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Scotland

# Business and human rights

Scotland

## 1. What kind of judicial protection do I have in your country as a victim of business-related human rights violations? Does this protection include compensation?

The Scotland Act 1998 requires that all legislation passed by the Scottish Parliament and all acts of members of the Scottish Government be compatible with rights contained in the European Convention on Human Rights (ECHR). The Human Rights Act 1998 makes it unlawful for public authorities in Scotland to act incompatibly with the Convention rights. If human rights breaches do occur, the Scottish courts have the power to hear cases and provide remedies.

The Companies Act 2006 sets out the legal basis on which companies are formed and run. The Crown Office and Procurator Fiscal Service (COPFS) is able to initiate proceedings against Scottish businesses in Scottish courts where there is evidence that an offence has been committed.

The Human Trafficking and Exploitation (Scotland) Act 2015 consolidates and strengthens existing UK criminal law against human trafficking and exploitation, and enhances the status of and support for victims.

The Act contains provisions on the creation of a single offence of human trafficking for all types of exploitation of both adults and children; establishes statutory aggravators of human trafficking for use with other crimes; and reframes the previous standalone offence of slavery, servitude and forced or compulsory labour.

Section 4 of the 2015 Act provides for an offence of slavery, servitude and forced or compulsory labour, which must be interpreted in accordance with Article 4 of the ECHR.

Bodies corporate (for example a company), unincorporated associations and partnerships can be guilty of an offence of human trafficking or an offence under section 4 of the 2015 Act. Section 39 of the 2015 Act provides that relevant individuals within such a body (such as a director) can also be guilty of an offence described above.

As required by the 2015 Act, the Lord Advocate has published instructions for prosecutors about the prosecution of suspected or confirmed victims of the offence of human trafficking and the offence under section 4 (slavery, servitude and forced or compulsory labour). The COPFS continues to apply these instructions to ensure that victims are not prosecuted in relation to offences committed as a consequence thereof.

The Scottish Public Services Ombudsman (SPSO) has a wide remit. It is the final stage for complaints about most devolved public services in Scotland. The SPSO also provides an independent review service for the Scottish Welfare Fund, with the power to overturn and substitute decisions made by councils on Community Care and Crisis Grant applications. The SPSO has a very limited role in compensation. Outcomes are usually in the form of recommendations to the public services being complained about. The powers and duties are set out in the Scottish Public Services Ombudsman Act 2002.

Where an individual believes that their human rights have been breached, they may wish to seek independent legal advice.

## 2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?

The Scottish Land Rights and Responsibilities Statement, published by the Scottish Government as required by the Land Reform (Scotland) Act 2016, sets out six principles to help shape policy around land issues in Scotland. The first of these principles is that: “The overall framework of land rights, responsibilities and public policies should promote, fulfil and respect relevant human rights in relation to land, contribute to public interest and wellbeing, and balance public and private interests. The framework should support sustainable economic development, protect and enhance the environment, help achieve social justice and build a fairer society.”

The 2016 Act requires Scottish Ministers to regularly review the Statement and report to Parliament.

The response to question 1 contains information regarding human trafficking and exploitation.

## 3. I am a victim of human rights violations resulting from activities of a European transnational corporation which occurred outside the European Union. Do I have access to the courts in your country if I am not an EU citizen or I don't live in the EU? What are the conditions to claim violation of my rights? Where can I find any additional information?

The particular judicial remedies available for a breach of a human right will depend on whether the right is provided for by the common law or in statute.

Section 2 of the Human Trafficking and Exploitation (Scotland) Act 2015 provides for the application of the human trafficking offence to conduct in the United Kingdom and elsewhere, reflecting the fact that human trafficking activity may involve activity that is completely or partly outside Scotland.

The 2015 Act also provides that a UK national, a person who at the time of the offence was habitually resident in Scotland, or a body incorporated under the law of a part of the UK, commits an offence of human exploitation regardless of where the relevant action takes place. Whether or not a person is habitually resident in Scotland will be determined in the light of all the facts and circumstances of the case. Any other person commits the offence of human trafficking only if any part of the relevant action takes place in the UK or the relevant action is taken with a view to a person arriving in or entering into, departing from, or travelling within, the UK.

## 4. Can Ombudsman Institutions, equality bodies or National Human Rights institutions support victims of business related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen and I don't live in the EU? Are there other public services (such as a labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?

The regulatory landscape for business in Scotland is similar in many ways to the rest of the UK and Europe, and a variety of regulators focus on business activities. Their enforcement powers are aimed towards sanctioning the business rather than supporting the victims, however mechanisms would be in place through the police and other government agencies if there is a criminal element related to the activity.

Scotland has two National Human Rights Institutions (NHRIs):

- [Scottish Human Rights Commission \(SHRC\)](#)
- [Equality and Human Rights Commission \(EHRC\)](#)

The SHRC and EHRC have a shared human rights remit and both play important, though different, roles in

promoting and monitoring the implementation of internationally-recognised human rights at the national level. The respective powers of each Commission are described on their websites.

The Scottish Public Services Ombudsman (SPSO) deals with final stage complaints about most devolved public services in Scotland. The Ombudsman is an independent officeholder and, in the exercise of her functions, is not subject to the direction or control of any member of the Scottish Government or Scottish Parliament. The SPSO can consider alleged breaches of human rights as part of its consideration of a complaint. It is unlikely that a European transnational corporation would form one of the listed bodies the SPSO can receive complaints about. The SPSO can look into complaints about services delivered by the private or voluntary sectors if these are delivered on behalf of a body under its jurisdiction.

In addition, section 9 (4) and (5) of the Scottish Public Services Ombudsman Act 2002 covers who can make a complaint to the SPSO. They must be resident in the United Kingdom at the time the complaint was made, or the actions complained about must have taken place while the person was present in the United Kingdom.

## 5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations apply also to violations that occurred outside the European Union? Who is in charge of monitoring these activities in your country? Are there public reports available providing information on the functioning of the system?

The UK has established a National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, which are a set of recommendations for responsible business conduct covering, among other things, human rights. Part of the Department for International Trade, the UK NCP is responsible for raising awareness of the OECD Guidelines and for implementing the associated complaints mechanism. If a company is breaching the OECD Guidelines, a complaint may be made to the NCP by any interested party, and this includes its employees or their trade unions, and communities affected by the company's activities. The NCP seeks to mediate an agreement between the parties, but where this is not possible, a determination of whether the company has acted inconsistently with the Guidelines is published and made available for public dissemination. Information about making a complaint can be found on the [NCP website](#).

Other sources of advice and mediation services in the UK include [Citizens Advice Bureaux](#) and the [Advisory, Conciliation and Arbitration Service](#).

## 6. Do I have specific rights if I am a vulnerable victim seeking remedy for business-related human rights violations? Can I have access to legal aid, and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?

Publicly funded legal assistance allows people to take action to uphold their rights or pay for their defence when they could not otherwise afford to do so.

There is no requirement to be resident in Scotland when applying for legal assistance under the Legal Aid (Scotland) Act 1986. There are two types of civil legal assistance:

- i. Through advice and assistance, a solicitor can provide advice, make enquiries and correspond with others on behalf of a client. Advice and assistance is available for matters of Scots Law (including UK law that applies in Scotland) but generally cannot be used to progress matters in court.
- ii. Civil legal aid is available for proceedings before the Scottish courts.

Both types of civil legal assistance are subject to statutory eligibility criteria. Advice and assistance is available

subject to financial eligibility criteria. The eligibility criteria for those accessing civil legal aid are consistent and transparent, with applications being subject to statutory tests. The first two tests are applied to the legal merits of the application. It must be shown that there is legal basis for the case for which legal aid is sought ('probable cause') and that it is reasonable to use public funds to support the case. The third test is applied to an applicant's financial circumstances.

More information can be found on the [Scottish Legal Aid Board website](#).

Section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015 empowers Scottish Ministers to specify the period during which adults must be provided with support and assistance, where there are reasonable grounds to believe that they are a victim of an offence of human trafficking and exploitation. Regulations that came into force on 1 April 2018 set this period of support at 90 days and include the provision of support and assistance in connection with (but not limited to):

- accommodation
- day to day living
- medical advice and treatment (including psychological assessment and treatment)
- language translation and interpretation
- counselling
- legal advice
- information about other services available to the adult
- repatriation

Section 10 of the 2015 Act contains powers for Scottish Ministers to make regulations about the support and assistance which may be provided to an adult who is, or appears to be, a victim of slavery, servitude and forced or compulsory labour. Regulations came into force on 1 April 2018 setting out that the process of determining whether an adult is a victim of such an offence; the support and assistance provided; and that the period for which it is provided should be identical to that for a victim of an offence of human trafficking and exploitation.

The Scottish Government has funding agreements in place with [Migrant Help](#) (which supports adult victims of trafficking and exploitation, other than female victims of trafficking for the purposes of commercial sexual exploitation) and the [Trafficking Awareness Raising Alliance](#) (which supports female victims of trafficking for the purposes of commercial sexual exploitation). [The Anchor Service](#), which is part of NHS Greater Glasgow and Clyde, is also funded to provide a psychological service to all adult victims of human trafficking and exploitation identified in Scotland.

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