

**Justice Committee**  
**Human Trafficking and Exploitation (Scotland) Bill**  
**Written submission from Aberlour**

**Introduction**

As Scotland's children's charity, Aberlour warmly welcomes the publication of the draft Human Trafficking and exploitation (Scotland) Bill and the opportunity to submit written evidence to the same. Our organisation has been working with vulnerable children across Scotland for 140 years. Over the past 5 years we have been working in partnership with the Scottish Refugee Council to deliver the Scottish Guardianship service. Whilst this service was principally designed to offer wrap around support to unaccompanied children and young people seeking asylum, we have in that time supported up to 65 children who may have been victims of human trafficking. This experience had given us an insight into the needs and particular vulnerabilities of children affected by trafficking and exploitation. In turn we have used this insight to inform a range of Scottish Government committees and groups to inform thinking and policy on this issue.

As introduced, there is much about this Bill to be welcomed and we hope to work with Scottish Government and the Justice Committee of the Scottish Parliament to improve and enhance the provisions of this legislation, particularly to the benefit of the child victims of trafficking with whom we work. We are broadly content with the provisions of Part 1 of the Bill and will restrict our comments to Part 2 which we feel could be improved and enhanced in some areas.

We would be happy to provide further detail in respect of this Evidence.

**Top lines**

1. Whilst we welcome the introduction of legislation to address and criminalise the appalling practice of human trafficking we are concerned that child victims of trafficking are not meaningfully recognised or provided for on the face of this Bill. For instance, there is no definition of what is meant by a child on the face of the Bill.
2. We would like to see the creation of a legal defence for victims of trafficking, who have committed an offence through coercion as a result of being trafficked, similar to that proposed in part 25 of the Modern Slavery Bill, introduced at Westminster.
3. We ask for the inclusion, in Part 8, of a section which covers the provision of support and assistance to child victims of trafficking similar to that which addresses support for adult victims. This should include:
  - a. A clear definition as to age of majority in respect to child and adult victims of trafficking

- b. A duty on local authorities to act in the 'best interests' of child victims of trafficking as defined under the terms of the UN Convention on the Rights of the Child.
- c. Specific reference to the status of child victims of trafficking in relation to section 25 of the Children (Scotland) Act (including 16 and 17 year olds) and when Local Authorities are to apply those duties proscribed under section 25.
- d. A legal right of children, who have been trafficked from overseas, to the services of a trained guardian and access to an interpreter should they wish it.

### **1: Recognition of and provision for child victims of trafficking**

The needs of child victims of trafficking are very specific and distinct from those of adult victims and should be reflected in the provisions of the Bill. The Scottish Government often states that it is reluctant to legislate for specific groups of children, or create 'hierarchies of vulnerability'. However there are numerous examples, where the Parliament has rightly passed legislation which singles out particular vulnerable groups and affords them additional assistance or rights. The Additional Support for Learning Act or the provisions for those in care or care leavers in the Children and Young People Act contain such examples.

The simple fact that child victims of trafficking are separated from their parents or care givers makes them vulnerable. Coupled with the trauma that they may have experienced prior to being trafficked (in the case of those from overseas seeking asylum), whilst being trafficked or subsequently, these children and young people may present with acute needs. As such we would contend that recognition of those needs and provision for them must be reflected in primary legislation.

### **2: The creation of a legal defence for trafficking victims who commit crime**

We are unpersuaded that the provisions in part 7, which place a duty on the Lord Advocate to issue guidelines to prevent the prosecution of victims of trafficking who have committed an offence, are sufficient to offer meaningful protection to victims of trafficking, forced to commit crime.

Towards the end of 2014, while the Human Trafficking (Scotland) Bill was first mooted, the Lord Advocate issued guidance (albeit non statutory) that no victim of trafficking should ever be criminalised for offences they were coerced into committing as a result of being trafficked. In early October 2014 the Guardianship Service received a referral from a Local Authority social work team to provide support and assistance to two teenage Vietnamese children who had been arrested on the 22<sup>nd</sup> September 2014 in a raid on a cannabis farm and were now in HMP Polmont YOI. It was suspected that they had been victims of trafficking by the arresting officers and were processed as such through the National Referral Mechanism for victims of trafficking. Despite this they were held without liberty for - 6 weeks before being released on the 3<sup>rd</sup> November 2014, even though a reasonable grounds trafficking decision was received on the 25<sup>th</sup> September 2014 which agreed that it was highly likely that they had been victims of trafficking.

Part 5 section 45 of the Modern Slavery Bill introduced at Westminster introduces a new legal defence for victims of trafficking who commit crime. We believe that Scottish victims of trafficking should be afforded equal protection in the eyes of the law. Whilst we understand that the Crown Office would be hesitant to introduce any new legal defence, we believe in this case it would be merited. We do not accept the argument that it would lead to more prosecutions of victims of trafficking (in order to test the defence). Legal defences are used in other parts of Scots law which have created a culture where there is a presumption against arrest.

In the case of physical chastisement of children (smacking) there is no law in this country which gives parents the legal power to hit their children. However the legal defence of justifiable assault means that no parent is criminalised for smacking their child. In this case, frontline police officers are clear that the legal defence protects this practice amongst parents and as such a culture exists where officers won't arrest in the knowledge that any prosecution would be unsuccessful.

We feel that a similar legal defence, to that created in the Modern Slavery Bill, would create a culture that would prevent circumstances where children caught up in criminal activity as a result of being trafficked would end up being criminalised and held without their liberty even should the Lord Advocate have issued guidance.

### **3: Provision of support and assistance to child victims of trafficking**

#### *Defining what is meant by a child in the context of this Bill*

Part 8 includes a clear list of support and assistance that might be offered to an adult victim of trafficking, but no such list exists for children. Of critical importance is the need to define what is meant by an adult or a child by age on the face of the bill. This is particularly important for 16 and 17 year olds as local authorities may be uncertain as to what duties apply to this age group- who represent a significant proportion of those trafficked from outside of the UK. We would suggest that majority in the context of this Bill be set at the age of 18.

#### *A duty on Local Authorities to act in the 'best interests' of the child*

Once children are adequately defined on the face of the Bill, we would seek the inclusion of a duty on local authorities to act in the best interests, as specified in the terms of the UN Convention on the Rights of the Child, of any child victim of trafficking who presents to them.

#### *A separate section on support and assistance for children and a legal right to guardianship*

We feel part 8 would be significantly improved by a new section defining support and assistance to child victims of trafficking that may be offered. This may include many or most of the specified kinds of support offered to adults, such as access to counselling or an interpreter, but should also include avenues of support that address the unique needs of child victims of trafficking. In particular we seek the inclusion of a right to the services of a trained guardian for those trafficked from outside of the UK on the face of the bill. Section 127 of the Children's Hearings (Scotland) Act makes provision for the right, of children who come before the panel, to the services of a trained advocate. This is a helpful example of previous legislation creating a statutory right to support from a trained professional for a particularly

vulnerable group. Guardianship has been shown to have demonstrable benefits for children and young people who are unaccompanied and seeking asylum, or who have been trafficked, in help with housing, education and the immigration system.

Whilst we are delighted and encouraged that the Scottish Government has committed to fund the Scottish Guardianship Service to provide support to unaccompanied asylum seeking and trafficked children there is still at times reticence and delays to make timely referrals to the service. The Guardians role should be strengthened with a duty to refer to the service and a duty for Local Authorities to include the Guardians in key meetings and decisions about the child and to share information. The Westminster government has recently announced in relation to the Modern Slavery Bill that they have drafted their own amendment to the Bill to give child trafficking advocates legal powers to instruct solicitors in the child's best interests and for local authorities to pay due regard to child trafficking advocates.

### **Defining when Local Authorities should apply section 25 of the 1995 Act on the face of the Bill**

Support for child victims of trafficking is referenced in the accompanying policy memorandum, this suggests that local authorities should consider supporting children who have been trafficked under section 25 of the Children (Scotland) 1995 Act. Section 25 is already used by local authorities for children who have been trafficked but not on a consistent basis, with some authorities choosing to apply section 22 of the 1995 Act inappropriately. We feel that the Bill should directly reference the use of section 25 on the face of the Bill, particularly in relation to children trafficked from outside the UK so that Authorities are clear in their obligations to treat children trafficked from abroad as those who are looked after. The Bill must also ensure that the continuing care and after care provisions of the Children and Young People (Scotland) Act 2014 apply to children who have been trafficked, to whom section 25 applies, including 16 and 17 year olds.

### **In conclusion**

The Scottish Parliament has an opportunity, in this legislation, to take a significant step forward in the fight against human trafficking. The Bill must however reflect the very real and insidious exploitation of children in this practice. As a key stakeholder and service provider we stand ready to work with Parliament and Government to ensure that we adopt a consistent and co-ordinated approach in tackling this important issue.

Aberlour  
24 February 2015