

Slavery, servitude and forced or compulsory labour

Modern Slavery Act 2015 section 1

Human trafficking

Modern Slavery Act 2015 section 2

Triable either way

Maximum: life imprisonment

Offence range: high-level community order – 18 years' custody

These are Schedule 19 offences for the purposes of sections 274 and 285 (required life sentence for offence carrying life sentence) of the Sentencing Code.

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15 for the purposes of sections 273 and 283 (life sentence for second listed offence) of the Sentencing Code.

These are specified offences for the purposes of sections 266 and 279 (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

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STEP ONE**Determining the offence category****CULPABILITY**

In assessing culpability, the court should weigh up all the factors of the case, including the offender's role, to determine the appropriate level. Where there are characteristics present which fall under different categories, or where the level of the offender's role is affected by the very small scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A- High Culpability	<ul style="list-style-type: none"> • Leading role in the offending • Expectation of substantial financial or other material advantage • High degree of planning/premeditation • Use or threat of a substantial degree of physical violence towards victim(s) or their families • Use or threat of a substantial degree of sexual violence or abuse towards victim(s) or their families
B- Medium culpability	<ul style="list-style-type: none"> • Significant role in the offending • Involves others in the offending whether by coercion, intimidation, exploitation or reward • Expectation of significant financial or other material advantage • Some planning/premeditation • Use or threat of some physical violence towards victim(s) or their families • Use or threat of some sexual violence or abuse towards victim(s) or their families • Other threats towards victim(s) or their families • Other cases falling between A and C because: <ul style="list-style-type: none"> ○ Factors in both high and lower categories are present which balance each other out and/or ○ The offender's culpability falls between the factors as described in A and C
C- Lower culpability	<ul style="list-style-type: none"> • Engaged by pressure, coercion or intimidation, or has been a victim of slavery or trafficking related to this offence • Performs limited function under direction • Limited understanding/knowledge of the offending • Expectation of limited or no financial or other material advantage • Little or no planning/premeditation

HARM

Use the factors given in the table below to identify the Harm category. 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.

The assessment of harm may be assisted by available expert evidence, but may be made on the basis of factual evidence from the victim, including evidence contained in a Victim Personal Statement (VPS). Whether a VPS provides evidence which is sufficient for a finding of serious harm depends on the circumstances of the particular case and the contents of the VPS. **However, the absence of a VPS (or other impact statement) should not be taken to indicate the absence of harm.**

Loss of personal autonomy is an inherent feature of this offending and is reflected in sentencing levels. 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.

Sentencers should therefore be careful not to assume that absence of evidence of harm from those trafficked or kept in slavery, servitude or in forced or compulsory labour indicates a lack of harm or seriousness. A close examination of all the particular circumstances will be necessary.

Category 1	<ul style="list-style-type: none"> • Exposure of victim(s) to high risk of death <p>A category 2 offence may also be elevated to category 1 by –</p> <ul style="list-style-type: none"> • The extreme nature of one or more factors • The extreme impact caused by a combination of factors
Category 2	<ul style="list-style-type: none"> • Serious physical harm which has a substantial and/or long-term effect • Serious psychological harm which has a substantial and/or long-term effect • Substantial and long-term adverse impact on the victim's daily life after the offending has ceased • Victim(s) deceived or coerced into sexual activity
Category 3	<ul style="list-style-type: none"> • Some physical harm • Some psychological harm • Significant financial loss/disadvantage to the victim(s) • Exposure of victim(s) to additional risk of serious physical or psychological harm • Other cases falling between categories 2 and 4 because: <ul style="list-style-type: none"> ○ Factors in both categories 2 and 4 are present which balance each other out and/or ○ The level of harm falls between the factors as described in categories 2 and 4
Category 4	<ul style="list-style-type: none"> • Limited physical harm • Limited psychological harm • Limited financial loss/disadvantage to the victim(s)

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 14 years' custody Category Range 10 - 18 years' custody	Starting Point 12 years' custody Category Range 9 - 14 years' custody	Starting Point 8 years' custody Category Range 6 - 10 years' custody
Category 2	Starting Point 10 years' custody Category Range 8 - 12 years' custody	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 4 years' custody Category Range 3 - 7 years' custody
Category 3	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 6 years' custody Category Range 5 - 8 years' custody	Starting Point 2 years' custody Category Range 1 - 4 years' custody
Category 4	Starting Point 5 years' custody Category Range 4 - 7 years' custody	Starting Point 3 years' custody Category Range 1 - 5 years' custody	Starting Point 26 weeks' custody Category Range High level Community Order – 18 months' custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step six of this guideline.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account in assessing culpability

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the

conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

A1 – 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

A2 – Steps taken to prevent the victim reporting the offence or obtaining assistance

A3 – Deliberate targeting of victim who is particularly vulnerable (due to age or other reason)

A4 – Victim's passport or identity documents removed

A5 – Gratuitous degradation of victim

A6 – Large-scale, sophisticated and/or commercial operation (where not taken into account at step 1)

A7 – Abuse of trust/responsibility

A8 – Substantial measures taken to restrain the victim

A9 – Victim forced to commit criminal offences (whether or not he/she would be able to raise a defence if charged with those offences)

Factors reducing seriousness or reflecting personal mitigation

M1 – No recent or relevant convictions

M2 – Offender has been a victim of slavery/trafficking in circumstances unrelated to this offence

M3 – Good character and/or exemplary conduct

M4 – Remorse

M5 – Sole or primary carer for dependent relatives

M6 – Age/lack of maturity

M7 – Mental disorder or learning disability

M8 – Physical disability or serious medical condition requiring urgent, intensive or long-term treatment

M9 - Offender co-operated with investigation, made early admissions and/or voluntarily reported offending

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE

Dangerousness

The court should consider:

- 1) whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose a life sentence (sections 274 and 285)
- 2) whether having regard to sections 273 and 283 of the Sentencing Code it would be appropriate to impose a life sentence.
- 3) whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279)

When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SEVEN

Ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders. The following are most relevant in modern slavery cases:

Slavery and trafficking prevention orders

Under section 14 of the Modern Slavery Act 2015, a court may make a slavery and trafficking prevention order against an offender convicted of a slavery or human trafficking offence, if it is satisfied that

- there is a risk that the offender may commit a slavery or human trafficking offence, and

- it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the offender committed such an offence.

DROP-DOWN

- *The effect of a slavery and trafficking prevention order is set out in section 17 of the Modern Slavery Act 2015, the power to make such an order on convictions is contained in section 14 of the Act.*
- *An order can only be made if the court is satisfied that (i) there is a risk that the offender may commit a slavery or human trafficking offence and (ii) the order is necessary (not merely desirable or helpful) for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the offender committed such an offence. The Act does not require the court to apply any particular standard of proof.*
- *The risk that the offender may commit a slavery or human trafficking offence must be real, not remote, and must be sufficient to justify the making of such an order. In considering whether such a risk is present in a particular case, the court is entitled to have regard to all the information before it, including the contents of a pre-sentence report, or information in relation to any previous convictions, or in relation to any previous failure to comply with court orders.”*
- *In determining whether any order is necessary, the court must consider whether the risk is sufficiently addressed by the nature and length of the sentence imposed, and/or the presence of other controls on the offender. The court should consider the ability of a Chief Officer of Police to apply for an order if it becomes necessary to do so in the future.*
- *The criterion of necessity also applies to the individual terms of the order. The order may prohibit the defendant from doing things in any part of the United Kingdom, and anywhere outside the United Kingdom. These prohibitions must be both reasonable and proportionate to the purpose for which it is made. The court should take into account any adverse effect of the order on the offender's rehabilitation, and the realities of life in an age of electronic means of communication.*
- *The terms of the order must be clear, so that the offender can readily understand what they are prohibited from doing and those responsible for enforcing the order can readily identify any breach.*
- *The order can be for a fixed period of at least 5 years or until further order. The order may specify that some of its prohibitions have effect until further order and some for a fixed period and may specify different periods for different prohibitions.*
- *A draft order must be provided to the court and to all defence advocates in good time to enable its terms to be considered before the sentencing hearing.*

Slavery and trafficking reparation orders

Where a confiscation order has been made by the Crown Court under section 6 of the Proceeds of Crime Act 2002 the court may make a slavery and trafficking reparation order under section 8 of the 2015 Act, requiring the offender to pay compensation to the victim for any harm resulting from an offence under sections 1, 2 or 4 of that Act. In practice, the reparation will come out of the amount taken under

the confiscation order. **In every eligible case, the court must consider whether to make a slavery and trafficking reparation order, and if one is not made the judge must give reasons.** However, a slavery and trafficking reparation order cannot be made if the court has made a compensation order under section 134 of the Sentencing Code.

Restraining order

Where an offender is convicted of any offence, the court may make a restraining order (section 360 of the Sentencing Code). The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.

The order may have effect for a specified period or until further order.

Forfeiture

A court convicting someone on indictment of human trafficking under section 2 of the 2015 Act may 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 (see section 11 of the 2015 Act).

STEP EIGHT

Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Committing offence with intent to commit a human trafficking offence

Slavery

Modern Slavery Act 2015 section 4

Triable only on indictment (if kidnapping or false imprisonment committed), otherwise triable either way

Maximum: Life imprisonment (if kidnapping or false imprisonment committed), otherwise 10 years' custody

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, and 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.

Breach of a Slavery and Trafficking Prevention Order/ Breach of a Slavery and Trafficking Risk Order

Modern Slavery Act 2015, s.30

Triable either way

Maximum: 5 years' imprisonment

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](#).

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