

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Crown Office and Procurator Fiscal Service

Introduction

1. The Crown Office and Procurator Fiscal Service (COPFS) acknowledges the importance of consolidating and strengthening the existing law in relation to Human Trafficking and Exploitation and welcomes the Bill proposed by the Scottish Government.

2. The investigation and prosecution of Human Trafficking and Exploitation offences is challenging given that they are crimes which are often committed across borders and involve victims with significant vulnerabilities who have, in some cases, been targeted due to these vulnerabilities. In essence it is a crime which can be difficult to identify and tackle. COPFS is committed to establishing a robust and consistent approach to this type of offending, ensuring that our staff are able to confront the complexities presented by these cases, that victims are fully supported and treated with dignity throughout the prosecution process and that a full range of appropriate disposals are available for those who are found to have committed these crimes.

3. In seeking to achieve these aims COPFS have taken a number of steps to improve the response to this type of offending. These have included appointing a National Lead Prosecutor for Human Trafficking and Exploitation, who is a senior Advocate Depute and also the Head of the National Sexual Crimes Unit, along with four Federation Lead Prosecutors for Human Trafficking and Exploitation who will assist the National Lead Prosecutor.

4. Additionally in order to ensure that staff from COPFS are reminded of the specific issues surrounding Human Trafficking and Exploitation a regular input is given by TARA to the Sexual Offences training provided to Prosecutors and in November 2014 a representative of TARA spoke to prosecution advocates about human trafficking and exploitation issues specifically relating to the sexual exploitation of women.

5. In October 2014 the Lord Advocate hosted a Human Trafficking Summit to coincide with EU Anti Trafficking day. This was attended by the Heads of the Prosecution Services in England and Wales, Northern Ireland and Ireland. At the conclusion of the Summit a communiqué was published outlining that Prosecutors from the UK would work together to share best practice and to establish a set of Prosecutor's Commitments in relation to this type of offending. A first meeting involving senior Prosecutors and Police from across the United Kingdom will be hosted by COPFS in Edinburgh on the 6th March 2015. The meeting will be an opportunity for all participants to discuss and compare the processes in place for tackling Human Trafficking in each of the different jurisdictions and to start the work on establishing a common set of Prosecutor's Commitments.

6. With this solid base it is anticipated that the introduction of the Human Trafficking and Exploitation Bill will build on the good work already being done by COPFS along with the various stakeholders, across Scotland and further afield, to highlight and tackle this type of offending.

Part 1 – Offences

7. COPFS supports the move to consolidate the existing law in order to provide a single Human Trafficking offence and a single offence of Exploitation both of which will assist prosecutors with preparation and presentation of evidence. In particular COPFS supports the provision at section 1(2) which makes it clear that it will be irrelevant for a Human Trafficking offence whether the victim has consented to any part of the arrangement or the facilitation of travel. This is consistent with the law as proposed in the UK Modern Slavery Bill and as enacted by the Human Trafficking and Exploitation Act in Northern Ireland.

8. The Human Trafficking aggravation introduced in section 5 of the Act is also welcomed by COPFS. Offences such as brothel keeping, provision of false documents and offences linked to immigration will often be associated with Human Trafficking but there may be insufficient evidence to establish the offence of Human Trafficking itself. In these circumstances the use of this aggravation by prosecutors will allow the Court to recognise the background to the offending and sentence offenders accordingly.

Part 2 – Protection of Victims

9. The victims of crime are at the centre of COPFS policy in relation to all types of offending. COPFS welcomes the proposal in section 7 of the Bill, placing an obligation on the Lord Advocate to publish guidelines on the prosecution of victims of Human Trafficking and Exploitation offences where the victim has been compelled to carry out an offence and that compulsion is attributable to being trafficked or exploited. There is currently guidance for COPFS staff in dealing with cases where there is evidence or an indication that the accused is a victim of trafficking. The guidance lists the factors which should be considered as part of the assessment as to whether any individual accused of a crime is a credible victim of trafficking and it is highlighted that, where required, further investigation should be carried out by the Police to provide a comprehensive picture of an individual. Where possible the Police should also be asked to provide an assessment or any information held by the United Kingdom Human Trafficking Centre. All cases of this type are referred to the National Lead Prosecutor for Human Trafficking and Exploitation for a final decision to be made.

10. The publication of refreshed guidance to include victims of exploitation will help to continue to protect the position of those individuals who commit offences because they are forced to do so.

Part 3 – Confiscation of Property

11. The additional powers relating to the detention of vehicles, ships and aircraft along with the extension of the list of lifestyle offences under the Proceeds of Crime

legislation are important tools in the efforts of both law enforcement and prosecution to disrupt and deter those people who commit Human Trafficking and Exploitation offences. The Serious and Organised Crime Division within COPFS will continue to use the Proceeds of Crime legislation where appropriate to make sure that those people who seek to profit from the exploitation of vulnerable people are prevented from doing so as they have done in the past. For example in 2011 an individual pled guilty to a charge of facilitating and controlling prostitution under section 22 of the Criminal Justice (Scotland) Act 2003. He was sentenced to forty months imprisonment and had a confiscation order of £45000 imposed by the Court.

Part 4 – Trafficking and Exploitation Prevention and Risk Orders

12. The orders proposed in the Bill will afford an extra measure for ensuring that offenders, or those who are suspected of offending, can be properly monitored and prevented from reoffending. Where appropriate prosecutors will highlight the availability of the prevention orders to the Court when an accused is being sentenced for a Human Trafficking or Exploitation offence.

Part 5 – Strategy and Reporting

13. COPFS support the idea of a national strategy which, it is anticipated, will build on the excellent interaction which is already taking place between the various stakeholders involved in this field in Scotland. COPFS has worked closely with the Scottish Government to ensure that a collaborative approach is taken in establishing national policy. In particular it is important that Prosecutors work alongside the Government, Law Enforcement Agencies and those representing the interests of individuals who might find themselves involved in this type of offending to make sure that the Criminal Justice System is well placed to deal with these offences. COPFS will continue this work and have already been involved in the early stages of drafting the strategy.

Conclusion

14. There can be no doubt that the issue of Human Trafficking and Exploitation is one which effects Scotland. COPFS consider that the provisions of this Bill will be integral in the efforts being made to ensure that Scotland is a hostile place for those people who wish to traffic or exploit vulnerable human beings. It will be important to monitor the success of the new offences introduced along with the various provisions made for the protection of victims and COPFS will continue to work with all of the key stakeholders to improve the quality and efficiency of our response.

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24 February 2015