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LEGISLATION

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HUMAN TRAFFICKING AND EXPLOITATION ORDINANCE 2009

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HUMAN TRAFFICKING AND EXPLOITATION ORDINANCE 2009

An Ordinance to make new provision to prevent human trafficking
and exploitation and for related matters

J. H. GORDON
ADMINISTRATOR

2nd November 2009.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Part 1
Preliminary

1. Short title

This Ordinance may be cited as the Human Trafficking and Exploitation Ordinance 2009.

2. Interpretation

In this Ordinance—

“computer system” means any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;

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

“child pornography” means a visual, audiovisual or other representation of—

- (a) a real child involved or engaged in sexually explicit conduct, including lewd exhibition of the genitals or pubic area of a child;
- (b) a real person appearing to be a child involved or engaged in the conduct mentioned in paragraph (a); or
- (c) realistic images of a non-existent child involved or engaged in the conduct mentioned in paragraph (a);

“pornography” means visual, audiovisual or other representation of any act of a sexual nature, on or with the participation of, a person;

“traffic” means the use of coercion to recruit, transport, transfer, harbour or receive a person and includes exchange or transfer of control over that person; and

“violence” includes any act or omission which causes bodily or mental harm to a victim.

3. Meaning of exploitation, sexual exploitation and coercion

- (1) In this Ordinance, a person is exploited if that person is subjected to—
 - (a) forced or compulsory labour;
 - (b) slavery or servitude of a similar nature;
 - (c) the removal of that person’s organs;
 - (d) prostitution or any other form of sexual exploitation;
 - (e) the worst forms of child labour as defined in the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour(a), if the person is a child.
- (2) In this Ordinance, a person is sexually exploited if that person is coerced, induced, incited, encouraged, recruited, organised or guided into prostitution or into participating in the making of pornography.
- (3) In this Ordinance, “coercion” includes—
 - (a) use of threats or force;
 - (b) abduction, restraint, deceit or fraud;
 - (c) abuse of a position of authority or trust or of a position of vulnerability such that the person who is abused has no reasonable alternative but to submit to the abuse involved;
 - (d) conduct or a course of action which is intended to create an impression on any person that failing to perform an act will result in injury or restraint of a person;
 - (e) abuse or threatened abuse of legal or administrative procedures relating to a person’s status;
 - (f) paying or conferring a benefit on a person having control over another person for the purpose of controlling that other person.

Part 2

Measures to protect children

4. Trafficking of a child

- (1) A person must not traffic a child for the purpose of exploiting that child.
- (2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 20 years.

5. Sexual exploitation of a child

- (1) A person must not—
 - (a) sexually exploit a child; or
 - (b) engage in sexual activity with a child who has been coerced into that activity.
- (2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 20 years.

6. Child pornography

- (1) A person must not—
 - (a) produce child pornography;
 - (b) distribute, disseminate or transmit child pornography in any way, including by means of a computer system;
 - (c) offer or provide information about how to obtain child pornography including by means of a computer system;
 - (d) acquire or possess child pornography in printed form or in a form held on a computer system;
 - (e) invite a child to participate in child pornography, including by means of a computer system.

- (2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 10 years or a fine of €42,715 or both.

7. Child labour exploitation

- (1) A person must not coerce a child into—
- (a) forced or compulsory labour; or
 - (b) slavery or servitude of a similar nature.
- (2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 10 years.

Part 3

Other protective measures

8. Trafficking of persons

- (1) A person must not traffic another person for the purpose of exploiting that other person.
- (2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 15 years.

9. Human organ trafficking

- (1) A person must not—
- (a) traffic another person for the purpose of removing that other person's organs; or
 - (b) transport, transfer or receive human organs of another person where those organs have been removed as a result of coercion.
- (2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 25 years.
- (3) A person commits an offence and is liable to imprisonment for life if—
- (a) that person contravenes subsection (1); and
 - (b) the person dies as a result of the removal of the organ.

10. Sexual exploitation

- (1) A person must not—
- (a) sexually exploit another person; or
 - (b) engage in sexual activity with a person who has been coerced into that activity.
- (2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 20 years.

11. Labour exploitation

- (1) A person must not coerce another person into—
- (a) forced or compulsory labour; or
 - (b) slavery or servitude of a similar nature.
- (2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 6 years.

12. Maintenance of a brothel

- (1) A person must not—
- (a) knowingly maintain, manage or finance (in whole or in part) a brothel or any other place within which a person is sexually exploited; or
 - (b) knowingly let any premises or part of any premises for use as a brothel.

- (2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 5 years or a fine of €17,086 or both.

13. Retention of personal documents

- (1) Subject to subsection (3) a person must not take, hide or retain a document specified in subsection (2) from the lawful holder of that document—
- (a) with the intention of committing an offence under this Ordinance; or
 - (b) with the intention of hindering the freedom of a victim of an offence committed under this Ordinance.
- (2) The documents specified in this subsection are—
- (a) a passport or other travel document;
 - (b) a document proving the identity of its holder; or
 - (c) a residence permit issued under any Ordinance or under the Aliens and Immigration Law of the Republic**(b)**.
- (3) A person does not commit an offence under subsection (1) if that person takes or retains a document for a lawful reason or pursuant to any lawful authority.
- (4) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 5 years or a fine of €17,086 or both.

Part 4

Legal proceedings

14. Jurisdiction of the courts

- (1) The courts of the Areas have jurisdiction to try offences committed under this Ordinance if the offence is committed using a computer system accessed from the Areas whether or not the computer system or any interconnected or related device is in the Areas.
- (2) Subsection (1) does not affect the operation of Part II of the Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960**(c)**.

15. Certain defences not valid

The following circumstances are not defences to offences under this Ordinance—

- (a) the fact that the accused did not know or believe that the victim of the offence was a child;
- (b) the fact that the victim consented or received some money or other benefit.

16. Aggravating factors

- (1) The following circumstances are to be regarded as aggravating circumstances when sentencing a person for an offence under this Ordinance—
- (a) the offence endangered, either deliberately or by gross negligence, the life of the victim;
 - (b) the offence was committed against a child of less than 12 years of age or a child with special needs;
 - (c) the offence involved violence to the victim; or
 - (d) the offence was committed as part of the activities of a criminal organisation as defined in section 63B of the Criminal Code**(d)**.
- (2) The aggravating circumstances listed in subsection (1) are not exhaustive.

17. Additional powers of the court

- (1) Notwithstanding any other legislation, the court may make an order in such terms as it determines to be appropriate requiring a person charged with an offence under this Ordinance to act or refrain from acting in a certain manner until the conclusion of the proceedings to which the charge relates.

- (2) If a person is convicted of an offence under this Ordinance the court may, in addition to any other sentence it may impose under this Ordinance, make an order in such terms as it determines to be appropriate requiring that a person act or refrain from acting in a certain manner for such time as it may prescribe.
- (3) Without prejudice to the generality of subsections (1) and (2), the court may—
 - (a) require a person to refrain from exercising a profession or operating a business;
 - (b) order that any object by which an offence may have been committed under this Ordinance is forfeited.
- (4) A person who fails to comply with an order made under subsection (1) or (2) commits an offence and is liable to imprisonment for 3 years or a fine of €8,543 or both.

18. Corroboration not required

Corroboration of evidence is not necessary for the purpose of proving an offence under this Ordinance.

19. Liability of bodies corporate

- (1) A body corporate may be convicted of an offence under this Ordinance if—
 - (a) the offence is committed for its benefit by a natural person acting either individually or as part of the organisation of that body corporate; and
 - (b) the natural person has—
 - (i) power to represent the body corporate;
 - (ii) authority to take decisions on behalf of the body corporate; or
 - (iii) authority to exercise control within the body corporate.
- (2) A body corporate must, so far as is reasonably practicable, ensure that a person referred to in subsection (1) does not commit an offence under this Ordinance for the benefit of the body corporate.
- (3) A body corporate which contravenes subsection (2) commits an offence.
- (4) Nothing in this section prevents criminal proceedings under this Ordinance being brought against a natural person referred to in subsection (1).

20. Penalties for bodies corporate

- (1) A body corporate convicted of an offence under this Ordinance is liable to a fine of €512,580.
- (2) If a body corporate is convicted of an offence under this Ordinance, the court may, in addition to any penalty imposed under subsection (1), make an order—
 - (a) temporarily or permanently excluding the body corporate from any public benefits or aid;
 - (b) temporarily or permanently prohibiting the body corporate from engaging in specified commercial activities;
 - (c) subjecting the body corporate to judicial supervision;
 - (d) winding up the body corporate;
 - (e) temporarily or permanently closing establishments used to commit the offence;
 - (f) forfeiting property used to commit the offence.
- (3) A person who fails to comply with an order made under subsection (2) commits an offence and is liable to a fine of €170,860.

Part 5

Miscellaneous and final provisions

21. Amendments to the Criminal Code

Sections 165 (Woman aiding, etc., for gain prostitution of another woman) and 254 (Unlawful compulsory labour) of the Criminal Code are repealed.

22. Amendment to the Protection of Witnesses Ordinance 2005

Section 3(4) of the Protection of Witnesses Ordinance 2005(e) is amended by inserting “or the Human Trafficking and Exploitation Ordinance 2009” after “Violence in the Family Ordinance 2003”.

23. Amendments to the Notification of Sexual Offences Ordinance 2008

The Schedule to the Notification of Sexual Offences Ordinance 2008(f) is amended by inserting after paragraph 20—

“The following offences under the Human Trafficking and Exploitation Ordinance 2009—

21. section 5 (sexual exploitation of a child);
22. section 6 (child pornography) if—
 - (1) the pornographic material depicted a person under the age of 16 years; and
 - (2) the offender—
 - (a) was 18 years or over; or
 - (b) is sentenced (in respect of the offence) to imprisonment for a term of at least 12 months;
23. section 10 (sexual exploitation).”.

24. Commencement

This Ordinance comes into force on the day it is published in the Gazette.

Notes

- (a) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO 182), 2001 Cmnd 5213.
- (b) Cap 105, Republic of Cyprus.
- (c) Ordinance 6/60.
- (d) Cap 154, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68). Section 63B was inserted by Ordinance 7/03.
- (e) Ordinance 4/05.
- (f) Ordinance 17/08.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This explanatory note relates to the Human Trafficking and Exploitation Ordinance 2009 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The Ordinance replicates in part the Republican Combating Human Trafficking and Exploitation and the Protection of Victims Law of 2007 (Law No. 87(I) of 2007).

4. The key concepts of exploitation and coercion are defined in section 3. Children are exploited if they are subjected to any of the worst forms of child labour as defined in the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. These forms of labour include use of children for the production and trafficking of drugs and work which is harmful to the health, safety or morals of children. This Convention is reproduced in Foreign and Commonwealth Office Treaty Series No. 37 of 2001 (Cmnd 5213) and can be obtained from the Foreign and Commonwealth Office Website at www.fco.gov.uk.

5. Part 2 of the Ordinance creates criminal offences for the protection of children from trafficking, sexual exploitation, involvement in child pornography and child labour exploitation. A child is defined as any person under the age of 18 years.

6. Part 3 of the Ordinance creates criminal offences for the protection of persons generally from trafficking, human organ trafficking, and sexual and labour exploitation. Part 3 also contains the ancillary offence of retaining a person’s documents with the intention of furthering offences under the Ordinance.

7. Part 4 of the Ordinance prohibits the use of certain circumstances as a defence, such as (in the case of offences against children) that the accused did not know the victim was a child. It also sets out some circumstances which the Court must regard as aggravating factors. Part 4 also provides that bodies corporate may commit an offence under the Ordinance and it prescribes the penalties which may be imposed on such bodies.

8. Part 5 amends the Criminal Code by repealing offences which would otherwise be duplicated in the Ordinance. It also amends the Notification of Sexual Offences Ordinance 2008 (the “2008 Ordinance”) by adding some offences created in the Ordinance to those offences in the 2008 Ordinance which must be notified to those countries within the scope of the 2008 Ordinance with which an offender appears to have a connection.

