

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Written submission from NHS Health Scotland

1. NHS Health Scotland welcomes the opportunity to respond to the Justice Committee's call for evidence on the Human Trafficking and Exploitation (Scotland) Bill. As a national health board we may be less well placed to respond to the legal technicalities of the bill but have a keen interest that victim care and support is suitably addressed within it.

Single human trafficking offence

2. We welcome the proposal for the creation of a single human trafficking offence and hope that it will lead to the better identification of victims and their ability to access support. In order to remove ambiguity in the definition of trafficking, we suggest that the bill should reflect the wording of the [Council of Europe \(CoE\) Convention on Action against Trafficking in Human Beings](#) – see Article 4 – and include the 'means' of human trafficking, "by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation". It would also be useful to borrow from the CoE convention here and define what a victim is: "Victim shall mean any natural person who is subject to trafficking in human beings as defined in this article".

3. The definition and offence of human trafficking should make explicit reference to both adults and children and clearly define the age thresholds for these (i.e. children – under age 18). For consistency, references to 'youth' and 'young' section 3(8) should be replaced with child, defined as under 18 years in line with the [UN Convention on the Rights of the Child](#). The England and Wales Modern Slavery Bill has been provided with arguments for the inclusion of a specific child exploitation offence and it would be worthwhile for the Scottish bill to consider these. Please see the [Refugee Children's Consortium submission](#) for information.

4. The bill could also benefit from including a clause on the presumption of age as found in the Modern Slavery Bill to ensure that where there is reason to believe that a victim is a child, they are treated as such until their age is determined.

5. Section 3(7) could benefit from explicitly stating criminal activities or forced begging to capture the changing nature of trafficking.

6. Sections 3(8) and 4(3) provide a narrow definition of vulnerability and miss the potential for persons targeted as a result of their low socioeconomic status. The bill should be carefully worded, striking a balance between specificity and openness to allow the successful prosecution of offenders and identifying victims for support.

Lord Advocate Guidance

7. Section 7 could be strengthened by making direct reference to the non-prosecution of victims as outlined in [Article 8 of the EU Trafficking Directive](#) and protecting them from initial prosecution taking place. [Jenny Marra's proposed Human Trafficking \(Scotland\) Bill](#) in September 2013 provided wording to consider:

“Where a victim has committed a criminal act as a direct consequence or as a manifestation of their human trafficking predicament;

And for adult victims only: unless it is strictly necessary and in the public interest to do so;

No prosecution should proceed or continue, or penalties are imposed, if the:

(a) Victim has been compelled to commit the criminal act as a direct consequence or as a manifestation of being subjected to –

- (i) threats, the use of force, or other forms of coercion,*
- (ii) abduction,*
- (iii) fraud,*
- (iv) deception,*
- (v) the abuse of power or of a position of vulnerability, or*
- (vi) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or*

(b) The victim was a child”

Provision of support and recovery services

8. Recognising that the provisions for support in the bill apply to adults (section 8), it would be useful for the bill to at least signpost to the legislation which provides support to children and as such reference should be made to the Children & Young Person (Scotland) Act 2014 and Getting it right for every child (GIRFEC).

9. The bill could be strengthened by clarifying that support and assistance is available to victims of all offences described in the bill and not just the ‘offence of human trafficking’ (section 8(1)). This wording potentially omits victims of the offence of slavery, servitude and forced or compulsory labour.

10. The wording of section 8 relies heavily on the terms of the National Referral Mechanism (NRM) yet the [UKHTC Baseline Assessment](#) in 2013 showed that many victims do not enter the NRM process. Support to victims should be provided regardless of their NRM status/involvement, thus reinforcing the need for this bill to clearly define who a victim of trafficking is, as outlined above, paragraph 2, and is therefore entitled to support.

11. Given the complex health consequences of trafficking (see [NHS Health Scotland evidence briefing](#)), victims should be provided with support and assistance in accordance with their needs which should not be determined by a finite period of time. It is pleasing to see in the explanatory notes that discretion can be applied to

provide support longer than the current 45 days, however the bill could be more victim centred and strengthened by focussing on need rather than a timeframe – or at least use the ‘relevant period’ as a basis for the minimum entitlement to support.

12. The bill could benefit from following the example of the [Northern Ireland Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Bill](#) (section 21) and provide independent guardians with legal powers for separated children. The guardianship service already exists in Scotland and this would provide it with the legal powers to act on behalf of the child and be able to do so in the best interests of the child, ensuring their position and instructions are rightfully considered by professionals involved.

Trafficking and exploitation strategy

13. A national strategy is welcome and development should involve the input of the NHS, especially in regard to the provision of support and care for victims.

NHS Health Scotland
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