

## Justice Committee

### Human Trafficking and Exploitation (Scotland) Bill

#### Written submission from the National Society for the Protection of Children Scotland

##### Summary of key points

- NSPCC Scotland welcomes the Human Trafficking and Exploitation (Scotland) Bill.
- Children must be more visible throughout the Bill and strategy
- The bill should be clearer on its relevance to the issue of internal trafficking of children for sexual exploitation.

##### About NSPCC Scotland

The NSPCC is here to end cruelty to children. We do this in three ways: Protecting children who are suffering abuse today; Preventing abuse from happening to children tomorrow; Transforming society so all children are safer in the future.

In Scotland, the NSPCC provides preventative services to help the most vulnerable children and their families. We believe that every childhood is worth fighting for and we make a difference for all children by standing up for their rights, listening to them, helping them when they need us and by making them safe.

Working with others, we are testing some of the very best models of child protection from around the world. As well as a UK-wide helpline for adults who are worried about a child or want advice, we also provide [ChildLine](#) – the UK's free, confidential 24-hour helpline and online service dedicated to children and young people.

ChildLine gives children a voice. Whatever their worry, whenever they need help, we're listening. It means we understand the problems they face, and we make sure that tackling them is at the heart of everything we do. It's one of the things that makes us unique as a children's charity.

##### About the NSPCC

NSPCC Scotland works with partners to introduce new child protection services to help some of the most vulnerable and at risk children in the country. Alongside our national adult Helpline and ChildLine, we are testing some of the best intervention models from around the world; based on the learning from all our services we seek to achieve cultural, social and political change. We deliver a range of services in Scotland, closely aligned to the early intervention agenda, which seek to prevent harmful neglect and abuse of babies and young children by providing parenting support; promoting optimum infant mental health and development and lessening the impact of parental alcohol and substance misuse. We deliver relationship focussed, early intervention work that seeks to promote healthy attachment to enable children's healthy mental, social and emotional development and resilience.

## Our work in this area

Across the UK, NSPCC operates the Child Trafficking Advice Centre (CTAC<sup>1</sup>), a specialised service, guided by an advisory group comprised of young people who were previously trafficked, which advises and supports professionals in cases where there is concern that a child has been trafficked into or within the UK. CTAC data shows that trafficking can affect children from newly born to eighteen, for a range of reasons, including informal fostering for benefit fraud, sexual exploitation, criminal activity (street crimes and cannabis cultivation), domestic servitude, labour, illegal adoption. CTAC works in collaboration with a range of agencies, advising professionals around a child protection response, conducting casework relating to individual trafficked children and delivering free training and awareness-raising materials to assist in the identification and support of trafficked children. NSPCC also delivers the 'Human Slavery' helpline on behalf of the Home Office. <https://modernslavery.co.uk/>

NSPCC runs several face to face support services aimed at young people aged 11-19 years who are vulnerable to sexual exploitation or who have been sexually exploited. *Protect and Respect*<sup>2</sup> supports young people who have been separated or trafficked; are unaccompanied or seeking asylum, are looked after children, have frequent 'missing' episodes. The service builds on 15 years' experience offering similar projects and has helped over 250 young people since March 2012.

## Overall comments

NSPCC Scotland welcomes the opportunity to respond to the Human Trafficking (Scotland) Bill. As a child protection organisation delivering services to some of the most vulnerable children and families in our society, we are acutely aware of the many adversities children can face from their earliest years, rendering them more at risk of crimes of abuse, including trafficking for exploitation. We welcome the bill's introduction of a specific offence of human trafficking into Scot's law and its consolidation of offences around trafficking for exploitation. We commend the bill for its duty on Scottish Ministers to develop and report on a Human Trafficking Strategy.

The Bill would be strengthened by an explicit reference to children on the face of the bill and specifically, greater clarity around the obligations of authorities to support and protect *all* children trafficked internally or externally for exploitation, through child protection processes. We would strongly support the bill referring to the range of duties on local authorities in relation to safeguarding and promoting the welfare of all children in need in their area (Children (Scotland) Act 1995) and intervening early in cases where children's wellbeing is assessed to be at risk (Children and Young People (Scotland) Act 2014), as applying to all children suspected of having been trafficked either internally within the UK or externally. The Bill does not currently provide a definition of 'child' which could potentially undermine its effectiveness in protecting vulnerable older children who may be particularly at risk given inconsistencies around age in Scot's law.

<sup>1</sup> [http://www.nspcc.org.uk/Inform/research/ctail/ctail\\_wda84866.html](http://www.nspcc.org.uk/Inform/research/ctail/ctail_wda84866.html)

<sup>2</sup> [http://www.nspcc.org.uk/what-we-do/the-work-we-do/priorities-and-programmes/sexual-abuse/protect-respect/protect-respect\\_wda93138.html](http://www.nspcc.org.uk/what-we-do/the-work-we-do/priorities-and-programmes/sexual-abuse/protect-respect/protect-respect_wda93138.html)

We note that Scotland's National Guidance Child Protection (SG 2014) recognises child trafficking as a particularly complex child protection issue, not least due to the distinctive issues of *identification* and *wider legal concerns*, which make handling child trafficking cases particularly complex. NSPCC considers it imperative that both these issues are addressed within the bill in such a way as to facilitate a child protection response in the child's best interests, in every case.

### **Child Rights Impact Assessment**

Jenny Marra MSP's Bill contained a specific recommendation to '*maximise the contribution to and impact of Scottish public policy to the reduction of human vulnerability that is at the heart of human trafficking*' (section 3; 35).

NSPCC Scotland delivers a suite of early interventions aimed at the most vulnerable babies, children and families, geared towards improving children's attachment relationships; arguably the fundamental building blocks of human resilience. This has been possible because of Scotland's commitment to early intervention which itself is addressed primarily towards reducing human vulnerability, through improving outcomes for all children.

However, we have concerns that the wider legislative agenda at present does not consider the impact on children's lived experiences, nor present a coherent vision for how the whole range of services meet the needs of children, young people and their families in Scotland<sup>[1]</sup> Although perhaps out-with the scope of this consultation, it is vital that the Scottish Government considers the impact of all policy and legislation on children.

We believe the Bill should go as far as possible to embed a process of scrutiny. For example, the Scottish Government has previously considered making Children's Rights Impact Assessment a fundamental aspect of public policy development more broadly<sup>[2]</sup>. The Bill might provide a useful vehicle to ensure this becomes a reality.

### **National Referral Mechanism (NRM)**

In relation to the issue of wider legal concerns, there are substantial issues around the functioning of the NRM in Scotland and the UK. We are aware of extensive concerns regarding the NRM in relation to trafficked children specifically, including the UK Human Trafficking Centre, UNICEF, Organisation for Security and Co-operation in Europe (OSCE), ECPAT UK, Scottish Refugee Council, SCCYP and most specifically Paul Rigby's (2012) conclusion that NRM is '*too closely aligned with the asylum process, resulting in the prioritising of immigration procedures which can*

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<sup>[1]</sup> For example, the Public Bodies (Joint Working) (Scotland) Bill, currently before Parliament, and the proposed Community Empowerment Bill potentially have an impact on children and children's services, although these impacts do not appear to have been fully explored.

<sup>[2]</sup> In 2009 the Scottish Government acknowledged the crucial importance of children's rights impact assessments (CRIA) informing policy making and stated it would 'consider a trial of children's rights impact assessment in a section of Scottish Government to see how it can help promote and develop a consideration of children's rights in the policy making process' 2. More recently, the government asserted its commitment "throughout the rest of 2012... [to] work with partners... to develop a child rights impact assessment model for use within the Scottish Government"<sup>3</sup>.

*undermine holistic, multi-agency approach addressing all the needs of the child*'. We consider that the current bill would be greatly strengthened by consideration of this issue, given the importance of collating information, not least to support Ministers reporting on outcomes as proposed.

## Questions

### **Part 1: Offences Human Trafficking**

NSPCC Scotland welcomes the creation of an offence of human trafficking in Scot's law, which acknowledges the irrelevance of consent. We are unclear however, as to the exact meaning of part 1 section (2) regarding the irrelevance of consent to *any part of the arrangement or facilitation of the travel*. We consider it imperative that the issue of consent as it applies to child trafficking is directly addressed on the face of the bill, i.e. that children cannot consent to their exploitation. Investigations and serious case reviews have shown beyond all doubt that perceptions around 'consenting behaviour' have been a significant factor in failures to protect children from internal trafficking for sexual exploitation across the UK. It is imperative the bill clarify this issue in the law on human trafficking. NSPCC Scotland would also strongly support the definition of trafficking at part 1 of the bill as applying to activity *within* a country as well as between countries, as per National Guidance.

We would also seek clarity on the extent to which the bill and proposed strategy are intended to address the substantially nuanced area of internal child trafficking for sexual exploitation. Our current reading suggests this is the intention. We would therefore draw the Committee's attention to the Scotland's Commissioner for Children and Young People's 2011 research which stresses the imperative for clarity in the discussion around internal child trafficking, in that its most defining feature is sexual exploitation, and their point that references to the term internal trafficking in the debate around the sexual exploitation of UK citizen children have been scant until recently. Subsequently, we would welcome the wording of the bill to clearly encompass all aspects of trafficking.

### **Part 1 section 3: Exploitation for purposes of offence of human trafficking**

In further relation to the issue expressed above regarding the absence of children on the face of the bill, NSPCC would recommend that Part 3 section (8) uses the term 'child' rather than 'young', and also that the bill includes a clear definition of 'child' as a person under 18 years of age, in line with the Palermo Protocol and Scotland's National Child Protection Guidance.

### **Part 2 section 7: Lord Advocate's Guidelines on prosecution of victims of offences**

NSPCC Scotland notes the proposed duty on the Lord Advocate to publish guideline's around the prosecution of potential victims of human trafficking. Our understanding of human trafficking is that it first and foremost involves the cynical exploitation of human vulnerability and that it is increased vulnerability which renders children and adults more at risk of trafficking. We would welcome the bill going

further, therefore, to enshrine the principles of non-criminalisation in Scots Law. In particular, we would urge a strong statement in the bill regarding the non-prosecution of child victims. This is particularly crucial for a number of reasons including: there is evidence of child victims of trafficking on remand or serving sentences for crimes they may have been forced to commit (ATMG, 2012); there can arguably be an assumption regarding the distinct approach to child welfare and justice in Scotland providing a strong safety net to children facing prosecution through the courts.

## **Part 2 section 8. Duty to secure support and assistance**

Section 8 outlines the role of Scottish Ministers in supporting and assisting potential adult victims of human trafficking. NSPCC consider it imperative that the right to support and protection for child victims of trafficking, through child protection processes, is clearly articulated at this section, if not elsewhere in the bill. We would strongly urge the bill to articulate the duty of Local Authorities, as above, to promote and protect the welfare of all children who are suspected of having been trafficked, with a clear statement around presumption of age. That is, where the age of a person suspected of having been trafficked is unclear but where there are reasonable grounds to believe they are under 18, all duties apply.

NSPCC Scotland also believes that the Bill would be strengthened by addressing the issue of a right to guardianship or advocacy for victims of child trafficking. We would strongly support a specific duty at Local Authority level for a guardian to be appointed in all cases of trafficked or separated children.

## **Part 4 Trafficking and Exploitation Prevention and Risk Orders**

Prevention of abuse before it takes place is a core aim of our organisation and we note the focus in the bill on the creation of statutory orders aimed at curtailing the activities of perpetrators or potential perpetrators of human trafficking. Given the extent to which the bill is dominated by these orders, we would highlight as a concern, the very low use of Risk of Sexual Harm Orders (RSHOs) in Scotland, as identified by Barnardo's and explored by the Justice Committee in relation to the prevention of child sexual exploitation.

We would reference Malcolm Graeme's evidence that Police Scotland's priorities in relation to sexual crimes against children are increasingly focussed on perpetrators and prevention and the 'national approach' to RSHOs, currently under development at police Scotland, is a necessity because *it has not historically been in the mind set of police to approach cases [in this way] and that police would like to see RSHOs used more pro-actively*. Victims of child sexual exploitation have amongst the most complex needs of anyone in the criminal justice system. We would therefore suggest that the bill might be strengthened towards some form of duty for pro-active investigation to accompany the range of orders proposed and also that the strategy outlines the need for training and awareness rising on the ground.

## **Part 5 Strategy and Reporting**

NSPCC Scotland are in no doubt that the issue of human and child trafficking demands a strategic approach and greatly welcome the proposed legal duty on

Scottish Ministers to prepare and report on a strategy for Scotland. Further to our wider comments around the absence of children on the face of the bill, however, and in recognition of Wallace and Wylie's<sup>3</sup> assertion that *Child trafficking should not be considered a sub code of human trafficking [but] requires its own child centred approach*, we consider it imperative that the instrument sets out an expectation that the strategy incorporate a specific, distinct emphasis on the issue of child trafficking.

Given the extent to which successfully tackling the issue of human and child trafficking depends on work across all sectors of government and civic society, we would warmly welcome specific wording to this effect in the bill. We would also welcome the creation of an anti-human and child trafficking strategy, in order to place the emphasis firmly on prevention, as well as prosecution and support for victims. In order that the strategy does not become the responsibility of the most obviously relevant sector (in this case, criminal justice), NSPCC Scotland would also greatly welcome a clearly stated cross cutting Ministerial duty on the face of the bill.

Lastly, we consider it vital that a strategy to address this highly complex area of child's rights and child abuse be developed in partnership with survivors of human trafficking, including child survivors, and suggest that a clause is added along the lines of *every reasonable effort be made to involve survivors in the development of the strategy*.

### **Duty to notify and provide information about victims**

NSPCC Scotland would welcome more detail on how the proposed duty to notify the chief constable of the Police Service of Scotland sits with the NRM and whether local authorities will now be expected to make two notifications to NRM and to police. We would also query how section 34 will apply to children suspected of having been trafficked, particularly where children with capacity do not give consent to information being shared.

### **Other issues**

The bill lists various sexual offences against children at Part 1, section 3, subsection (5), which are included in conduct pertaining to exploitation for purposes of an offence of human trafficking. NSPCC Scotland is unclear whether Section 9 in the Protection of Children and Prevention of Sexual Offences (Scotland) Act, regarding 'payment for sexual services' needs extended to include gifts, given the substantial evidence around grooming techniques involved in trafficking vulnerable children for sexual exploitation.

We are unsure why a parent/ person with parental responsibility, who is involved in trafficking their child for sexual exploitation, would be liable on conviction to a very light sentence in comparison to, for example, a property manager who is aware of exploitation happening on their property, as proposed in the bill.

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<sup>3</sup> Wallace, MM., and Wylie, K. (2011) Child trafficking: A Scottish Perspective in Commonwealth Judicial Journal 19, 1, June

**Conclusion**

NSPCC Scotland would consider the language of children's rights to be helpful in strengthening a bill aimed at addressing in Scots law a crime which represents the most fundamental breach of children's rights. We also consider the widespread political and societal recognition of children as rights holders to be an essential cornerstone in reducing children's vulnerability to exploitation and abuse, including and perhaps especially the abuse of internal trafficking for sexual exploitation. We believe this crucial legal instrument can help pave the way towards Scotland more fully embracing children's rights.

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