

## Justice Committee

### Human Trafficking and Exploitation (Scotland) Bill

#### Written submission from the Scottish Refugee Council

##### Introduction

1. Scottish Refugee Council is Scotland's leading refugee charity, which since 1985 has provided help and advice to those that have fled human rights abuses or other persecution in their homeland and seek refuge in Scotland. Our vision is that all refugees seeking protection in Scotland are welcomed, treated with dignity and respect, and are able to achieve their full potential. We provide advice and information to those seeking asylum and refugees, campaign for their fairer treatment and for better awareness, policy, and law on matters affecting them.

2. This response focusses on aspects of the Bill as it relates to adults. We have submitted a separate response to the parts of the Bill concerning children based on our experiences of developing and delivering the Scottish Guardianship Service in partnership with Aberlour Childcare Trust.

3. Scottish Refugee Council has long experience in advising and advocating on behalf of women, men, and children in Scotland fleeing persecution in their homelands and are seeking international protection in the UK. Furthermore, we adopt a holistic, person-centred, and rights-based approach to the services we provide. This reflects our experience the persecution and displacement may have involved severe psychological or physical abuse of torture, sexual violence, as well as trafficked exploitation and related forms of servitude.

4. It is established in international law and policy and increasingly in domestic legislation and standards that trafficked exploitation can happen within and across national borders. Part of the rationale for the Council of Europe's Human Trafficking Convention was make clear that exploitation and not movement should be the focus of anti-trafficking legislation and strategy across Europe and elsewhere. Furthermore, it is recognised internationally as well as gradually here in the UK and Scotland that trafficked exploitation is about abuses of the person, of trust, and that this vulnerability is often gendered, with girls and women especially vulnerable, particularly to sexual exploitation and domestic servitude.

##### **Creating Scottish processes for identification of and decisions on survivors trafficking and exploitation**

5. It has, therefore, been a source of frustration to us and others that trafficking policy, criminal offences, and processes to identify victims of trafficking at the UK level have been too often entrapped in immigration discourses. The clearest and most damaging example of this is fact that since April 2009 the Home Office has been the Competent Authority empowered to decide whether someone is or is not a trafficking survivor. Human trafficking and related forms of exploitation are essentially human rights violations and serious crime. These are devolved responsibilities. We welcome Scottish Ministers' recognition of this fact through the introduction of

Scotland's first dedicated legislation against trafficked exploitation and related forms of servitude.

6. Experiences of trafficking abuses and exploitation are often completely unrelated to immigration or international protection considerations – for example in cases of internal trafficking of persons habitually resident in Scotland and the UK. In so far as they exist in asylum statements, they should be treated as secondary matters. We note the Home Secretary's recent and overdue recognition of the need to remove the Home Office from trafficking decision-making and hope and expect that Scottish Ministers will now, given this change and the platform provided by this Bill, move to develop Scotland-based identification and trafficking decision processes.

7. Scottish identification and decision-making processes should be consistent with UK frameworks, but only in so far as these reflect the necessary survivor-centred architecture of dedicated, multi-agency, assessment-based decision making by those statutory and third sector bodies in Scotland that are closest to the protection and recovery needs of survivors. Furthermore, this autonomy would be strengthened by the Scottish Ministers being granted through executive devolution, the right to grant trafficking survivors temporary leave to remain for specified purposes, especially to enable their recovery as well as any involvement they may have in relevant legal proceedings, such as assisting as a witness in a criminal prosecution against traffickers, or subsequent asset recovery proceedings, or for the purpose of securing compensation the exploitation suffered e.g. criminal injuries compensation, against wrongful imprisonment, or unpaid or lost earnings in cases of forced or compulsory labour or services.

### **Assistance and support towards recovery for survivors of trafficking and exploitation**

8. Survivors are by definition at the centre of human trafficking and exploitation. It is often forgotten, however, that they are also integral to overcoming it, be that as powerful advocates for change or as witnesses in prosecutions against their traffickers. Before they can get to that point, however, they need to be assisted and supported, sometimes over the long-term, to the fullest possible recovery. They should never be regarded as passive or stereotyped as inherently vulnerable; on the contrary it is their resilience that has enabled them to survive their exploitative conditions and abuse which are the true source of their vulnerability. In order to recover survivors needs recognition and rights to assistance and support and therefore it is very welcome that the Bill starts to do this.

9. Our main suggestions at this stage for clause 8 of the Bill are that:

- (a) **Access to whatever trafficking identification and decision-making process is agreed on in Scotland starts at the point a potential trafficking survivor is deciding whether to consent to enter the NRM.** Survivors are often too traumatised to decide quickly whether to consent. However they do need support immediately;

- (b) **The sub-clause on repatriation is supplemented by "safe return" to ensure proper risk assessment and safety planning is undertaken.** This is to prevent or minimise the risk of re-victimisation on return for trafficking survivors with no right to remain in the UK;
- (c) **New processes for identification of and assistance for trafficking survivors need to be strengthened if Scottish Ministers are granted, through executive devolution, the right to grant trafficking survivors temporary leave to remain for specified purposes.** This is to ensure that:
  - (i) Victims are enabled to recover; or
  - (ii) Any involvement survivors may have legal proceedings, such as assisting as a witness in a criminal prosecution against their traffickers, or in subsequent asset recovery proceedings, or for the purpose of securing compensation related to the exploitation they have suffered: for example criminal injuries compensation, against wrongful imprisonment, or unpaid or lost earnings in cases of forced or compulsory labour or services.

10. The Smith Commission Agreement recommended that the Scottish and UK governments work together "to explore the possibility of extending the temporary right to remain in Scotland for someone who is identified as a victim of human trafficking". This power would ensure those non-EEA trafficking survivors identified and assisted in Scotland can also recover here. **We recommend that the Committee press the Scottish Government on the timescale for the conclusion of the discussion of this issue to ensure that the outcome of these discussions is included within the scope of the Bill.**

### **Non-prosecution and penalisation of survivors of trafficking and exploitation**

11. We welcome the provision in the Bill whereby the Lord Advocate places himself under a duty to make and publish statutory guidelines. Prosecuting survivors of trafficking and servitude for acts they, by definition, had no control over risks miscarriages of justice and may undermine the integrity of the principle of criminal responsibility and its presuppositions of agency and intent on the part of the accused. Furthermore, such prosecution not only needlessly removes an essential survivor right and puts them through traumatic legal processes; it also undermines the wider criminal justice effort against trafficking and organised crime. It does so by rendering as accused, survivors who actually are potential witnesses.

12. **The guidelines should be strengthened through clear monitoring and review timelines on the face of the Bill alongside consideration of introducing a statutory defence as in equivalent proposals elsewhere in the UK.** We regard a statutory defence as a proportionate additional protection to trafficking survivors. This defence would come into its own when an individual is not recognised by the Crown as being, or appearing to be a trafficking survivor, or in those circumstances when the Crown does not accept a link between the offending behaviour and status as a victim. In these cases, the individual may have difficulty in challenging effectively a decision to prosecute, and the laudable preventative intent of the

statutory guidelines is unlikely to apply, thereby raising the risk of survivors going through criminal procedure they shouldn't be and at worst the risk of miscarriages of justice occurring.

### **Strategy in Scotland against Human Trafficking and Exploitation**

13. We welcome the leadership of Scottish Ministers in preparing, publishing, and reporting to Parliament a Human Trafficking and Exploitation Strategy. This is a unique provision in anti-slavery legislation across the globe and it provides a platform the necessary long-term approach to tackling deep-seated problems like human trafficking. Our experiences are principally working with vulnerable migrants seeking to access international protection. The persecution of asylum seekers and their often traumatic journeys from their homeland, including when they arrive in Scotland, often do involve trafficked and related exploitation. **Therefore, it is important that organisations and individuals – from here and elsewhere that have intimate knowledge of the international protection-trafficking nexus are an integral part of the preparation, delivery, and review of the strategy.**

### **Offences and definitions**

14. We welcome the creation of one offence of human trafficking. This should provide much needed clarity on what trafficked exploitation is and what it not as well as ironing out inconsistencies between and within the two previous offences in UK immigration and Scottish criminal justice legislation, respectively. It should also assist in the identification and prosecution of trafficked exploitation, especially for pressurised front-line staff and officers in key sectors of child protection and social work, health, and policing. Similarly, it should assist in clarifying – through targeted awareness raising work flowing from the Bill's strategy - within the third sector and community-based organisations that may encounter potential trafficked indicators of what the offence is. Community-level work needs to be integral to the strategy - reflecting that such exploitation is peppered across Scotland and within affluent and deprived and densely and sparsely populated areas alike – not least to bring the new single offence, as far as feasible, into the public consciousness.

15. However, **we suggest the following changes are considered by the Committee in terms of offences and definitional matters. First, the insertion of forced criminality as a separate definition of exploitation within clause 3 of Bill**, in reflect of the fact that trafficking indicators are prevalent in offences of pickpocketing or the cultivation of cannabis, and that the fact that the EU Human Trafficking Directive explicitly defined this form of exploitation for the first time. This clarity should give criminal justice partners the status needed to better identify and prosecute this form of exploitation, which is often linked to organised crime.

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