

Subsidiary Legislation made under s.697.

Victims of Human Trafficking Regulations 2013

LN.2013/055

Commencement

4.4.2013

Transposing:

Directive 2011/36/EU

EU Legislation/International Agreements involved:

Decision 2002/629/JHA

ARRANGEMENT OF REGULATIONS

Regulation

1. Title and commencement.
2. Interpretation.
3. Assistance and support for victims of human trafficking.
4. Legal counselling.
5. Protection of victims in criminal investigation.
6. General provisions on assistance, support and protection measures for child victims of trafficking in human beings.
7. Assistance and support to child victims.
8. Access to education.
9. Appointment of guardian.
11. Application of regulations 7 to 10.
12. Protection of child victims in criminal investigations.
13. Assistance, support and protection for unaccompanied child victim.
14. Compensation to victims.
15. Prevention.
16. National rapporteurs or equivalent mechanisms.

2011-24

Criminal Procedure and Evidence

2013/055

Victims of Human Trafficking Regulations 2013

In exercise of the powers conferred on the Minister under section 697 of the Criminal Procedure and Evidence Act 2011 and on the Government under section 23(g)(i) of the Interpretation and General Clauses Act, and for the purpose of transposing, in part, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Victims of Human Trafficking Regulations 2013 and come into operation on the day of publication.

Interpretation.

2. In these Regulations—

“child” means a person under 18 years of age;

“Directive” means Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, as the same may be amended from time to time;

“Directive 2004/81/EC” means Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, as the same may be amended from time to time;

“Framework Decision 2001/220/JHA” means Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, as the same may be amended from time to time;

“human trafficking offence” means an offence committed under section 191A or within the meaning of section 280 of the Crimes Act 2011;

“legal counselling” means assistance given to enable victims to be informed and receive advice about the various possibilities open to them and should be provided by a person having received appropriate legal training (without necessarily being a barrister or solicitor);

“parental responsibility” shall have meaning assigned to it by section 12 of the Children Act 2009;

“victim” means a person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by conduct amounting to a human trafficking offence.

Assistance and support for victims of human trafficking.

3.(1) It shall be the duty of the Government to provide such resources as may be required to ensure that as soon as there are reasonable grounds for believing that a person might have been subjected to conduct which constitutes a human trafficking offence, that such a person is provided with assistance and support.

(2) The support referred to in subregulation (1) shall be provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings, in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in these Regulations.

(3) Without prejudice to Directive 2004/81/EC or any other enactment, any assistance and support for a victim, which may be provided for pursuant to this Regulation, shall not be conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial.

(4) The assistance and support measures referred to in subregulations (1) and (2) shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims’ subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

(5) The information referred to in subregulation (4) shall cover, where relevant, information—

- (a) on a reflection and recovery period pursuant to Directive 2004/81/EC;
- (b) on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status; or
- (c) pursuant to other international instruments, other applicable provisions.

(6) The Government shall take the necessary measures to—

- (a) establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations; and
- (b) attend to victims with special needs where those needs derive, in particular, from whether they are pregnant, their state of health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence which they have suffered.

Legal counselling.

4. The Government shall ensure that victims of a human trafficking offence, including child victims where Article 15 of the Directive applies, have access without delay to legal counselling which shall be free of charge where the victim does not have sufficient financial resources.

Protection of victims in criminal investigation.

5.(1) The Government shall ensure that victims of a human trafficking offence receive appropriate protection on the basis of an individual risk assessment, in particular, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined in law or other procedures.

(2) A person conducting an investigation into a human trafficking offence shall, having regard to the individual assessment by the relevant competent authority of the personal circumstances of the victim, and without prejudice to the rights of a defendant, and for the purpose of preventing the secondary victimisation, avoid as far as possible the following—

- (a) unnecessary repetition of interviews during investigation;
- (b) visual contact between victims and defendants by appropriate means including the use of appropriate communication technologies;
- (c) unnecessary questioning concerning the victim's private life.

(3) The protection measures referred to in this regulation are in addition to the rights set out in Framework Decision 2001/220/JHA.

General provisions on assistance, support and protection measures for child victims of trafficking in human beings.

6.(1) In the implementation of these Regulations the Government shall ensure that child victims of a human trafficking offence are provided with assistance, support and protection

and that in the application of the Directive and these Regulations, the child's best interests are the primary consideration.

(2) Where the age of a person who is the victim of a human trafficking offence is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child for the purposes of regulations 4 and 7 to 12.

Assistance and support to child victims.

7.(1) Following an assessment of the special circumstances of a child victim, and after taking due account of the child's views, needs and concerns and with a view to finding a durable solution for the child, the Government shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken.

Access to education.

8. Child victims and the children of victims who are given assistance and support in accordance with regulation 3 must, within a reasonable time, be given access to education, in accordance with any enactment relating to the provision of education to children.

Appointment of guardian.

9.(1) Where as a result of the operation of any law or rule, the holders of parental responsibility of a child victim-

- (a) have a conflict of interest between them and the child; or
- (b) would be precluded from ensuring the child's best interests and from representing the child, or both,

the Government shall ensure that a guardian or a representative is appointed as soon as the child is identified by the relevant authority.

(2) A representative appointed under subregulation (1) may be appointed for the purposes of Article 15(1) and (2) of the Directive.

Assistance and support for the family of child victim.

10. Where appropriate and possible, the Government shall take measures to provide assistance and support to the family of a child victim of a human trafficking offence when the family is in Gibraltar, and in particular and where appropriate and possible, it shall apply Article 4 of Framework Decision 2001/220/JHA to the family.

Application of regulations 7 to 10.

11. Regulations 7 to 10 shall apply without prejudice to regulation 3.

Protection of child victims in criminal investigations.

12. Without prejudice to regulation 5, a person who conducts a criminal investigation in respect of a human trafficking offence shall have regard to the following—

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

Assistance, support and protection for unaccompanied child victim.

13.(1) The Government shall—

- (a) ensure that the specific actions to assist and support child victims of a human trafficking offence referred to in regulations 7 and 8 take due account of the personal and special circumstances of the unaccompanied child victim;
- (b) take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child;
- (c) take the necessary measures to ensure that, where appropriate, a guardian is appointed;

- (d) ensure that, in criminal investigations and in subsequent proceedings a representative is appointed where the child is unaccompanied or separated from its family.

(2) This regulation shall apply without prejudice to regulations 7 to 12.

Compensation to victims.

14. For the purposes of the Criminal Injuries Compensation Scheme Regulations 2013, a person who is a victim of human trafficking shall be deemed to satisfy the requirements in regulation 5 thereof if the victim has been trafficked to, from or within Gibraltar.

Prevention.

15. The Government shall—

- (a) take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings;
- (b) take appropriate action, including through the internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings;
- (c) promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

National rapporteurs or equivalent mechanisms.

16. The Government shall establish rapporteurs or equivalent mechanisms for the purposes of, inter alia, the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.