

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Written submission from CARE for Scotland

Summary

- i. CARE for Scotland welcomes the Human Trafficking and Exploitation (Scotland) Bill. We believe that this is a timely moment to reflect on existing human trafficking legislation, policy structures and practical action so that this Bill will provide a strong foundation for the future. In our view the Bill makes a number of positive advances but there are several areas where it needs strengthening to meet its objectives.
- ii. CARE for Scotland believes that to strengthen the Bill amendments are needed (in clause order) to:
 - Ensure that all forms of exploitation under international law are covered by the trafficking offence (clause 3(7) and 3(8));
 - Replace references to young people with references to a child under 18 years old (clause 3(8));
 - Address the issues of consent in slavery, servitude and forced labour (clause 4);
 - Guarantee that the reflection and recovery period during which support is to be provided will be a minimum period of 45 days and preferably 90 days (clause 8(b));
 - Guarantee provision of guardians for trafficked children and ensure that guardians have a statutory foundation for their key functions (new clause);
 - Criminalise the purchase of sexual services to address the demand for commercial sexual exploitation and provide support services for those who wish to leave prostitution (new clauses).
- iii. CARE (Christian Action Research and Education) is a well-established mainstream Christian charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives across the UK. CARE for Scotland is supported by around 3,000 Christian households in Scotland.

1. Offences of human trafficking and slavery, servitude, forced and compulsory labour (clauses 1-4)

- 1.1. CARE for Scotland welcomes the new consolidated offence of human trafficking. We believe it will give clarity, be simpler for frontline police officers to use and will be particularly beneficial where individuals are victims of multiple forms of exploitation.¹
- 1.2. We welcome the widening of the definition of trafficking for sexual exploitation. This is a positive response to criticism from GRETA, the Treaty Monitoring body for the Council for Europe convention on combating trafficking and will bring our law closer to the international definition of human trafficking.²

¹ Equality and Human Rights Commission Inquiry into Human Trafficking in Scotland August 2011 recommended consolidation of the offence for legal clarity

² Greta (Group of Experts on Action Against Trafficking in Human Beings), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, GRETA(2012)6, 12 September 2012 paragraph 78

- 1.3. However, there remain major flaws in the definition of exploitation in clause 3. Sub-clause (7) mentions only force, threats, and deception, and makes no mention of other means of inducing a person to perform services or obtain benefit which are listed in the EU Directive such as other forms of coercion, fraud, abuse of power or the exchange of payments with a person having control over the victim.³ It is vital that the Bill includes these factors so that it meets international definitions and makes it clear that a person can be compelled to surrender to exploitation by a variety of means.
- 1.4. Sub-clauses (7) and (8) address exploitation for the provision of services or acquisition of benefits, but do not specifically refer to trafficking for forced begging or criminal activities (both of which have been identified as a significant threat in Scotland⁴). These types of exploitation are explicitly included in the definition of human trafficking in Article 2(3) of the EU Directive and in the revised offence under section 3(5) of the new Northern Ireland Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015.
- 1.5. Sub-clause (8) refers to children using the terms “young” and “youth”. These terms are vague and do not adhere to international law which defines a child as a person under the age of 18 years.⁵ Use of these terms means that sub-clause (8) does not meet international law which does not require “means” of coercion for trafficking offences against children.⁶ We recognise that these terms are used in the existing offence, but note that the new consolidated offences in both Northern Ireland and Westminster legislation have replaced these terms with specific references to a child.⁷
- 1.6. **We strongly recommend that begging and criminal activities should be added to the definition of exploitation in clause 3. We also recommend the terms “young” and “youth” in that clause should be replaced by references to offences against “a child,” defined as a person under the age of 18 years so Scotland’s provisions are not weaker in these key areas than those of Northern Ireland, England and Wales.**
- 1.7. The offence of slavery, servitude and forced or compulsory labour in clause 4 of the Bill does not deal adequately with situations where a person may appear to have consented to the treatment, something which can be used by defence counsel to question whether an offence has taken place. Psychological constraints and coercions can cause people to acquiesce to exploitative situations but this does not automatically mean that no offence has taken place.⁸ **CARE for Scotland recommends that clause 4 be amended to address the issue of a person’s apparent consent so the protections offered in**

³ Article 2(1) of Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims

⁴ Equality and Human Rights Commission August 2011, Op. Cit. page 52

⁵ Including in Article 2(6) of the EU Anti-Trafficking Directive Op.Cit.

⁶ Article 2(5) of the EU Anti-Trafficking Directive Op.Cit.

⁷ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Northern Ireland) Act 2015 section 3(6); Modern Slavery Bill HL Bill 69 2014-15 as amended at Committee 10 Dec 2014, clause 3(6)

⁸ Geddes, A. Craig, G, Scott, S. Forced Labour in the UK, 2013, Joseph Rowntree Foundation, page 91

Scotland are not weaker than those in Northern Ireland, England and Wales, see the Northern Ireland Act and the Modern Slavery Bill.⁹

2. Support and assistance for victims (Clause 8)

- 2.1. CARE for Scotland welcomes the inclusion in the Bill of a duty to provide support and assistance to victims and the Bill's articulation of the key areas in relation to which a victim should receive support which broadly reflect international obligations in the Council of Europe Convention and the EU Directive.¹⁰ CARE for Scotland also welcomes the stipulation in the clause that the support should be provided only with the consent of adult victims and that it is not conditional on participation in criminal proceedings, both provisions which meet international obligations.
- 2.2. The clause falls short, however, of a full implementation of international provisions relating to the manner in which support should be provided in respect of a victim's special needs and need for safety and protection.¹¹
- 2.3. **CARE for Scotland recommends that such stipulations be added to clause 8(5) as has been done in Northern Ireland.¹²**
- 2.4. We are also concerned that there is no guarantee that the minimum time period during which support must be provided under 8(2)(b)(i) will meet the current 45 day reflection and recovery period or the minimum 30 days set by the Council of Europe Convention.¹³ As currently drafted, if a victims receives a positive conclusive grounds decision in fewer days than set by Ministers in regulations under clause 8(2)(b)(i), the victim's right to assistance will end. The victim will have only the possibility of discretionary extension under clause 8(3)(c).
- 2.5. **CARE for Scotland recommends that clause 8(b) should be amended to ensure that there is a statutory minimum reflection and recovery period of at least 45 days during which a person who is conclusively determined to be a victim of trafficking must be provided with support.**
- 2.6. **We also recommend that the reflection and recovery period should be extended to three months (90 days).**
- 2.7. For many victims the existing period of 45 days is not sufficient to achieve a level of recovery that will enable them to access employment or education and fully integrate into society or to meet the aims of the reflection and recovery period in international law.¹⁴ Research has shown that during the first three months after escaping from human trafficking, a high proportion of victims display symptoms of Post-Traumatic Stress Disorder.¹⁵ Studies also show that

⁹ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Northern Ireland) Act 2015 section 1(5); Modern Slavery Bill HL Bill 69 2014-15 as amended at Committee 10 Dec 2014, clause 1(5)

¹⁰ European Convention on Action Against Trafficking in Human Beings 2005; EU Anti-Trafficking Directive Op.Cit.

¹¹ Article 12 of the Council of Europe Convention 2005 Op. Cit. and Article 11 of the EU Anti-Trafficking Directive Op.Cit.

¹² Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Northern Ireland) Act 2015 section 18(5);

¹³ Article 13 of the European Trafficking Convention Op.Cit.

¹⁴ Centre for Social Justice, It Happens Here, 2013 page 170; Scottish Centre for Crime and Justice Research, Care and support for adult victims of trafficking in human beings: a review, 2012 page 36

¹⁵ Cathy Zimmerman, The health risks and consequences of trafficking in women and adolescents. Findings from a European study, 2003; Cathy Zimmerman, Stolen smiles: a summary report on

longer reflection periods can greatly improve chances of providing substantial assistance to trafficking victims.¹⁶ Many NGOs and expert groups, including the UN have consistently recommended a reflection period of 90 days since 2009.¹⁷ A number of countries provide longer reflection and recovery periods.¹⁸ This presents Scotland with an opportunity to lead the way in the UK.

3. Guardians for trafficked children

- 3.1. Children are the most vulnerable victims and are at heightened risk of human trafficking and exploitation.¹⁹ A trafficked child needs someone who can stand beside them as a point of continuity in all their dealings with the multiple state agencies they have to engage with and who can advocate for their best interests.²⁰ Scotland has led the way in the UK by providing a specialist guardianship service for trafficked and separated migrant children since 2010; something of which CARE for Scotland is very supportive.
- 3.2. It is therefore disappointing that the Human Trafficking and Exploitation Bill does not give statutory status to this excellent service and thus falls behind the Northern Ireland Act and the Modern Slavery Bill.²¹
- 3.3. Although evaluations of the Scottish Guardianship Service demonstrate that it is working well, there are distinct advantages to enshrining the provision in statute. A statutory basis will ensure this specialist support will continue to be provided to trafficked children in the future and make it less vulnerable to changes in government and policy. It will also help give the guardianship service authority and establish its role among the other public bodies which engage with these children, giving weight to existing protocols between the Guardianship Service and other agencies and helping develop effective working relationships with agencies that are less familiar with the Service.
- 3.4. The functions of the guardian should be set out in the clause, as recommended by international guidelines,²² and should be based on international best practice including the EU handbook, UNICEF guidelines²³ and UN recommendations.²⁴

the physical and psychological health consequences of women and adolescents trafficked in Europe, 2006. Both cited in Brunovskis 2012 below.

¹⁶ Anette Brunovskis: Balancing protection and prosecution in anti-trafficking policies (Norden Institute) 2012. This principle was also echoed in a 2013 report from the International Organisation for Migration Evaluation of the Effectiveness of measures for the Integration of Trafficked Persons

¹⁷ Scottish Centre for Crime and Justice Research 2012 Op. Cit. page 36; Joint NGO Statement on the Draft European Convention against Trafficking <http://www.amnesty.org/en/library/asset/IOR61/020/2004/en/67c56b59-d589-11dd-bb24-1fb85fe8fa05/ior610202004en.pdf>; European Commission Expert Group on Trafficking in Human Beings http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_7-1.pdf page 327-8; Prevent. Combat. Protect. Human Trafficking. Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, November 2011, page 44;

¹⁸ Including Canada & Norway – 180 days, Germany – three months, Czech Republic – 60 days, Denmark – 30-100 days and Italy – three months renewable

¹⁹ Scotland's Commissioner for Children and Young People (SCCYP), Scotland: A safe place for child traffickers? 2011

²⁰ Recommended by many international and UK studies, as noted in SCCYP 2011 Op.Cit.

²¹ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Northern Ireland) Act 2015 section 21; Modern Slavery Bill HL Bill 69 2014-15 as amended at Committee 10 Dec 2014, clause 48

²² European Union Agency for Fundamental Rights, Guardianship for children deprived of parental care - A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, June 2014, page27

- 3.5. **CARE for Scotland recommends the addition of a new clause establishing a legal framework for a guardian for trafficked children and including a statutory list of the guardians' functions based on international best practice guidelines.**

4. Addressing demand for commercial sexual exploitation

- 4.1. Article 18 of the EU Directive requires countries to take measures “to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.” Official statistics continue to demonstrate that many people are trafficked into, through and within Scotland for the purpose of sexual exploitation which has **the highest prevalence of all forms of exploitation among potential victims across the UK and the EU.**²⁵
- 4.2. CARE for Scotland believes the Scottish Government should consider new steps to address the demand for commercial sexual services as this fosters human trafficking for sexual exploitation. Such action has been recommended by both the GRETA report and the US Trafficking in Persons Report.²⁶
- 4.3. Legislation criminalising the purchase of sexual services in Sweden and Norway has had a positive effect on reducing the rates of human trafficking and prostitution. Authors reviewing the data on prostitution and trafficking have concluded that “countries that implement harsher laws regarding prostitution seem to get a lower prevalence of trafficking.”²⁷ The Swedish Police report that they have evidence of traffickers avoiding Sweden, considering it a “bad market” for coerced prostitution.²⁸
- 4.4. This so-called “Nordic” approach is being widely acknowledged as one of the most effective approaches to addressing trafficking for sexual exploitation and exploitation in prostitution more generally. The Council of Europe resolution, ‘Prostitution, trafficking and modern slavery in Europe,’ states clearly that “trafficking in human beings and prostitution are closely linked,” that “legislation and policies on prostitution are indispensable anti-trafficking tools” and recommends “criminalising the purchase of sexual services, based on the Swedish model, as the most effective tool for preventing and combating trafficking in human beings”.²⁹ The European Parliament has also passed a resolution affirming this approach as a way of “combating the trafficking of women and under-age females for sexual exploitation and improving gender equality”.³⁰ The Northern Ireland and Canadian administrations have recently

²³ Guidelines on the Protection of Child Victims of Trafficking, UNICEF technical notes, September 2006, section 4.2, page 17 and Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, UNICEF, 2006, section 5.2, page 51 and pages 117-8, Check List for Guardians: Roles and Responsibilities

²⁴ UN November 2011, Op.Cit. pages 76-77

²⁵ NCA Strategic Assessment The Nature and Scale of Human Trafficking in 2013, EU Statistical Working Paper Trafficking in Human Beings 2014

²⁶ GRETA, Op Cit, Recommendation 16, page 85; US Department of State, Trafficking in Persons Report 2014, page 394

²⁷ Niklas Jakobsson and Andreas Kotsadam, The Law and Economics of International Sex Slavery: Prostitution laws and trafficking for sexual exploitation, Working Papers in Economics No 458, University of Gothenburg, June 2010, Revised May 2013, page 15, page 17

²⁸ Swedish Police Report: Trafficking in Women - Situation report 5:2002

²⁹ Resolution 1983 (2014), 8 April 2014, paragraphs 12.1.1 and 12.1.5
<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20716>

³⁰ European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI))

introduced such laws,³¹ and the approach is being considered by the Republic of Ireland and France.³² This approach has also been strongly endorsed (80% of all respondents) by a public consultation on a proposal from Rhoda Grant MSP.³³ A new offence should also be accompanied by provision of support services for those who wish to leave prostitution.³⁴

Conclusion

5. We value the opportunity presented by the Human Trafficking and Exploitation (Scotland) Bill to start a new chapter in the fight against human trafficking and exploitation. The Bill is a positive step but it is not yet the legislation that is needed to address all aspects of this terrible crime. We hope the Bill will be strengthened as it goes through the parliamentary process. CARE for Scotland would welcome the opportunity to give oral evidence to the Committee and provide draft amendments.

Gordon Macdonald
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³¹ Bill C-36 Protection of Communities and Exploited Persons Act 2014; Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Northern Ireland) Act 2015 section 15

³² <http://www.irishtimes.com/news/politics/cabinet-approves-law-to-criminalise-purchase-of-sex-1.2014422>;
<http://uk.reuters.com/article/2013/12/04/uk-france-prostitution-idUKBRE9B30R220131204>

³³ Rhoda Grant Summary of consultation responses Proposed Criminalisation of the Purchase of Sex (Scotland) Bill (2) 2013

³⁴ Also recommended by the Council of Europe and European Parliament resolutions.