

Human Trafficking and Smuggling

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Introduction

The purpose of this guidance is to provide practical and legal guidance to prosecutors dealing with cases of human trafficking and smuggling.

Human trafficking is a serious crime that can often present prosecutors with significant challenges:

1. It is a crime that is clandestine; it is a form of modern day slavery and victims may be "imprisoned" in either residential properties (as domestic servants) or places offering sauna and massage services. They are not visible;
2. Trafficked victims do not always wish, or are not always able to, cooperate with the authorities as they often fear the consequences of giving evidence against their traffickers;
3. Victims of forced labour are reluctant to report; however bad their circumstances, they consider their situation here to be better than that offered in their home country;
4. Human trafficking cases nearly always cross borders and jurisdictions, requiring investigations and evidence to be obtained from source and transit countries.

Trafficking and Smuggling

Definition

In terms of prosecutions it is important to understand the difference between persons who are smuggled and those who are trafficked; in some cases the distinction between a smuggled and trafficked person will be blurred and both definitions could easily be applied. It is important to examine the end situation when the victim is recovered to determine whether someone has been smuggled or trafficked.

A number of factors help distinguish between smuggling and trafficking:

1. Smuggling is characterised by illegal entry only and international movement only, either secretly or by deception (whether for profit or otherwise);
2. Smuggling is a voluntary act and there is no further exploitation by the smugglers once they reach their destination;
3. There is normally little coercion/violence involved or required from those assisting in the smuggling.

Smuggling is normally defined as the facilitation of entry to the UK either secretly or by deception (whether for profit or otherwise). The immigrants concerned are normally complicit in the offence so that they can remain in the UK illegally. There is normally little coercion/violence involved or required from those assisting in the smuggling.

Trafficking involves the transportation of persons in the UK in order to exploit them by the use of force, violence, deception, intimidation or coercion. The form of exploitation includes commercial sexual and bonded labour exploitation. The persons who are trafficked have little choice in what happens to them and usually suffer abuse due to the threats and use of violence against them and/or their family.

Assisting unlawful immigration

Section 25 Immigration Act 1971 creates an offence of assisting unlawful immigration (known as facilitation). The offence was substituted by section 143 Nationality, Immigration and Asylum Act 2002 which came into force on 10 February 2003. This widened and extended the old facilitation provisions and covers any act facilitating a breach of immigration law by a non-EU citizen (including a breach of another Member State's immigration law) and acts covered by the old offence of "harbouring".

Under section 25(1) a person commits an offence if he:

- a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union;
- b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of immigration law by the individual; and
- c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.

The offence is defined broadly enough to encompass both the old offences of assisting illegal entry (whether by smuggling someone in a vehicle or by providing false documents for presentation at a port) or assisting someone to remain by deception (for example by entering into a sham marriage) and other forms of assistance which facilitate a breach of the immigration laws.

Section 25(5) of the Act was replaced by section 30(1) of the UK Borders Act 2007 which came into force on 31 January 2008. This now covers acts committed in the United Kingdom, regardless of the nationality of the perpetrator as well as acts committed overseas.

The offence is an either-way offence and the maximum sentence on indictment is up to 14 years imprisonment. It is also a "lifestyle offence" under schedule 2 of the Proceeds of Crime Act 2002.

In *R v Naillie and Another* [1993] 1 All ER 75, [1992] 1 WLR 1099, [1992] the defendants were convicted of facilitating entry into the UK contrary to section 25(1) of the Immigration Act 1971 by making arrangements for people travelling to the UK using false passports. The defendants appealed on the ground that it had not been shown that when the people arrived in the UK, claiming asylum, they were illegal entrants. The appeals were allowed. It was held that:

1. Under the 1971 Act entry was not to be equated with disembarkation. Those who disembarked without a right of entry were not automatically illegal entrants;
2. An asylum seeker who claimed asylum while still within the designated area was not an illegal entrant, albeit he might have forged documents or no documents at all;
3. On the facts, none of those whose arrival in the United Kingdom was assisted by the defendants, was an illegal entrant.

The leading sentencing guide case is R v Le and Stark [1999] 1 Cr.App.R.(S.) 422. This states that the most appropriate penalty for all but the most minor offences of this nature is custody. Aggravating features include repeat offending; committed for financial gain; involving strangers rather than family members; a high degree of planning / sophistication; the number of immigrants involved and the level of involvement of the offender. For guidance on non-commercial facilitation, see R v Panesar [1988] Cr.App.R.(S.) 457. In the case of commercial facilitation see R v Brown [1997] 1 Cr.App.R.(S.) 112, R v Woop [2002] 2 Cr.App.R.(S.) 65 and R v Akrouf [2003] EWCA Crim 291.

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Facilitating entry by asylum seekers to the UK for gain – section 25A Immigration Act 1971

This offence was substituted by section 143 Nationality, Immigration and Asylum Act 2002 and came into force on 10 February 2003. Section 29 of the UK Borders Act 2007 inserted "or the entry into" the UK under section 25A(1)(a).

Under section 25(A)(1) a person commits an offence if he:

- a) knowingly and for gain facilitates the arrival in or the entry into the United Kingdom of an individual, and
- b) knows or has reasonable cause to believe that the individual is an asylum seeker.

In this section "asylum seeker" means a person who intends to claim that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom's obligations under the Refugee Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33)

(interpretation)), or the Human Rights Convention (within the meaning given by that section).

No element of smuggling is required to make out the offence; the asylum seekers do not need to be illegal entrants. The offence is aimed at those who, for gain, bring asylum seekers to the UK to enable them to claim asylum. This does not apply to anything done by a person acting on behalf of an organisation, which aims to assist asylum seekers, and does not charge for its services.

The offence covers any actions done whether inside or outside the United Kingdom, regardless of the nationality of the perpetrator.

The offence is an either-way offence and the maximum sentence on indictment is up to 14 years' imprisonment, a fine or both. It is also a "lifestyle offence" under schedule 2 of the Proceeds of Crime Act 2002.

Bearing in mind the nature of the offences and the sentences that can be imposed, it is likely that most such cases will not be suitable for summary trial unless there are significant and exceptional circumstances to justify this course of action. The factors in *R v Le and Stark* [1999] 1 Cr.App.R.(S.) 422 would appear to apply equally here.

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Assisting entry to the UK in breach of deportation or exclusion order – section 25B(1) Immigration Act 1971

This offence was substituted by section 143 Nationality, Immigration and Asylum Act 2002 and came into force on 10 February 2003.

Under section 25(B)(1) a person commits an offence if he:

- a) does an act which facilitates a breach of a deportation order in force against an individual who is a citizen of the European Union, and
- b) knows or has reasonable cause for believing that the act facilitates a breach of the deportation order.

Assisting entry/remaining of excluded person – section 25B(3) Immigration Act 1971

In cases where the Secretary of State personally directs that the exclusion from the United Kingdom of an individual who is a citizen of the European Union is conducive to the public good, subsection (3) below applies.

Under Section 25(B)(3) a person commits an offence if he:

- a) does an act which assists the individual to arrive in, enter or remain in the United Kingdom;
- b) knows or has reasonable cause for believing that the act assists the individual to arrive in, enter or remain in the United Kingdom; and
- c) knows or has reasonable cause for believing that the Secretary of State has personally directed that the individual's exclusion from the United Kingdom is conducive to the public good.

The offences cover any actions done whether inside or outside the United Kingdom (amended by section 30 UK Borders Act 2007). It is an either-way offence and the maximum sentence on indictment is up to 14 years' imprisonment, a fine or both. It is also a "lifestyle offence" under schedule 2 of the Proceeds of Crime Act 2002.

Bearing in mind the nature of the offences and the sentences that can be imposed, it is likely that many cases will not be suitable for summary trial unless there are significant and exceptional circumstances to justify this course of action. The factors in *R v Le and Stark* [1999] 1 Cr.App.R.(S.) 422 would appear to apply equally here.

Under section 25C Immigration Act 1971, where a person is convicted on indictment of an offence under sections 25, 25A or 25B, the court may order the forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence if the convicted person owned, was in possession of or was driving it at the time.

Under section 25D Immigration Act 1971, if a person has been arrested for an offence under sections 25, 25A or 25B, a senior officer or a constable may detain a relevant ship, aircraft or vehicle.

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Human Trafficking Offences

Trafficking in prostitution – section 145 of the Nationality, Immigration and Asylum Act 2002

This offence commenced on 10 February 2003 but was repealed by Sexual Offences Act 2003 (schedule 7) as of 1 May 2004 [SI 874 (2004)] and substituted by offences in sections 57, 58 and 59 Sexual Offences Act 2003. This offence can thus only be charged where the acts that amount to the commission of the offence, were committed after 10 February 2003 and before 1 May 2004.

Under section 145(1), a person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the "passenger") and:

- a) he intends to exercise control over prostitution by the passenger in the United Kingdom or elsewhere, or
- b) he believes that another person is likely to exercise control over prostitution by the passenger in the United Kingdom or elsewhere.

Subsection 2 creates an offence in similar terms where the travel is within the UK.

A further offence is committed for facilitating the transportation of a prostitute outside of the UK – subsection 3.

All these offences are either-way offences and on conviction on indictment, are subject to imprisonment for a term not exceeding 14 years, to a fine or to both.

This offence is a "lifestyle offence" for the purposes of the Proceeds of Crime Act 2002.

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Trafficking into the UK for sexual exploitation – section 57 Sexual Offences Act 2003

This offence came into force on 1 May 2004. Section 31(3) of the UK Borders Act 2007 inserted 'or the entry into the UK' under section 57(1) with effect from 31 January 2008.

Under section 57(1) a person commits an offence if he intentionally arranges or facilitates the arrival in or the entry into the United Kingdom of another person (B) and either:

a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence, or
b) he believes that another person is likely to do something to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence.

A relevant offence is defined under section 60(1) Sexual Offences Act 2003 as:

a) an offence under Part 1 of the Sexual Offences Act 2003;
b) an offence under section 1(1)(a) of the Protection of Children Act 1978;
c) anything done outside England and Wales and Northern Ireland which would be an offence if done in England and Wales or Northern Ireland.

Sections 60(2) and 60(3) are amended by section 31(4) UK Borders Act 2007 to apply to anything done whether inside or outside the United Kingdom, with effect from 31 January 2008.

This is an either-way offence and on conviction on indictment, is subject to imprisonment for a term not exceeding 14 years. This offence is also a "lifestyle offence" for the purposes of the Proceeds of Crime Act 2002. This offence is likely to lead to a significant sentence on conviction. Such offences would almost certainly receive sentences over 12 months and thus should be tried in the Crown Court.

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Trafficking within the UK for sexual exploitation – section 58 Sexual Offences Act 2003

This offence came into force on 1 May 2004.

Under section 58(1) a person commits an offence if he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either:

a) he intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, (see above), or
b) he believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.

Sections 60(2) and 60(3) are amended by section 31(4) UK Borders Act 2007 to apply to anything done whether inside or outside the United Kingdom, with effect from 31 January 2008.

This is an either-way offence and on conviction on indictment, is subject to imprisonment for a term not exceeding 14 years. This offence is also a "lifestyle offence" for the purposes of the Proceeds of Crime Act 2002.

This offence is likely to lead to a significant sentence on conviction. Such offences would almost certainly receive sentences over 12 months and thus should be tried in the Crown Court.

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Trafficking out of the UK for sexual exploitation – section 59 Sexual Offences Act 2003

This offence came into force on 1 May 2004.

Trafficking people for exploitation – section 4 Asylum and Immigration (Treatment of Claimants etc) Act 2004

This offence came into force on 1 December 2004. Section 31(1) of the UK Borders Act 2007 inserted "or the entry into the UK" under Section 4(1) with effect from 31 January 2008. Section 54 of the Borders, Citizenship and Immigration Act 2009 amended section 4(4)(d) with effect from 10 November 2009.

Under section 4(1) a person commits an offence if he arranges or facilitates the arrival in or the entry into the UK of an individual, and;

- a) he intends to exploit the person in the UK or elsewhere, or
- b) believes another person is likely to.

Under section 4(2) a person commits an offence if he arranges or facilitates travel within the UK of an individual in respect of whom he believes has been trafficked into the UK and he intends to exploit the person, or believes another person is likely to, whether in the UK or elsewhere.

Under section 4(3) a person commits an offence if he arranges or facilitates the departure from the UK of an individual and he intends to exploit that person outside the UK, or believes another person is likely to, outside of the UK.

Under section 4(4) for the purposes of these offences, a person is exploited if he is:

a) the victim of behaviour contravening Article 4 of the ECHR (slavery or forced labour);

b) encouraged, required or expected to do something which would mean an offence is committed under the Human Organ Transplants Act 1989;

c) subjected to force, threats or deception designed to induce him:

i) to provide services of any kind,

ii) to provide another person with benefits of any kind, or

iii) to enable another person to acquire benefits of any kind; or

d) a person uses or attempts to use him for any purpose within sub-paragraph i, ii or iii of paragraph c, having chosen him for that purpose on the grounds that:

i) he is mentally or physically ill or disabled, he is young or has a family relationship with a person; and

ii) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose.

Under subsection 4(a) behaviour contravening Article 4 of ECHR (slavery or forced labour), further guidance on what constitutes servitude and forced and compulsory labour can be found in the ECHR case of *Siliadin v France* [26 July 2005] (Application no. 73316/01). The evidence showed the applicant, an alien who arrived in France at the age of sixteen, had worked for several years for the respondents carrying out household tasks and looking after their three, and subsequently four, children for seven days a week, from 7 am to 10 pm, without receiving any remuneration. She was obliged to follow instructions regarding her working hours and the work to be done, and was not free to come and go as she pleased. The Court unanimously held that there has been a violation of Article 4 of the Convention.

Under subsections 4(c) (ii) and (iii) benefits is defined as any advantage derived by the trafficker, which could include financial gain, profit, personal benefit or privilege as well as state financial assistance.

Sections 5(1) and 5(2) are amended by section 31(4) UK Borders Act 2007 to apply to anything done whether inside or outside the United Kingdom, with effect from 31 January 2008.

The offences are either way. On summary conviction the maximum penalty is six months imprisonment, fine up to the statutory maximum or both (after section 154 Criminal Justice Act 2003 is commenced the maximum penal sentence on summary conviction will be increased to 12 months' imprisonment). Conviction on indictment carries a maximum sentence of 14 years' imprisonment, a fine or both. This offence is also a "lifestyle offence" for the purposes of the Proceeds of Crime Act 2002.

This offence is likely to lead to a significant sentence on conviction. Such offences would almost certainly receive sentences over 12 months and thus should be tried in the Crown Court.

In circumstances where the victim was not trafficked or the trafficking element cannot be proved to the criminal standard, prosecutors should consider the offence of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour under section 71 of the Coroners and Justice Act 2009. A person commits the offence if they hold the other person (or persons) in slavery or servitude or require another person (or persons) to perform forced or compulsory labour. The circumstances must be such that the defendant knows or ought to know that the person is being so held or required to perform such labour.

Under section 59(1) a person commits an offence if he intentionally arranges or facilitates the departure from the United Kingdom of another person (B) and either:

- a) he intends to do anything to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence, (as stated above), or
- b) he believes that another person is likely to do something to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence.

Sections 60(2) and 60(3) are amended by section 31(4) UK Borders Act 2007 to apply to anything done whether inside or outside the United Kingdom, with effect from 31 January 2008.

This is an either-way offence and on conviction on indictment, is subject to imprisonment for a term not exceeding 14 years. This offence is also a "lifestyle offence" for the purposes of the Proceeds of Crime Act 2002.

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Other Offences

In addition to offences of human trafficking, prosecutors should consider charging other offences such as rape, kidnapping, false imprisonment, threats to kill or causing or inciting prostitution for gain where they are supported by evidence, in order to provide the court with a range of powers to reflect the full criminality of the case.

Conspiracy to traffick

A conspiracy to traffick may involve the doing of an act by one or more of the parties, or the happening of an event, in a place outside England and Wales. This situation is covered by section 1A of the Criminal Law Act 1977 which provides that where (a) that act or event would be an offence by the law of that place and (b) it would also be an offence here (but for the fact that it takes place outside the jurisdiction), then a person in England and Wales who becomes a party to the agreement or, being a party, does anything in pursuance of the agreement (even before its formation) can be charged with conspiracy contrary to section 1(1) of the Criminal Law Act 1977. Prosecutors should note, however, that by virtue of

section 4(5) of the same Act, the prior consent of the Attorney General is required to prosecute offences to which section 1A applies.

For further guidance on obtaining the consent of the Law Officers prosecutors should refer to legal guidance on [Consents to Prosecute](#).

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Sentencing

Sentencing guidelines have been included under the relevant statutory offences, including relevant leading sentencing guide cases.

The following cases provide guidelines on sentencing and reflect the degree of coercion, force and violence used in the exploitation of their victims:

R v Plakici [2005] 1 Cr.App.R.(S.) 19, Attorney General's Reference (No 6 of 2004) dealt with a series of individual offences that amounted to an extremely serious case of trafficking. The offender had arranged for the illegal entry of women and young girls into this country in circumstances that involved both deception and coercion and forced them to work as prostitutes. Counts of illegal entry attracted sentences of 5 years, of living on immoral earnings 5 years, of kidnapping 10 years, and of incitement to rape, 8 years. A total sentence of 23 years was imposed.

R v Maka [2006] 2 Cr.App.R.(S.) 14. Sentences totalling 18 years were upheld, on a guilty plea, in the case of a man who trafficked a 15 year old girl into this country and repeatedly sold her to others for the purposes of prostitution. The court endorsed the comment of the sentencing judge that human trafficking was a degrading activity producing untold misery around the world and that the case had echoes of slavery with the girl being sold from one procurer to another. It added that the offence was intended to embrace a wide variety of different forms of conduct, identified as trafficking for sexual exploitation.

R v Roci and Ismailaj [2006] 2 Cr.App.R.(S.) 15. In this case the appellants were concerned in the importation and the control in this country of prostitutes from Lithuania. While the women came to this country willingly, they were then coerced to work in unpleasant circumstances and ways contrary to their wishes and to pay

over most of their earnings. The sentence on the appellant who was concerned in all these matters was reduced from 11 years' to 9 years' imprisonment.

R v Makai (Atilla) [2008] 1 Cr.App.R.(S.) 73. The appellant appealed against a sentence of 40 months' imprisonment imposed following his plea of guilty to conspiracy to traffic into the UK for sexual exploitation. He was involved in recruiting and arranging for Hungarian girls to come to the UK and work as prostitutes in brothels. He posted advertisements on Hungarian websites inviting girls to contact them and then passed the girls on to other men more closely involved in the trade. The Crown accepted that the girls would have known the kind of work for which they had been recruited. The basis of plea was that the girls came to the UK of their own free will, were above the age of consent, had entered the UK legally, knew prostitution was legal in the UK, and that his role had been limited to introducing them to others that placed them in the brothels. Appeal allowed and 30 months' imprisonment substituted.

R v Khan, Khan and Khan [2010] EWCA Crim 2880. The defendants were convicted of an offence of conspiracy to traffic for exploitation under section 4 Asylum and Immigration Act 2004 and each was sentenced to 3 years' imprisonment. They were concerned in the management of a restaurant business and during a period of over 4 years they recruited men from the Middle East and India to work in the restaurant. Their passports and other personal documents were confiscated on arrival in the UK and bond money was handed over to the defendants. They were required to work for 12 hours or more a day for 6 – 7 days a week for little reward. It was found that they had been deceived by promises of attractive wages, had been subjected to conditions of neglect, abuse, deprivation and economic exploitation. Sentences of 4 years imprisonment were substituted for 2 of the defendants.

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Section 54 and Schedule 4 of the Violent Crime Reduction Act 2006: Forfeiture and detention of vehicles etc.

Forfeiture: If a person is convicted on indictment of an offence under sections 57 to 59 of the Sexual Offences Act 2003, section 60A will enable the courts to order

the forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence.

Detention: Section 60B enables a constable, or an immigration officer not below the rank of chief immigration officer, to detain a vehicle, ship or aircraft of a person arrested for an offence under sections 57 to 59 if it is one which the constable or immigration officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 60A.

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Trafficked Victims

Definition

There is no definitive definition of a trafficked victim. Trafficked victims are identified as those persons who are exploited at the hands of their traffickers and victims of the criminality as defined by the Palermo Protocol. This definition is reflected in UK legislation.

Loss of freedom is a defining feature of trafficking. For example, trafficked victims are often not allowed to leave the premises where they are held or if they do, they are accompanied by a trafficker. Victims suffer frequent and severe abuse, both physical and psychological. Violence and physical harm are the hallmarks of trafficked women, in particular.

From a prosecution perspective it is important to adhere to the standards set out in the Code of Practice for Victims of Crime which places the needs of victims at the heart of the criminal justice system.

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Council of Europe Convention on action against Trafficking in Human Beings

The Convention on Action against Trafficking in Human Beings was implemented on 1 April 2009. This introduced a number of provisions to improve our ability to identify victims, refer them to appropriate support and bring more cases to

justice. The provisions include mechanisms for early identification of victims, national referral schemes, and the granting of recovery and reflection periods and renewable residence permits to victims.

National Referral Mechanism: is a single framework centred on victim identification and referral to appropriate support. First responders (which may include police, UKBA, local authorities and certain NGOs) can refer all suspected victims of trafficking to a Competent Authority for a decision to be made within 48 hours. A first responder will complete a referral form recording their encounter with a potential victim. Sufficient information will be included to enable a decision on whether the subject has "reasonable grounds" for being treated as a victim of trafficking. General indicators of a potential victim's behaviour, circumstances and responses to questions will assist in the assessment.

A multi-agency Competent Authority is based in the UK Human Trafficking Centre (UKHTC). The UKHTC will act as a central point of contact for all agencies likely to encounter victims (e.g. NGOs, police, UKBA, local authorities). A linked but separate Competent Authority in UK Border Agency will address situations where trafficking is raised as part of an asylum claim or in the context of another immigration process. For general enquiries www.ukhtc.org; National Referral Mechanism forms can be found here: [referral form](#)

Reflection period: Where the competent authority has confirmed "reasonable grounds", victims will be eligible for a reflection period of 45 days, which will be extendable in some circumstances, for example extreme trauma. This is to enable a victim to recover from their immediate physical or psychological trauma before deciding whether to support an investigation/prosecution. However this does not preclude the victim from speaking with law enforcement to provide intelligence or information or make a statement if they wish to assist an investigation.

Residence permit: Following the Reflection period, victims may be eligible for a residence permit, which will be granted for a minimum of one year and is renewable. This will be granted where a victim is cooperating with an investigation or criminal proceedings, or it is deemed necessary owing to their personal circumstances.

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Disclosure

In all cases of human trafficking, where the victim has been referred to the competent authority for a "reasonable grounds" decision, the referral form completed by a first responder recording their encounter with the victim may be disclosable to the defence. Information on the form might go to the credibility of the victim or other prosecution witnesses. There may be inconsistencies in the victim's initial answers given in the course of preparation of the initial report when compared with what is contained in the victim's statement. Inconsistencies are probably capable of assisting the defence in cross examination and may therefore have to be disclosed to the defence.

The prosecutor must apply the disclosure tests set out in the Code of Practice to the Criminal Procedure and Investigations Act, issued under section 23, and disclose the form to the defence if it is capable of undermining the case for the prosecution or of assisting the defence case. The form should be identified by the police on MG6.

Full guidance on disclosure, including the Protocol for the Control and Management of unused Material in the Crown Court can be found in the [Disclosure Manual](#) elsewhere in the Legal Guidance.

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Cross-examination of the victim on grounds of inducement

There may be benefits to victims in claiming they have been trafficked: they are able to access accommodation and support and are eligible for a (renewable) residence permit to remain in the UK. Prosecuting Advocates will need to be alert to cross-examination of the victim at court on the grounds of inducement and their spurious claims of being a trafficked victim in order to acquire a residence permit.

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Case Management Issues

Many victims take significant risks in giving evidence. Prosecutors should consider the range of measures available to support and protect trafficked victims giving evidence and make appropriate applications to the court.

Achieving Best Evidence (ABE) - Video interviews

The revised edition of "Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses" (ABE) provides full guidance on videotaped interviews for vulnerable or intimidated witnesses.

Special Measures

Under section 17(4) Youth Justice and Criminal Evidence Act 1999 a trafficked victim who has been subjected to sexual exploitation is deemed automatically to be "intimidated".

Early Special Measures meetings: provide an opportunity for the investigating officer and prosecutor to either meet or speak on the phone, to discuss a victim's needs, their eligibility for special measures and the most appropriate special measure for them.

Appropriate measures may include screening the victim from the defendant, giving evidence through CCTV, providing video recorded evidence in chief or clearing the public gallery. In some instances, this might include not revealing the victim's identity when giving evidence.

For further information see Special Measures elsewhere in the Legal Guidance.

Victims who wish to return to their home country

Where a victim has chosen to be repatriated to their home country and they do not wish to return to the UK, there is provision for evidence to be given through television link from their country under section 32 Criminal Justice Act 1988; however evidence may not be given without leave of the court. An application should be made by giving notice in writing within 28 days after the committal or notice of transfer, specifying the grounds for the application. In cases where a victim or witness has returned to their home country, is required to return to the UK to give evidence at a criminal trial but is subject to immigration control, Home Office Circular 2 / 2006 provides guidance on the appropriate procedures. It

applies to cases where a witness would otherwise be required to leave the UK or needs to return to the UK.

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Reporting Restrictions

Reporting restrictions can be applied for under section 46 of the Youth Justice and Criminal Evidence Act 1999 to protect the identity of the witness. Whilst the media can be useful in raising awareness of human trafficking, media interest in specific cases can be unhelpful during the investigation and prosecution phase. Media coverage of witness identities can reveal the identity of witnesses and create safety issues both within the UK and the country of origin as national media often pick up the story from international news networks. Be aware though that there can be no guarantee of restricting press reporting in other jurisdictions, as there may be no mutual recognition of court orders made in England and Wales.

Anonymity

Where there may be safety concerns for the victim, pseudonyms can be used for witness statements if desired. For further information see the Director's Guidance on Witness Anonymity elsewhere in the Legal Guidance.

Interpreters

Consideration must be given, where appropriate, to issues such as gender, political orientation or affiliation, regional origins and cultural background of the interpreter, and the interpreter should be selected to conform to the reasonable requirements set by the witness, if such preferences are indicated. Arrangements for the selection and engagement of appropriately qualified interpreters can be found in the National Agreement on Arrangements for the Use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings within the Criminal Justice System.

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Prosecution of Defendants (children and adults) charged with offences who might be Trafficked Victims

The UK is bound by the Council of Europe Treaty ratified by Parliament on 17 December 2008 and which places specific and positive obligations upon EU States to prevent and combat trafficking and protect the rights of victims. It provides for the possibility of not imposing penalties on victims for their involvement in unlawful activities to the extent that they have been compelled to do so.

Adults and children arrested by the police and charged with committing criminal offences might be the victims of trafficking. This most frequently arises when they have been trafficked here to commit criminal offences (some of the offences most frequently committed appear below):

1. Causing or inciting / controlling prostitution for gain: Sections 52 and 53 Sexual Offences Act 2003;
2. Keeping a brothel: Section 33 or 33a Sexual Offences Act 1956;
3. Theft (in organised "pickpocketing" gangs), under section 1 Theft Act 1968;
4. Cultivation of cannabis plants, under section 6 Misuse of Drugs Act 1971.

But trafficked victims may also be apprehended by law enforcement where they are escaping from their trafficking situation, the most obvious being immigration offences:

1. using a false instrument under section 3 of the Forgery and Counterfeiting Act 1981;
2. possession of a forged passport or documents under section 5 of the Forgery and Counterfeiting Act 1981;
3. possession of a false identity document under section 6 Identity Documents Act 2010;
4. failure to have a travel document at a leave or asylum interview under section 2 Asylum and Immigration (Treatment of Claimants) Act 2004.

When reviewing any such cases, prosecutors must be alert to the possibility that the suspect may be a victim of trafficking and take the following steps:

1. Advise the senior investigating officer to make enquiries and obtain information about the circumstances in which the suspect was apprehended and whether there is a credible suspicion or realistic possibility that the suspect has been trafficked (this should be done by contacting the UK Human Trafficking Centre (UKHTC) see:www.ukhtc.org);
2. The police should be advised to consider referring the suspect through the national referral mechanism (NRM) to the competent authority for victim identification and referral to appropriate support. In the case of children, this can be done by the Local Authority. Referral forms can be found here: [referral form](#).
3. Where the suspect is assessed as being under 18 and has been arrested in connection with offences of cannabis cultivation, police should be referred to ACPO Child Protection: Position on Children and Young People Recovered in Cannabis Farms Prosecutors should also consider information from other sources that a suspect might be the victim of trafficking, for example from a non-government organisation (NGO) which supports trafficked victims. That information may be in the form of medical reports (for example, psychiatrist reports) claiming post traumatic stress as a result of their trafficking experience;
4. Re-review the case in light of any fresh information or evidence obtained;
5. If new evidence or information obtained supports the fact that the suspect has been trafficked and committed the offence whilst they were coerced, consider whether it is in the public interest to continue prosecution. Where there is clear evidence that the suspect has a credible defence of duress, the case should be discontinued on evidential grounds (but see separate section on Children).

In complying with the judgment in *R v O* [2008] EWCA Crim 2835, it is the duty of the prosecutor to be pro-active in causing enquiries to be made about the suspect and the circumstances in which they were apprehended. In giving their judgment the Court highlighted a number of important issues in cases such as this:

1. It required that both Prosecutors and Defence lawyers are "to make proper enquiries" in criminal prosecutions involving individuals who may be victims of trafficking, in line with the findings of the Parliamentary Joint Committee on Human Rights report on Human Trafficking, that there must be coordinated law enforcement in protecting the rights of victims of trafficking;
2. CPS legal guidance on the prosecution of trafficked victims was recognised; the court advised that this is published more widely to ensure others are aware of it;
3. The court, defence and prosecution were criticised for failing to recognise that O was a minor.

In the case of O, guidance on the prosecution of trafficked victims was not followed. The importance of following the guidance was further re-enforced by LM, MB, DG, Betti Tabot and Yutunde Tijani v The Queen [2010] EWCA Crim 2327.

Some trafficked victim's experiences are likely to be outside the knowledge and experience of prosecutors. For example young female victims may be subject to cultural and religious practices such as witchcraft and juju rituals inherent in their culture which binds them to their traffickers through fear of repercussions.

Other trafficked victims may be held captive, physically and sexually assaulted and violated, or they may be less abused physically but are psychologically coerced and are dependent on those who are victimising them.

Prosecutors should therefore have regard to these wider factors when considering whether the circumstances of the person's situation might support a defence of duress in law. In Lynch v DPP for Northern Ireland [1975] A.C. 653, HL (Archbold 2011 17-120), Lord Simon said:

"...such well grounded fear, produced by threats, of death or grievous bodily harm or unjustified imprisonment if a certain act is not done, as overbears the wish not to perform the act, and is effective, at the time of the act, in constraining him to perform it."

The following are also factors which prosecutors might consider:

1. When considering duress was the defendant driven to do what he did because he genuinely believed that if he didn't, he or a member of his family would be killed or seriously injured?
2. Might a reasonable person with the defendant's belief and in his situation have been driven to do what he did?
3. Was there opportunity for the defendant to escape from the threats without harm to himself, for example by going to the police?
4. Did the defendant put himself into a position in which he was likely to be subject to threats made to persuade him to commit an offence of the seriousness of the charge, eg getting involved in a criminal gang likely to subject him to threats to commit criminal offences?

Even where the circumstances do not meet the requirements for the defence of duress, prosecutors must consider whether the public interest is best served in continuing the prosecution in respect of the criminal offence. The following factors are relevant when deciding where the public interest lies:

1. is there a credible suspicion that the suspect might be a trafficked victim?
2. the role that the suspect has in the criminal offence?
3. was the criminal offence committed as a direct consequence of their trafficked situation?
4. were violence, threats or coercion used on the trafficked victim to procure the commission of the offence?
5. was the victim in a vulnerable situation or put in considerable fear?

Guidance has been issued to police and UK Border Agency (UKBA) on identification of victims and the indicators that might suggest that someone is a trafficked victim. However, all decisions in the case remain the responsibility of the prosecutor.

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Children

Children are particularly vulnerable to trafficking and exploitation. Recent experience has highlighted the following offences as those most likely to be committed by trafficked children:

1. Cultivation of cannabis plants, under section 6 Misuse of Drugs Act 1971;
2. Theft (in organised "pickpocketing" gangs), under section 1 Theft Act 1968.

Prosecutors should be alert to the possibility that in such circumstances, a young offender may be a victim of trafficking and have committed the offences by being exploited by their traffickers or others controlling them. Child trafficking is first and foremost a child protection issue and they are likely to be in need of protection and safeguarding. In these circumstances, prosecutors should take the steps outlined above to make pro-active enquiries about the circumstances in which the child was apprehended.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) makes it clear that for child victims, consent is irrelevant; therefore there is no requirement to show the means of trafficking (that is the threat, coercion, or deception).

When considering the evidential factors set out in the previous section, in particular the reasonableness of the defendant's belief in the likely harm which might be caused to them or to their family and the likelihood of taking up opportunities to escape the threats, proper allowance should be made for the age, vulnerability and lack of maturity of the young person.

Children who have been trafficked may be reluctant to disclose the circumstances of their exploitation or arrival into the UK for fear of reprisals by the trafficker or owner, or out of misplaced loyalty to them. Experience has shown that inconsistencies in accounts given are often a feature of victims of trafficking and should not necessarily be regarded as diminishing the credibility of their claim to be a victim of trafficking.

The child may have been coached by their trafficker to not disclose their true identity or circumstances to the authorities. In some cases, they may have been coached with a false version of events and warned not to disclose any detail beyond this as it will lead to their deportation.

In a similar way to adults, children may have been subject to more psychological coercion or threats, such as threatening to report them to the authorities; threats of violence towards members of the child's family; keeping them socially isolated; telling them that they/their family owes large sums of money and that they must work to pay this off; or through juju or witchcraft practices.

Police should work with local authorities to ensure early identification of trafficked victims before entering any suspected cannabis farm, in line with the "Safeguarding Children Who May Have Been Trafficked" guidance. Police and prosecutors should also be alert to the fact that an appropriate adult in interview could be the trafficker or a person allied to the trafficker.

Any child who might be a trafficked victim should be afforded the protection of our child care legislation if there are concerns that they have been working under duress or if their well being has been threatened. Prosecutors are also alerted to the DCSF Guidance Safeguarding Children and Young People from Sexual Exploitation (June 2009).

In these circumstances, the youth may well then become a victim or witness for a prosecution against those who have exploited them. The younger a child is the more careful investigators and prosecutors have to be in deciding whether it is right to ask them to become involved in a criminal trial.

Prosecutors are reminded of the principles contained within the CPS policy statement on Children and Young People and in particular, our commitment to always consider the welfare of children in criminal cases.

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Age disputes

Young people may have no identifying information on them, their documents may be false or they may have been told to lie about their age to evade attention from the authorities. Some victims may claim to be adults when they are in fact under 18 years of age.

Where it is not clear whether the young person is a child (i.e. under 18 years of age) then in line with the United Nations Convention of the Rights of the Child, the benefit of the doubt should be given and the young person should be treated

as a child. This is re-enforced in the Council of Europe Convention on Action against Trafficking in Human Beings.

Where there is uncertainty about a suspected victim's age, Children's Services will be responsible for assessing their age. The Local Authority in whose area the victim has been recovered will have responsibility for the care of the child as required by the Children Act 1989.

Where a person is brought before any court and it appears that they are a child or young person, it is the responsibility of the court to make due enquiry as to their age. Under section 99 Children and Young Persons Act 1933 and section 150 Magistrates' Courts Act 1980 the age presumed or declared by the court is then regarded to be their true age.

For further reference on age assessment refer to R (on the application of A) v London Borough of Croydon [2009]; R (M) v London Borough of Lambeth [2009]. This case concerned the duty imposed on local authorities in providing services under the Children's Act 1989 in instances where the local authorities disputed age and assessed them as adults.

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Child Trafficking

Child trafficking is the practice of transporting children into, within and out of the UK for the purposes of exploitation. The exploitation can be varied and include:

1. labour exploitation (e.g. construction, restaurants, etc);
2. domestic servitude;
3. criminal activity (e.g. cannabis cultivation, petty street crime, illegal street trade, etc);
4. sexual exploitation (brothels, closed community, for child abuse images);
5. application of residence;
6. benefit fraud;
7. illegal adoption;

8. and forced marriage.

Child trafficking and exploitation is often accompanied by various types of control such as violence, the threat of violence, sexual abuse, alcohol and drug abuse, emotional abuse, manipulation through twisting cultural practices and imprisonment to suppress victims and ensure their compliance. For that reason, victims may not fully cooperate with an investigation or prosecution for fear of reprisals. Offenders may also attempt to abduct or coerce the child whilst criminal proceedings are ongoing and while the child is being cared for by the local authority.

Children are sometimes forced into committing criminal acts on behalf of their trafficker. Examples include forced cannabis cultivation and organised street crime and begging. Where it is found that the child committed an offence as a direct result of trafficking prosecutors should follow the guidance on Prosecution of Defendants (children and adults) charged with offences who might be trafficked victims. If the victim states they are a child, they should be viewed as such until their age can be verified by identification or an independent age assessment carried out by the local authority or a court determination.

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Internal Trafficking

Whilst the UK is primarily a destination state for human trafficking, an emerging issue is the "internal trafficking" of children. This term is used to describe the trafficking of children born, or normally resident in the UK. Internal trafficking is characterised by the recruitment, grooming and sexual exploitation of young teenage girls in the UK by organised crime gangs. Investigations may arise in circumstances where a child has gone missing (often, but not limited to, children in local authority care). They may be sexually abused before being taken to other towns and cities where the sexual exploitation (prostitution) continues.

However not all cases of child sexual exploitation and abuse will be considered to be internal trafficking. Where evidence obtained by investigators supports an offence of trafficking within the UK (under section 58 Sexual offences Act 2003), then this offence should be charged. Where other serious sexual offences involving the exploitation of children are disclosed, prosecutors should refer to legal guidance on Children as Victims and Witnesses.

Further guidance on investigating and evidencing such cases can be found in the NPIA Child Abuse Guidance.

The Department for Education (DFE) and Home Office published guidance in December 2007 Working Together to Safeguard Children Who May Have Been Trafficked provides guidance on the roles and functions of all relevant agencies involved in identifying and supporting child victims.

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Other Issues

Deportation

Procedures in relation to deportation are dealt with in Sentencing and Ancillary Orders Applications, elsewhere in the Legal Guidance.

Compensation & Asset Recovery

Prosecutors must consider applying for compensation on conviction. Trafficked victims have effectively been used as slaves while their traffickers have benefited significantly from their exploitation.

All human trafficking offences are classed as "lifestyle offences" and as such, the court may use its powers under the Proceeds of Crime Act 2002 to restrain and confiscate the value of a defendant's criminal assets. In these cases, the court assumes that all assets acquired in the previous six years are the proceeds of crime and are available to be confiscated.

Further information on proceeds of crime is available elsewhere in the Legal Guidance.

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