious organised criminality. For example, people may be trafficked from other countries to work in the production of cannabis. While research on victim experiences is limited, accounts suggest “unbearable” conditions.¹⁸⁸ These offences potentially link to others (such as violence, firearms offences, etc), meaning the impact of such offences can be substantial.

Police responses throughout the UK have been coordinated to respond to the scale of serious organised criminality.¹⁸⁹ Indeed, in Operation Millie it was reported that “242 people have been arrested and 19 individuals suspected of being victims of modern slavery and human trafficking and have been referred to the National Referral Mechanism to receive appropriate support.”¹⁹⁰ The nationwide operations reported in March 2025 details cases involving the removal of drugs with a street value of about 50 million pounds and the removal of weapons and firearms from the streets.¹⁹¹ Similarly, human trafficking and exploitation “has been identified in all areas of Scotland”¹⁹² and Police Scotland also engages in multi-agency operations that impact modern slavery and human trafficking.¹⁹³

However, the scale of the issues means that there may be merit in looking at responses to human trafficking and modern slavery offences from a cross-jurisdictional perspective.¹⁹⁴ Doing so would entail matters beyond sentencing. For instance, the scope of offences has been an active area in the UK with the Crime and Policing Bill proposing a new offence.

¹⁸⁸ BBC News. 2025. *Illegal working in UK was unbearable, migrant says*. Available at: <<https://www.bbc.co.uk/news/articles/cwyez0y6kvlo>> [Last accessed 17 March 2025].

¹⁸⁹ See for example, Greater Manchester Police. 2024. *Challenger officers’ proactive investigation into an Albanian OCG results in recovery of more than 13,000 cannabis plants and £10 million of drugs*. Available at: <<https://www.gmp.police.uk/news/greater-manchester/news/news/2024/october/challenger-officers-proactive-investigation-into-an-albanian-ocg-results-in-recovery-of-more-than-13000-cannabis-plants-and-10million-of-drugs/>> [Last accessed 17 March 2025]; BBC News. 2024. *Crackdown on Albanian modern slavery gangs*. Available at: <<https://www.bbc.co.uk/news/articles/cjd5m3jdd5o>> [Last accessed 17 March 2025].

¹⁹⁰ National Police Chief’s Council. 2025. *Over £45 million worth of drugs seized in cannabis crackdown*. Available at: <<https://news.npcc.police.uk/releases/over-gbp-45-million-worth-of-drugs-seized-in-crackdown-on-cannabis-cultivation>> [Last accessed 17 March 2025].

¹⁹¹ Ibid.

¹⁹² Scottish Government. 2024. *Serious Organised Crime Taskforce: progress report 2024*. Available at: <<https://www.gov.scot/publications/serious-organised-crime-taskforce-progress-report-2024/pages/3/>> [Last accessed 17 March 2025].

¹⁹³ Police Scotland. 2024. *Police lead day of action in relation to human trafficking modern slavery*. Available at: <<https://www.scotland.police.uk/what-s-happening/news/2024/october/police-lead-day-of-action-in-relation-to-human-trafficking-and-modern-slavery/>> [Last accessed 17 March 2025].

¹⁹⁴ For a broad overview see the Antislavery Legislation Database. Note that data on the “United Kingdom of Great Britain and Northern Ireland” is, understandably, lacking in detail in terms of sentencing. Available at: <<https://antislaverylaw.ac.uk>> [Last accessed 17 March 2025].

There are also questions around regulation,¹⁹⁵ investigation and prosecution, and other related areas.¹⁹⁶ These matters go far beyond sentencing considerations. Still, an effective system for responding to these offences across multiple jurisdictions could be an important factor and sentencing a key consideration for this (albeit one consideration amongst many).

Features of the English and Welsh guideline system have already been highlighted. However, there are other jurisdictions that might also be worth considering. For instance, the Judicial College of Victoria has published modern slavery guidance for courts.¹⁹⁷ While the 75-page document goes beyond sentencing, it is nonetheless interesting as another way to provide guidance in this area. In part, the length is due to the guidance covering matters beyond sentencing (such as victim and witness support) and providing context on offences related to modern slavery across multiple pieces of legislation: servitude offences, forced labour offences, forced marriage offences, slavery like offences, international and domestic trafficking offences and other related offences. In terms of sentencing, this guidance includes “sentencing issues” and sets out salient factors and highlights key case law. Factors highlighted in the guidance are noted in Appendix E.

The guidance also reflects on the hierarchy of offences and the purposes of sentencing where it notes that “it appears clear that deterrence, denunciation, and just punishment are the principle purposes in sentencing for modern slavery offences.” The style of guidance here is different in style to that of the SCEW guidelines but may provide insights into different ways of providing guidance on this topic.

In sum, robust responses to these offences are crucial. Effective sentences would seem likely to be an important part of this response to ensure that offenders are held accountable and victims protected. While sentences must be tailored to each jurisdiction, there are perhaps interesting dialogues to be had and lessons and experiences about what works and what factors are most salient.

¹⁹⁵ For example, there have been developments in Canada with “An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff” coming into force on 1 Jan 2024. This imposed certain reporting obligations “on certain government institutions and private-sector entities to report on the measures taken to prevent and reduce the risk that forced labour or child labour is used by them or in their supply chains.” Available at: <https://www.parl.ca/Content/Bills/441/Private/S-211/S-211_3/S-211_3.PDF> [Last accessed 17 March 2025].

¹⁹⁶ For example, see the UK-Albania Joint Communique: Enhancing bilateral Cooperation in areas of common interest. This includes a focus on “the fight against organised crime and illegal immigration.” Available at: <<https://www.gov.uk/government/publications/uk-albania-joint-communique-enhancing-bilateral-cooperation-in-areas-of-common-interest/uk-albania-joint-communique-enhancing-bilateral-cooperation-in-areas-of-common-interest>> [Last accessed 17 March 2025].

¹⁹⁷ Judicial College of Victoria. 2022. *Modern slavery: Guidance for Australian courts*. Available at: <<https://judicialcollege.vic.edu.au/sites/default/files/2022-06/Modern%20Slavery%20-%20Guidance%20for%20Australian%20Courts.pdf>> [Last accessed 17 March 2025].

6.0 Conclusion

This review has examined key aspects of the sentencing for offences related to modern slavery and human trafficking under UK legislation. As has been noted, the legislation can capture a diverse range of criminal conduct and, thus, potentially raise a broad range of complex sentencing considerations. Understanding these complexities is vital for the development of sentencing guidance that is both meaningful to practice and respected by users. From this review, three points are worth emphasising.

First, in exploring sentencing for offences related to modern slavery and human trafficking in Scotland, the review has encountered some challenges. One profound challenge is the limited empirical information available on Scottish sentencing practice. In part, in this context, this limited data is due to the small number of reported cases in this area. However, there are also broader limits to available data on sentencing in Scotland. As a result, data on other key factors relating to the offence/offender are unavailable and better data on sentencing practice would be useful. In the absence of better official data, and given that between 2015-16 and 2024-25 there were only 37 convictions, this may be an area where an analysis of case papers would be feasible.

Second, looking to other jurisdictions, the experiences of the Judicial College of Victoria and the SCEW usefully illustrate the complexity and diversity of offences related to modern slavery and human trafficking and some of the challenges guidelines in this area will have to overcome. As such, these experiences may assist in creation of guidelines in this area. Notably, the sentencing factors used in other jurisdictions and the reasons for including these factors (and not including others) are perhaps the most informative for those looking to develop guidance related to modern slavery and human trafficking in Scotland. The styles of guidance used elsewhere may also be of interest: such as how and why the SCEW has produced one detailed guideline covering two MSA offences and two shorter guidelines covering other MSA offences. Moreover, the SCEW experience suggests that future guidelines in this area may wish to consider the role of ancillary orders as well as the approach that will be taken in relation to victims who are also offenders.

Finally, sentencing for offences related to modern slavery and human trafficking may serve various functions noted in the principles and purposes of sentencing guidelines. However, it is worth emphasising that effective sentences are only one factor among many in securing these positive outcomes. Indeed, the nature of the offending (including the potential transnational context here) means there is, perhaps, scope for broader dialogues. For example, matters related to investigation and prosecution (nationally and transnationally) may be key. Similarly, research from other jurisdictions suggests that a better understanding of victim perspectives could be beneficial to ensure they are confident in disposals as a means to hold offenders accountable and provide protection.

APPENDIX A

Charges reported to COPFS under:- Human Trafficking and Exploitation (Scotland) Act 2015 S1 & S4 or any charge with a general (Human Trafficking activity) aggravation											
			Financial Year Reported								
Action taken re Accused	Action taken re Charge	Outcome	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Solemn	Court	Convicted	6	1	3	16	8	3	0	0	0
		Not Convicted	5	4	5	10	40	15	1	2	0
		Ongoing	0	0	1	5	3	20	7	25	20
		No Further Action	0	7	11	11	23	15	2	1	0
	Court Total		11	12	20	42	74	53	10	28	20
	No Decision	No Decision	0	0	5	0	13	46	2	11	3
	Not Separately Actioned	Not Separately Actioned	19	4	8	48	46	17	11	13	14
Solemn Total			30	16	33	90	133	116	23	52	37
Action taken re Accused	Action taken re Charge	Outcome	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Summary	Court	Convicted	0	0	0	0	0	1	0	0	0
		Ongoing	0	0	0	0	0	0	2	0	0
	Court Total		0	0	0	0	0	1	2	0	0
	Not Separately Actioned	Not Separately Actioned	0	1	0	0	0	0	0	0	0
Summary Total			0	1	0	0	0	1	2	0	0
Action taken re Accused	Action taken re Charge	Outcome	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Direct Measure	Warning	Warning	0	0	0	0	1	0	0	0	0
Direct Measure Total			0	0	0	0	1	0	0	0	0
No Action Total			10	10	6	20	4	2	2	6	0
No Decision Total			0	0	0	0	6	8	0	29	15
Grand Total			40	27	39	110	144	127	27	87	52

APPENDIX B

Table 1: Number of accused per case under the Human Trafficking and Exploitation (Scotland) Act 2015 from 2016-17 to 2024-25

	No of Accused in case	Total Cases
2016-17	1	1
	4	2
	8	1
2017-18	1	5
	2	4
	3	3
	4	1
2018-19	1	6
	2	2
	3	1
	4	1
2019-20	1	10
	2	4
	3	5
	6	2
2020-21	1	5
	10	2
	12	1
	2	6
	3	1
	4	1
	5	1
	6	1
	7	1
	8	2
2021-22	1	8
	2	3
	3	4
	4	1
	5	1
	6	2
2022-23	1	11
	2	1
	5	1
	7	1
2023-24	1	13
	2	4
	3	3
	4	3
	5	1
	7	1
2024-25	1	8
	2	3
	3	3
	6	1
Grand Total		142

APPENDIX C

Office	Financial Year Reported								
	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Aberdeen	0	0	0	3	0	0	0	5	7
Airdrie	0	0	0	0	0	0	2	0	0
Alloa	0	0	0	5	0	0	0	0	0
Campbeltown	0	0	0	0	0	0	0	0	1
Dumfries	0	0	0	2	8	6	2	0	0
Dundee	0	0	12	31	13	52	4	26	0
Dunfermline	0	0	0	2	0	0	0	0	0
Edinburgh	0	1	0	1	26	38	1	17	4
Elgin	0	3	2	0	0	0	0	0	0
Forfar	0	2	0	0	0	7	0	0	0
Fort William	0	0	0	0	0	0	0	0	2
Glasgow	11	13	9	39	86	5	10	7	10
Greenock	0	0	1	2	0	0	0	0	2
Hamilton	2	0	0	0	3	4	0	11	0
Inverness	1	1	4	4	0	0	4	4	0
Jedburgh	0	0	0	0	0	0	0	4	3
Kirkcaldy	0	4	1	9	0	0	3	2	0
Livingston	26	2	0	0	0	0	0	0	5
Paisley	0	0	0	0	1	0	0	0	3
Perth	0	0	4	0	7	14	1	0	0
Peterhead	0	0	6	5	0	0	0	5	0
Selkirk	0	0	0	0	0	1	0	6	0
Stirling	0	1	0	0	0	0	0	0	0
Stranraer	0	0	0	0	0	0	0	0	15
Wick	0	0	0	7	0	0	0	0	0
Total	40	27	39	110	144	127	27	87	52

APPENDIX D

Accused Sex	Age group	Financial Year Reported								
		2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Female	18-20 years	0	1	0	1	0	0	0	0	0
	21-30 years	0	2	1	8	13	4	0	5	0
	31-40 years	0	4	0	2	13	16	2	11	5
	41-50 years	0	2	1	10	0	0	0	3	4
	51-60 years	0	1	0	5	3	5	0	5	2
	61-70 years	0	0	3	0	0	0	0	0	0
	Over 70 years	0	0	0	0	0	0	0	10	0
Total		0	10	5	26	29	25	2	34	11
Male	17 & under	0	0	0	1	0	7	1	2	0
	18-20 years	0	4	1	4	12	3	2	2	3
	21-30 years	19	3	7	35	44	15	5	17	27
	31-40 years	19	2	9	9	50	51	8	14	8
	41-50 years	0	6	2	13	7	15	4	4	1
	51-60 years	1	2	8	16	2	6	2	3	1
	61-70 years	1	0	7	0	0	3	3	2	1
Over 70 years	0	0	0	1	0	0	0	9	0	
Total		40	17	34	79	115	100	25	53	41
Not Recorded	21-30 years	0	0	0	5	0	2	0	0	0
Total		0	0	0	5	0	2	0	0	0
Grand Total		40	27	39	110	144	127	27	87	52

APPENDIX E

Slavery factors:

- Where the prosecution charges both “possession” and “use” [of slaves] offences under the separate offences created by Criminal Code s 270.3(1)(a) in relation to a single victim, the sentencing court must be astute to avoid double punishment, as there is clear overlap between possession and use; full concurrency is not an adequate solution to the problem of double punishment.
- It is necessary to consider the character of the work which the victims were required to perform. Where the work involves prostitution, the court must avoid moral judgments about prostitution. But the use of slaves within the prostitution industry robs the victims of control over both their lives and their bodies and dehumanises the victims.
- Reducing a person to a state of slavery through kidnapping or coercion is more serious than where the victims give ostensible consent – but offending may remain very serious notwithstanding ostensible consent;
- The moral culpability of the offender does not depend on recognising that their conduct involves treating a person as a slave.

Servitude factors:

- The victim’s illiteracy, poverty, deprived circumstances, ignorance of Australia, and inability to extricate herself and return home made her vulnerable and were facts taken advantage of by offenders to possess, control and manage her;
- The severe limitation of the victim’s freedom to act and make decisions for herself;
- The almost complete control the offenders exercised over the victim throughout the period she lived with them;
- It ‘occurred in the daily presence and with the obvious knowledge and comprehension of [the offenders’] children. [The offenders] set them a deplorable example of how parents should act towards another human being.

Human trafficking and dealing in slaves factors globally:

- The extent of the resulting harm
- Abusing a position of trust or authority
- Vulnerability of the victim
- Premeditation
- The number of victims
- The nature of the exploitation
- The degree and method of control exercised over the victims, including any degrading treatment or actual or threatened violence
- The nature and degree of deception practiced on the victim in their home country
- The mechanism of entering the country of enslavement
- The duration of the offending and the circumstances in which it stopped
- The age of the victims
- Any financial benefit received

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