

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Written submission from the Joseph Rowntree Foundation

Joseph Rowntree Foundation works for social change in the UK by researching the root causes of social problems and developing solutions. We use our evidence and our practical experience of developing housing and care services to influence policy, practice and public debate. We are politically independent, but we are not neutral about poverty.

Summary

1. Since 2010 JRF has led one of the largest research programmes into the nature, scale and scope of forced labour in the UK.¹ On the basis of that work we support the introduction of the Human Trafficking and Exploitation (Scotland) Bill but perceive important gaps. The legal penalties under section 4 are to be welcomed for the potentially strong signal they send about the unacceptability of slavery. However they do not address the wider problem of labour exploitation. Likewise the Bill sidesteps the issue of support and assistance for adult victims of forced labour and slavery who were not trafficked.
2. We would welcome the opportunity to speak to these issues in more detail in front of the committee.

Part 1, Section 4

3. Although forced labour and human trafficking sometimes overlap, they are not the same. Forced labour is defined by the International Labour Organization's Forced Labour Convention No.29 (1930) as 'any work or service exacted under the menace of any penalty, and for which the worker has not offered himself voluntarily.' Human trafficking is defined in the EU Trafficking Directive and The Council of Europe Trafficking Convention as a process whereby a person is brought into a situation of exploitation through a variety of abusive actions and means. Whilst the legal definitions of forced labour and human trafficking help to describe the acts that constitute breaches of law, the reality is often more complex. The notion of exploitation remains undefined in international law and in the UK, hampering law enforcement.
4. Our research into forced labour indicates a continuum ranging from decent work to severe exploitation (forced labour – a criminal act).² The spectrum between the desirable and the unacceptable is filled with various degrees of exploitative, unlawful acts, which although correlated with forced labour might not in themselves be sufficient to prove a forced labour situation.

¹To access the full suite of JRF research in this area visit: <http://www.jrf.org.uk/topic/forced-labour>
² <http://www.jrf.org.uk/publications/forced-labour-united-kingdom>

5. Enforcement in exploitative situations is complex also because employment relationships are rarely static; an individual's work situation can change over time due to their own circumstances (economic, social), their personal vulnerabilities (mental health, addictions), as well as external pressures (immigration regulations, economic climate). These pressures affect the choices that workers make, or that are open to them, and on the behaviour of employers, which may change over the course of an employment relationship. Hence, having a spectrum of offences that can be applied to varied degrees of exploitative situations would better equip the law enforcement and increase the chances of prosecuting these acts.

6. Research into the UK food sector for JRF exemplified various exploitative situations experienced by workers working within the sector. Using 19 indicators of forced labour divided into three categories (strong, medium, weak), the research then ascertained signs of forced labour in the sample of 62 workers. The most common 'strong' forced labour indicators were:

- breaches in or lack of contract (41 cases);
- non-payment of wages or illegal deductions (40 cases);
- payment below minimum wage (34 cases);
- purposeful isolation at work (33 cases);
- psychological harm (30 cases);
- fear (26 cases);
- confinement to workplace (20 cases)³

Consequently an individual's work or services can be exploited by others for profit with little risk of prosecution as the offences provided for in law (and in the proposed Bill) do not capture the full array of situations linked to forced labour and the deliberate actions through which exploiters may change methods and degrees of abuse of workers over time.

7. We therefore recommend that a new offence tackling human exploitation, independent of human trafficking considerations, be created. This would plug the current gap and cover situations where evidentially it may be difficult to prove slavery, but where the individual still suffered significant exploitation. The wording in section 3(7) of the Bill, which mirrors Clause 1 of the Modern Slavery Bill, arguably provides a workable basis for a new exploitation offence unrelated to trafficking. Inclusion of this offence would further contribute to preventing modern slavery as it has been demonstrated that when exploitation and abuse at workplaces goes unpunished, over time these very likely lead to widespread use of more severe forms of exploitation that amount to forced labour and slavery.

Part 2, Section 8

8. JRF welcomes the fact that the Bill contains a detailed section on support for the victims of trafficking - our research confirms that a strong statutory underpinning is important to securing the necessary resources. However we note with concern that as drafted the legislation potentially leaves victims of forced labour in Scotland at a disadvantage with other parts of the UK, especially now that Clause 48 of the

³ <http://www.jrf.org.uk/publications/forced-labour-uk-food-industry>

Modern Slavery Bill covers *all* victims of modern slavery, in recognition that victims of forced labour deserve the same protection and assistance as that afforded to victims of human trafficking. Although that part of the legislation is by no means perfect but it does represent an advance on the current situation and it would be sensible for there to be parity in Scotland.

9. This is especially the case when the right of victims to specific forms of protection and assistance is enshrined in international law which is already binding for the UK. For example, victims of forced labour that are trafficked are entitled to protection and assistance under Art.10 of the Council of Europe Convention on trafficking from the first moment a suspicion has been raised that a person might have been a victim.

10. Added to that Articles 3 & 4 of the new Protocol supplementing the ILO Forced Labour Convention No. 29 require states to take measures to identify, protect and rehabilitate victims and to provide them with access to effective remedies (regardless of their immigration status) including compensation.⁴ The UK Government voted in favour of the Protocol in June 2014. We therefore recommend that eligibility for the support outlined in this section be extended to victims of forced labour and slavery who have not been trafficked into the UK.

Part 6

11. We welcome the inclusion in Part 6 of the Bill of a provision of "Offences by bodies corporate etc." This provision brings Scotland in compliance with Article 5 of the EU Trafficking Convention and makes it plain that companies as well as individuals are to be liable for modern slavery offences. This is an important step further to addressing exploitation in supply chains. To that effect, the Scottish Bill goes further than the Modern Slavery Bill. While Modern Slavery Bill provides for a requirement on commercial organisations to disclose what they are undertaking to prevent and address modern slavery in supply chains, it currently contains no explicit sanctions for companies that are involved in modern slavery.

Frank Soodeen
Head of Public Affairs
Joseph Rowntree Foundation
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⁴ http://www.ilo.org/ilc/ILCSessions/103/reports/committee-reports/WCMS_248900/lang-en/index.htm