Justice Committee

Legislative Consent Memorandum on the Modern Slavery Bill
(UK Parliament legislation)

Written submission from the Scottish Refugee Council

1. Further to our email of 24 November 2014 (appended) and, in advance of the Cabinet Secretary for Justice’s forthcoming oral evidence on Draft Legislative Consent Memorandum (LCM) on 16 December 2014, please see below for the Committee’s consideration, short written evidence from Scottish Refugee Council.

2. As you will know, Scottish Refugee Council has decades of experience working with men, women, and children across the world who are in Scotland and are seeking international protection in the UK, including refugee status arising from a positive asylum decision, as well as other forms of humanitarian protection.

3. It is often people in vulnerable predicaments that suffer trafficked exploitation and slavery en route to or in the UK and Scotland. Furthermore, our experience is there is overlap between people seeking asylum in the UK and those that have survived trafficked exploitation.

4. We won’t rehearse the points shared in our appended email of 24 November. Rather, we suggest that the Committee when taking evidence on the Independent Anti-Slavery Commissioner (the IASC) component of this draft LCM, should focus on how this should be tailored to best reflect the Scottish context. Of particular interest is how the functions of the IASC may best reflect survivors’ issues as well as the desirability of Scottish Ministers having the power to appoint or to consent to a Scotland commissioner to lead the IASC work in Scotland externally and internally.

5. The draft LCM set out the Scotland elements of the IASC (paras., 41-43). In general terms these concern the IASC’s relationship with Scottish Ministers and the Scottish Parliament in terms of its (a) establishment; (b) public reporting including grounds for redaction; (c) its strategic plan; (d) annual reporting; and (e) the proposed power of Scottish Ministers to specify in regulations those public authorities with functions exercisable in or as regards Scotland that they consider must fulfil the duty to cooperate with the IASC. These are welcome as slavery and trafficking do not respect or require international borders, with survivors from across the world and the UK.

6. The wider question is how the IASC may best fit the Scottish context. Most relevant legislation, policy and services to anti-slavery and human trafficking are devolved to the Scottish Parliament. These include survivor assistance, child protection, health, legal advice, and criminal justice and the courts. Furthermore, others such as the reception zones for and dispersal of asylum seekers are areas of

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1 LCM(S4)35.1
2 As recently amended in the House of Lords Committee Stage of the Modern Slavery Bill through UK Government Amendments 70 and 71 that changed Clause 41 of the Bill to reflect the responsibility of the Lord Advocate for criminal prosecutions for offences under the law of Scotland, at House of Lords Committee Stage on Modern Slavery Bill on 8th December 2014.
Joint Working\textsuperscript{3} between the Scottish and UK Governments. The forthcoming Human Trafficking and Exploitation Bill\textsuperscript{4} should reflect the substantial control Scotland has in this area.

7. Furthermore, the report of the Smith Commission recommended under its "additional issues for consideration"\textsuperscript{5} that the UK and Scottish Governments should work together to explore the possibility of extending the temporary right to remain in Scotland for trafficking survivors for protection needs or to participate in relevant legal proceedings.

8. The Smith Commission also suggested that both governments work together on the possibility of putting different powers in place in Scotland for asylum seekers to access accommodation and financial support and advice. In being subjects of high relevance to anti-slavery, they would not only expand Scottish responsibilities in this area, but we think they also speak to an unprecedented need for IASC functions and powers to adequately reflect Scotland.

9. The extensive devolution of areas of most relevance to anti-slavery is reflected in the increasing specialisation of anti-slavery resources in different sectors in Scotland. Police Scotland has a National Human Trafficking Unit and the Crown Office and Procurator Fiscal Service has specialist guidance on slavery and trafficking offences. There are specialist arrangements in health, child protection, and legal advice and representation in place in Scotland. And, the Trafficking Awareness Raising Alliance and the Scottish Guardianship Service are expert services working with, respectively, adult women survivors of sex trafficking and separated children and young people, a substantial number of whom have indicators of human trafficking, such as young Vietnamese men exploited in cannabis farming.

10. The thread throughout this ever-increasing specialisation is the need to prioritise survivor assistance and protection. The current remit and functions of the proposed IASC relate in the main to the encouragement of good practices in the law enforcement sphere, specifically in terms of the prevention, detection, investigation and prosecution of trafficking and slavery offences, as well as the identification of survivors of those offences. These are necessary but, in our opinion, not sufficient conditions to enable the IASC to promote holistic good practice in anti-slavery in Scotland, as well as ideally, across England, Northern Ireland, and Wales too.

11. We think promotion of good practices in anti-slavery and human trafficking needs to be across the piece. And, that entails a function, at the very least in Scotland in the devolved areas of victim care, to develop and disseminate good practice in survivor assistance and protection. This will enable the development, implementation, and scrutiny around Scotland’s anti-slavery performance by the Scottish Parliament and others, to benefit from comprehensive and contemporary good practices as opposed to only those that consider slavery and human trafficking through the prism of law enforcement and criminal offences, important as that perspective is.

\textsuperscript{3} Areas of Joint Working between UK and Scottish Governments  
\textsuperscript{4} Para., 210, p.68, Scottish Government's Legislative Programme 2014-15  
\textsuperscript{5} Paragraphs 96(3)&(4) of Additional Issues for Consideration
12. Such a Scottish function in the IASC’s remit to promote good practice in terms of survivor assistance and protection should also bring out the inequality inherent in slavery and trafficking. It is well recognised from international law through to frontline services here that trafficking is a gendered crime, afflicting especially children and young people too, as well as those who are vulnerable from inside and outside these Isles. We suggest the Committee considers the desirability that the IASC, in respect of its Scotland work, has a function to encourage good practice in survivor assistance and protection, and that the Committee enquires as to whether the CSJ may seek an enabling power in the Modern Slavery Bill, to effect this.

13. Furthermore, we suggest the Committee consider how the proposed IASC will ensure, within its governance arrangements, that the Scottish context is appropriately reflected in the IASC priority setting processes, strategic planning, and public and stakeholder engagement. Whereas there are some requirements in to the current Modern Slavery Bill to safeguard Scottish interests e.g. the Secretary of State must consult Scottish Ministers before approving the IASC’s strategic plan. However, there is no provision yet that ensures Scottish interests are reflected in the governance of the IASC so - to expand on the strategic plan example-, there is no mechanism to ensure Scotland is properly reflected in the formulation of this plan.

14. Therefore, we suggest the Committee considers whether the current provisions in the Modern Slavery Bill provide adequate safeguards to ensure Scottish interests are reflected both in the internal and external work of the IASC in respect of Scotland. And, in particular, the desirability of whether the CSJ should seek an enabling power in the Modern Slavery Bill for Scottish Ministers to appoint or have the power to consent to an Commissioner for Scotland within the IASC, analogous for instance, to the Scotland Commissioner within the Equality and Human Rights Commission.6 Such should help to protect Scottish priorities in the UK-wide IASC.

Graham Ö’Neill
Policy Officer
Scottish Refugee Council
10 December 2014

Appendix

The LCM relates to two provisions in the Modern Slavery Bill (the MSB) on, respectively, the proposed independent anti-slavery commissioner and enforcement powers in relation to ships. The suggestions below relate to the proposed anti-slavery commissioner.

Scottish Refugee Council broadly welcomes the intent behind Part 4 of the MSB, dealing as it is with the remit etc., of the proposed "independent" anti-slavery commissioner. We welcome the rationale in the Memorandum to seek a LCM from the Scottish Parliament that the UK Parliament legislate in this area through its MSB. Human trafficking and related forms of servitude-based exploitation are indeed

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crimes that often traverse borders so it is desirable that responses to it are, as far as possible within current and future constitutional arrangements, consistent across the UK.

Scottish Refugee Council has decades of experience working with men, women, and children across the world who are in Scotland and are seeking international protection in the UK, including refugee status arising from a positive asylum decision. This experience has taught us it is often people in or fleeing vulnerable predicaments that are most at risk of and who then suffer trafficked exploitation and slavery en route to and / or within the UK and Scotland. We recognise too there is overlap between people seeking asylum in the UK and those that have survived trafficked exploitation.

Trafficking and slavery are crime. An individual may have been trafficked and be seeking asylum, but trafficking is properly the responsibility of Scottish criminal justice institutions and those with expertise to assist and meet the protection and recovery needs of survivors. In particular, and amongst others, this means Police Scotland, the Crown Office and Procurator Fiscal Service, and the Scottish law courts at the criminal justice end as well as us, TARA, Freedom from Torture, Scottish Guardianship Service, the NHS, social work, and solicitors and advocates at the survivors’ end.

To date, the Home Office has had responsibility for decisions on international protection (which is appropriate) but also, unfortunately, on trafficking / slavery status through the Home Office being the Competent Authority within the National Referral Mechanism. Thankfully, the recently published review of the NRM has recommended ceasing this Competent Authority role for the Home Office and replacing it with regional multi-disciplinary panels to make conclusive decisions on whether one is deemed to be a survivor of trafficking or servitude-based exploitation. It remains to be seen how this recommendation is taken forward in the UK as well as in Scotland, notably through the forthcoming Scottish Bill.

Scottish Refugee Council’s work with asylum seekers and refugees has identified human trafficking and servitude-based exploitation. This is especially amongst women, children (especially girls) and young people and such reflects wider global patterns of how such exploitation is often highly gendered and trades on the distinctive vulnerabilities of children and younger people. This experience has led us to develop close relationships with key trafficking survivors agencies, such as TARA, as well as to advocate that the Home Office as a Competent Authority on trafficking always completely separates out the trafficking / slavery issue from any asylum claim, acting ideally in the best interests of the survivor. It is our view that this separation hasn’t always happened, so undermining the ability of the Home Office to ensure that best interests are upheld.

All of the above informed our interpretation of this Memorandum. As we say, we support the need to promote as much consistency in anti-trafficking efforts across the UK as is feasible. That said, we invite the Committee to critically consider the overarching question as to whether the proposed commissioner should be confined to hold each jurisdiction in the UK accountable for such efforts on the "same basis". Such may limit the proposed commissioner’s promotion of good practices across the
full gambit of key anti-trafficking / slavery issues in Scotland. A notable function gap is good practice on the assistance and recovery of survivors which is not so far part of the proposed commissioner’s functions in the MSB, but which should be there both in the commissioners role and, we hope too, in the anti-human trafficking strategy in the forthcoming Human Trafficking (Scotland) Bill.

Furthermore, we suggest the Committee gives consideration to whether the Memorandum sufficiently develops the Scottish dimension of the functions and role of the proposed anti-slavery commissioner. In particular, it may wish to have regard to the following, specific considerations:

(a) the need for the MSB to include a provision for the appointment or selection of a Scotland anti-slavery commissioner analogous, perhaps, to the Scotland Commissioner at the Equality and Human Rights Commission;

(b) as noted above, scope in the MSB, that the proposed anti-slavery commission in its operations in Scotland, can develop complementary functions on promoting good practices (or more) relating to key issues such as, as mentioned earlier, the assistance and recovery of survivors, which is perhaps especially important given the absence of a victims’ commissioner or statutory champion in Scotland; and

(c) that the current MSB Bill and the Memorandum do not specify any mechanism for a direct relationship between the proposed commissioner and parliaments across the UK, including therefore the Scottish Parliament.

Furthermore, the Memorandum does not reflect that the trafficking and related servitude-based exploitation are always borne out of inequalities and abuses of power, as well as being severe human rights violations. As mentioned above, international law and policy pinpoint gender and age-based inequalities are especially significant. The Committee may wish to consider how equality and human rights considerations can be better and more explicitly integrated, perhaps through inviting the Cabinet Secretary to ensure that an equalities and human rights assessment is not only conducted in relation to the forthcoming Scottish Bill but also to the provisions in this Memorandum.

Finally, we suggest that the Committee considers inviting the Cabinet Secretary to give oral evidence on this Memorandum and, potentially, that also the full Chamber of the Parliament is requested to debate the proposed anti-slavery commissioner provisions, especially.

Graham O’Neill
Policy Officer
24 November 2014