

Additional Modern Slavery Act 2015 considerations (Appendix D)

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First published 11 February 2026

Section 4 – Committing offence with intent to commit other offences under section 2

The section 4 offence is not widely known or understood by policing. Consequently, charges and prosecutions are rare. When charged in relevant cases, it may attract more serious penalties. It may be useful to have early case discussions about potential charges with a prosecutor.

“A person commits an offence under this section if the person commits any offence with the intention of committing an offence under section 2 (including an offence committed by aiding, abetting, counselling or procuring an offence under that section).”

Section 4 provides that preparatory criminal conduct that constitutes a lesser offence can attract higher penalties in section 5. For example, this may be up to 10 years’ imprisonment on indictment or, where the preparatory offence is kidnapping or false imprisonment, up to life imprisonment.

Section 4 will also capture activity such as supplying false documents to be used to facilitate trafficking. Section 4 is drawn widely enough to encompass any (less serious) criminal offence committed with intent to commit a more serious offence of human trafficking (or aiding or abetting human trafficking), but where there is insufficient evidence to prosecute the more serious offence in its own right.

It reflects section 62 of the [Sexual Offences Act 2003](#) (committing an offence with intent to commit a sexual offence), which could be used in cases of trafficking for sexual exploitation, to ensure parity in cases of trafficking for non-sexual exploitation.

This provision cannot be used for section 1 of the Modern Slavery Act 2015.

In its application to human trafficking under section 2, it should be used in circumstances where the act committed is a criminal offence and where the following apply.

- The evidence supports the commission of a lesser offence with intent to commit the more serious offence of human trafficking, but there is insufficient evidence to prosecute the more serious offence in its own right.
- The act is itself criminal, but the offender has not gone far enough to have attempted to commit the more serious substantive offence. To prosecute for an offence of attempting to commit an offence of human trafficking (under the [Criminal Attempts Act 1981](#)), the criminal act has to be more than merely preparatory to the commission of the substantive offence.

Examples where section 4 could be considered:

- theft of a motor vehicle with the intention of using that vehicle to traffic individuals
- making or supplying false documents
- assaulting or sexually assaulting a person to force or coerce them into criminal, sexual or labour exploitation
- kidnapping or falsely imprisoning a person before trafficking them for exploitation
- threats to kill

Section 8 – Power of court to make slavery and trafficking reparation orders

Reparation orders are made by the criminal court dealing with the offender, offering an opportunity to provide the victim with recompense for the work they completed while being enslaved, held in servitude, forced or exploited.

To make a reparation order, a person must have been convicted of an offence under section 1, 2 or 4 of the Modern Slavery Act 2015 and a [confiscation order](#) made in respect of that conviction. The same can be done where the offender absconds but a confiscation order under the [Proceeds of Crime Act 2002](#) has been made and the offender has been convicted of an offence under section 1, 2 or 4.

Reparation orders can be applied for retrospectively – for example, after an offender has been sentenced.

Section 11 – Power of court to order forfeiture of land vehicle, ship or aircraft

When a person is convicted on indictment of a human trafficking offence under section 2, section 11 enables the court to order the forfeiture of a vehicle, ship or aircraft used – or intended to be used – in connection with the offence of which the person is convicted.

Section 12 – Power of court to order detention of land vehicle, ship or aircraft

Section 12 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 section 2. This applies if the constable or officer concerned has reasonable grounds for believing that the vehicle, ship or aircraft could, on conviction of the arrested person for the offence for which they were arrested, be the subject of an order for forfeiture made under section 11.

Section 14 – Power of court to order to make slavery and trafficking prevention order on sentencing

The advice in this section is general. Investigators are advised to read the Modern Slavery Act 2015 and/or the following statutory guidance carefully if they intend to take further action.

A [slavery and trafficking prevention order](#) (STPO) on sentencing is a civil order made by a criminal court as part of the sentencing of a person convicted of a slavery or human trafficking offence. The order is made in line with other statutory prevention and risk orders, with offenders having to comply with the requirements or prohibitions outlined in the order. Breaches of the requirements or prohibitions amount to a criminal offence that can result in a maximum sentence on indictment not exceeding five years' imprisonment.

The court can make an order only if both of the following apply:

- the court is satisfied there is a risk that the offender may commit a slavery or human trafficking offence
- it is necessary to make the order to protect specific people – or the public in general – from physical or psychological harm, which would be likely to occur if the offender committed such an offence

The requirements are limited and only relate to notifying specified people of their name and addresses or changes to name and address.

The prohibitions are not restricted and should be focused on reducing the risk of harm that the offender presents. The prohibitions last for a fixed period of at least five years but may be longer. They can only be applied if they are necessary to protect people. They apply to behaviour inside and outside the UK.

Foreign travel to any country outside the UK can be prohibited under the order for a fixed period not exceeding five years. The offender must surrender their passport.

Slavery and trafficking orders are entirely a matter for the court to decide on, but the prosecutor may invite the court to make such an order. On occasions, investigators have been asked for advice on what prohibitions should be included in the order. Advice is available via the [policing slavery and human trafficking group](#) (this is a closed group on the Knowledge Hub).

Once the order has been made, the police can apply to the court, making the initial order for a variation, renewal or discharge of the order or prohibitions contained within.

Section 15 – Power of court to order slavery and trafficking prevention order on application

An STPO on application is different than the order on sentencing, as it requires an applicant to apply for one and does not follow a conviction. It applies to a person who has a previous recording of guilt or where there has been a court finding in respect of a slavery or human trafficking offence. The recording of guilt could be a conviction or a caution either in the UK or an equivalent offence outside. The order can still be made if the act behind the recording of guilt occurred.

Section 21 – Power of court to order interim slavery and trafficking prevention orders and Section 23 – Power of court to order slavery and trafficking risk orders

Where a police force is applying for an STPO under section 15, or a slavery and trafficking risk order (STRO) under section 23, there is an option to apply for an interim order. This can be applied

for at the same time as the main application or via a subsequent application to the same court.

Interim STPOs are not available to manage an offender who is pending a court appearance and does not have a previous recording of guilt. In those circumstances, an application for an STRO, accompanied by an interim order, is the only option. If granted, the interim order lasts for a fixed period of time set out on the order. It can be varied, renewed or discharged. As per the full order, it can include requirements and prohibitions.

Breaching the requirements or prohibitions is a criminal offence that carries the same maximum penalty as breach of a full order.

The use of interim orders is a significant intrusion into a person's private life without a detailed examination of the facts. The Home Office guidance states:

"...given that such an Order will be made before the Court has heard and tested all the evidence, great care must be taken to ensure that such a course of action is justified."

As interim orders are short-term and are made pending the main application being considered, adjournments are unlikely and they can be extremely helpful tools for the police.

Appeals

For all slavery and trafficking orders that are approved by the courts – prevention, risk and interim – there is an appeal process for the defendant. In the case of an order being made, varied or renewed by the crown court, the defendant can apply to the Court of Appeal. Where the order has been made, varied or renewed by a magistrate's court, the defendant can apply to the crown court.

Section 46 – Special measures for witnesses

Section 17 of the [Youth Justice and Criminal Evidence Act 1999](#) defines witnesses who are eligible for assistance on grounds of fear or distress about testifying. Sub-section 4 now includes complainants of offences under sections 1 and 2 of the Modern Slavery Act 2015 as being such witnesses. As a result, they are eligible for an application to the court to be made for the requested special measures to be implemented, as outlined in sections 23 to 28 of the act. These are:

- being screened from the accused

- evidence by live link
- evidence given in private
- removal of wigs and gowns
- video-recorded evidence in chief
- video-recorded cross examination or re-examination

Section 28 of the Youth Justice and Criminal Evidence Act 1999 allows for pre-recorded cross-examination of victims.

Further information

- [Investigation APP – Working with victims and witnesses](#)

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