

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Written submission from Children in Scotland

1. Children in Scotland warmly welcomes the introduction of the Human Trafficking and Exploitation (Scotland) Bill and the opportunity to provide written evidence.

2. In our position as the national network and membership organisation for the children's sector in Scotland, whilst there is much to be welcomed in this legislative development, we are concerned primarily with the impact that this Bill and its key components will have on the wellbeing and protection of children and young people. The Bill must respond to the exploitation of children and young people and recognise their position as a distinctly vulnerable group in society. A coordinated and consistent approach in tackling this profound violation of human rights is imperative when protecting all victims, particularly trafficked children and young people.

3. Several of our member or partner organisations including Barnardo's Scotland, Equality and Human Rights Commission (EHRC), Scotland's Commissioner for Children and Young People (SCCYP) and the Aberlour Child Care Trust (Aberlour) have responded to your call for written evidence and we fully support, draw from and endorse their responses. In particular, we would like to champion the response of Aberlour, as theirs is explicitly informed by the insight gained from their collaborative work with the Scottish Refugee Council to deliver the Scottish Guardianship Service. We draw attention to the voices of young people coming through in their findings; a perspective that promotes a Bill, which would be truly reflective of the needs of this minority group.

Key areas of concern

4. **Currently, the Bill neither recognises the particular needs and vulnerabilities of children and young people, nor provides for explicit protection for this group.** We are very concerned by the lack of reference to the specific rights, vulnerabilities and needs of children and young people and call for a Child Rights Impact Assessment to be carried out in full at the earliest possible stage to inform the development of meaningful legislation.

5. **Children in Scotland calls for a definition of what is meant by 'child'**, for the purpose of this Bill, as any person under the age of 18 along with a clause on presumption of age when there is uncertainty.

6. **We seek clarity around implications for those who are 16 or 17 years old.** It must be clear that under no circumstances should a child be dealt with in the adult processes of identification, protection and support. We call for a removal of any potential ambiguity relating to care and support provisions for 16 and 17 year olds. In order to reduce the inconsistent treatment by different local authorities of children in this age group, the Bill should directly reference the use of section 25 of the Children (Scotland) Act 1995 to provide accommodation and support to children and young

people (including 16 and 17 year olds) so that they are clear in their obligations to treat children trafficked from abroad as those who are 'looked after'.

7. Children in Scotland advocates for this Bill to demonstrate a clear foundation in international human rights law and specifically, legal instruments that are there to protect the rights of children and young people.

There is a coherent body of international law on human trafficking including the Council of Europe's (CoE) Human Trafficking Convention, and the European Union's (EU) Human Trafficking Directive (the EU Directive). These should inform the development of this Bill in partnership with specific articles within the United Nations Convention on the Rights of the Child (UNCRC): Article 3 (best interest of the child); Article 11 (measure to combat the illicit transfer/non-return of children abroad); Article 12 (the voice of the child); Article 19 (protection from abuse or neglect); Article 32 (protection from harmful work); Article 34 (freedom from sexual exploitation and abuse); Article 35 (measures to prevent the abduction of, the sale of or traffic in children); Article 36 (protection against exploitation prejudicial to the child's welfare); and, Article 39 (measures to promote physical and psychological recovery and social reintegration of a child victim). It is also important to consider the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which was ratified by the UK in February 2009.

8. The Bill should include a clear duty on local authorities to act in the 'best interest' of trafficked, exploited and separated children, giving due regard to their particular vulnerabilities, in line with the existing provisions in the Children (Scotland) Act 1995 and Article 3 of the UNCRC.

9. It is important that this development builds towards a coherent and consistent legislative and policy framework across the UK, in partnership with the Modern Slavery Bill going through Westminster and the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill newly incorporated in Northern Ireland. Consideration is needed of the distinctive legal, policy and institutional environment in Scotland and efforts to ensure an appropriate fit with wider devolved policy, law and institutions. Furthermore, the Bill should include specific reference to how it will fit within the existing child protection, specifically, Getting It Right For Every Child (GIRFEC) framework as well as the legislative framework for children and young people in Scotland, including the Children (Scotland) Act 1995, the Children's Hearings (Scotland) Act 2011, the Education (Additional Support for Learning) (Scotland) Act 2009, the Children and Young People (Scotland) Act 2014 and the proposed Criminal Justice (Scotland) Bill. We are aware that the latter contains a provision, which would allow prosecutors to attach a statutory aggravation to any offence to mark it as trafficking-related, which will, in turn, enable the courts on conviction to reflect the trafficking-related nature of the offence in the sentence. We welcome this, although we remain concerned that this may make the use of the specific human trafficking offences by procurators fiscal even less likely. That said, as trafficking at present is a high-profit, low-risk activity, the statutory aggravation may well have some deterrent effect, however we are calling for the **focus** to be on frontline identification and appropriate policing response to this issue.

10. **The Human Trafficking and Exploitation (Scotland) Bill should be accompanied by clear statutory guidance, which identifies the links between existing legislation and policies in order to further streamline service provision for trafficked, exploited and separated children.** We must ensure that the rights, vulnerabilities and duties towards trafficked children are detailed in one place, so that those who are obligated to protect and provide services to trafficked children understand as clearly as possible what is required of them. We would like to see a better 'fit' between this proposed Bill and other pieces of legislation and national approaches. For example, GIRFEC should work for trafficked children but, as SCCYP expressed in their 2011 report '*Scotland: a safe place for child traffickers?*' there are significant concerns around the ability of frontline public services, that are most likely to encounter a trafficked child, to recognise the signs and act appropriately and decisively in the best interest of the child. Whilst there is now a structure in place to start addressing many of these concerns following on from the Scottish Government's trafficking 'summit' in 2011/12 and the subsequent working groups tasked with awareness raising and training of frontline practitioners, we would call for this Bill to further strengthen how trafficking as an issue is addressed by GIRFEC.

11. **Details of the implications of this Bill should also be incorporated, where possible and appropriate, in the emerging statutory guidance accompanying the Children and Young People (Scotland) Act 2014.**

12. In 2008, the UN Committee on the Rights of the Child recommended that the UK 'should always consider, both in legislation and in practice, child victims of these criminal practices (sexual exploitation and abuse), including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders.'¹ In the spirit of this recommendation and to safeguard the rights of some of our most vulnerable and exposed children and young people, **Children in Scotland calls for both a presumption of non-prosecution of trafficking victims and a statutory defence for children as a further safeguard against the potential for prosecution for crimes committed under coercion and distress as a result of being trafficked.** It should be clear that in cases involving children, no proof of compulsion is necessary in line with the international definition of trafficking. Therefore, we feel that a similar legal defence to that enshrined in the Modern Slavery Bill is the most appropriate course of action to protect the rights of children and young people and would urge the Scottish Government to ensure that there is a clear and unambiguous provision within the Bill that takes a rights-based approach to non prosecution of children and young people, which is in line with Article 8 of the EU Directive.

13. **Support and assistance for child victims of trafficking must be clearly defined.** Much of this, such as access to counselling or an interpreter, may well be similar to or the same as that which is offered to adults and is set out in the current draft of the Bill, however, it is imperative that services and support systems which recognise the unique needs of child victims are outlined in statute. In particular, we advocate for a Guardianship Service to be placed in statute in order to promote and

¹ Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, October 2008.

protect the best interests of child victims of trafficking. The existing role of the Scottish Guardianship Service should be strengthened with a duty to refer to the service and a duty for Local Authorities to include the Guardians in all meetings and decisions about the child and to share effectively information pertaining to their case. Specific assistance, support and protective measures should be available to child victims in line with Articles 13-16 of the EU Directive along with existing measures available to children and young people in Scotland through the child protection and GIRFEC framework, identified through a SHANARRI wellbeing assessment. We would welcome particular reference to the importance of timely access to child and adolescent mental health services for the victims. Further to this, the Bill should be very clear in outlining the child victim's right to access free, specialist legal advice and representation, as early as possible, as outlined in Article 15(2) of the EU Directive.

14. **Children in Scotland and Enquire – the Scottish Advice Service for Additional Support for Learning – together seek consistency in the fit between this Bill and provisions within the Education (Additional Support for Learning) (Scotland) Act 2009**, under which local authorities have a duty (within their jurisdiction laid out in the legislation) to identify whether a child has additional support needs and to put in place appropriate support to ensure that they can access their education. We call for recognition within the Bill of the particular vulnerabilities and needs of child victims of trafficking in relation to their ability to access their education and to incorporate into the accompanying guidance a clearly defined support route for practitioners to put in place when they encounter a child in these circumstances. We are calling for support and services to be made available to victims, whilst causing minimal disruption to education and providing teaching and learning experiences most suited to the individual child's needs whilst they are receiving support and rehabilitation.

15. **The main focus of the Bill is on external trafficking and we are calling for more explicit recognition of the more prevalent form of *internal* trafficking within the UK**, identified by Barnardo's through the services they deliver and their key CSE publication entitled *Running from hate to what you think is love* (2013).

Children in Scotland
3 March 2015