Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Written submission from WithScotland

Background

Based in University of Stirling, WithScotland supports adult and child support and protection practice, policy and research. We connect research with practice; exchange knowledge and ideas working with Adult and Child Protection Committees. At the heart of WithScotland is the principle of improving outcomes for children in need of care and protection and adults at risk of harm.

WithScotland springs from the convergence of The Multi-Agency Resource Service (MARS) and the Scottish Child Care and Protection Network (SCCPN). Both were set up in response to the Inspection into the Care and Protection of children in Eilean Siar, which recommended the establishment of a multi-agency resource on which all staff in Scotland working with complex child protection issues can draw for advice, expertise, training and research (SWIA 2005).

Below is WithScotland’s response to the questions posed in the consultation paper.

This Bill is a very welcome development and WithScotland is strongly supportive of the proposal to create unified, clear and consistent legislation on human trafficking and exploitation for Scotland which brings together an approach that focuses on protection, provision of services, prevention and prosecution.

Listed below are some general comments on the Bill.

Comments on the Bill

Part 1 Offences

Section 1: Offence of Human Trafficking

- ‘Irrelevance of consent’, (S1(2)) should refer to the ‘intended exploitation’ (i.e. the ‘purpose’) rather than ‘any part of the arrangement or facilitation of travel’ (i.e. the act).
- The offence/definition makes no specific reference to children.

Section 3: Exploitation for purposes of offence of human trafficking

- The factors listed under S 3(8)(a) as the grounds on which someone may be chosen for exploitation do not adequately capture the reasons why someone may be vulnerable. The problem with this approach is that ‘vulnerability’ is often complex, multi-faceted and cumulative, rather than definable by one single element. Certain factors known to increase trafficking vulnerability, for example socio-economic deprivation have been overlooked in the Bill.

- It is also very difficult to prove that a person has been ‘chosen’ as a result of this factor.
S 3(8) includes the words ‘young’ or ‘youth’, neither of which are defined within the Bill. ‘Child’ should instead be used and defined as any person under the age of 18 in line with the definition found in the UN Convention on the Rights of the Child.

**Section 4: Slavery, servitude and forced and compulsory labour**

- S 4(3) - the ‘personal circumstances’ listed as making an individual vulnerable do not fully encapsulate all known vulnerability factors. At a minimum, an ‘abuse of a position of vulnerability’ should be listed. Furthermore guidance maybe required here as to when reference to the Adult Support and Protection (Scotland) Act 2007 is appropriate.

**Missing elements from Part 1**

1. **Presumption of age**: A clause, similar to that found in Article 13(2) of the EU Trafficking Directive and Article 10(3) of the Council of Europe, should be included in Bill to ensure that, where there is reason to believe that a victim is a child, they are treated as such until the final determination (including resolution of disputes) of their age. A presumption of age clause is included in the Modern Slavery Bill.

2. **Definition of a child**: As a person under the age of 18, in line with the UNCRC. To be included in Part 1 or in a specific definitions section. In addition to which references to other legislation which may be applicable require consideration e.g. Adult Support and Protection (Scotland) Act 2007 which stipulates an age of 16 years and over in defining an adult.

**Part 2: Protection of Victims**

**Section 7- Lord Advocates Guidelines on prosecution of victims of offences.**

**Key concern**

- Both a non-prosecution principle and a statutory defence should be included on the face of the Bill. The guidance must be very clear that Police must use their discretion not to prosecute and that prosecutions must be stopped at the earliest stage possible. In cases involving children, the guidance must make clear that children (including older children at 16/17 years) suspected of being victims of slavery and trafficking should be referred through child protection processes as soon as possible. Where the adult is thought to be an ‘adult at risk of harm’ in terms of the Adult Support and Protection (Scotland) Act 2007, again consideration should be given as to the appropriate action. This is especially noteworthy as the Police are one of the statutory bodies with a duty to refer under Section 5 of this legislation.

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2. Adult Support and Protection (Scotland) Act 2007
Section 8: Support and assistance

Key concerns

- The support provided under this section would only be provided to adults, not children, and only for victims of trafficking, rather than victims of all offences under the Bill (slavery, servitude, forced or compulsory labour).
  - The rationale given by the government is that children will be protected under Children and Young Person (Scotland) Act 2014\(^3\) and Getting it right for every child (GIRFEC)\(^4\), and to include further child-specific provisions in this Bill would be to create a parallel system. However, reference at least should be made to the existing Children’s legislation in this Bill and it should be made certain that the existing legislation contains all of the necessary support provisions for trafficked and exploited children.

- Support is tied to the NRM and decisions made under it. The NRM has been under review and may be significantly changed as a result\(^5\), and government figures show that a significant proportion of potential victims chose not to enter NRM\(^6\); hence support should be not be tied to it and instead be provided to victims of offences under this Bill according to need.
  - It is important to ensure that the provision makes clear that support can be provided to those who are still waiting for an NRM to be submitted and/or are deciding if they wish to be referred. At the moment some support providers have a certain degree of flexibility in regard to pre-referral support, and it is important that this remains.

- There should be a ‘Duty on public authorities to identify, assess and provide support to victims’- authorities should be held accountable for identifying victims (not for victims to self-identify), assessing needs and providing access to support on the basis of needs.

- The core principles of the system of identification and support should be included in the Bill, but the details for how this will be practically implemented should be included in regulations.

- In addition to the above reference may also be required in guidance notes to the support available under the Adult Support and Protection (Scotland) Act 2007 where appropriate.

\(^3\) http://www.legislation.gov.uk/asp/2014/8/contents/enacted
\(^4\) http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright
\(^6\) 65% of the total number of potential victims identified in 2012 - see the UKHTC’s Baseline assessment in 2013 http://www.ecpat.org.uk/sites/default/files/ext-6538_ukhtc_strategic_assesssment_on_human Trafficking_2012_v1.01.pdf
**Missing elements**

The provision of Independent Guardians for all separated children with full legal powers

- Children’s organisations have formed a coalition to work jointly to strengthen provisions related to children in the Modern Slavery Bill. One lobbying focus has been on giving the ‘Child Trafficking Advocates’ in the Modern Slavery Bill the legal powers to act on behalf of the child to ensure they are able to act in the best interests of the child, instruct lawyers and other professionals on their behalf, and that their opinions and instructions are heeded by all professionals involved in the child’s case.

- Clause 21 of the Northern Ireland ‘Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Bill’ provides the gold standard for ‘Independent Guardians’. The guardianship service currently in place in Scotland is not too dissimilar to that in Northern Ireland; including a Child Guardianship provision in this Scottish Bill will therefore only be bringing existing policy into legislation, and thus have no cost implications.

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

There are several references to physical and psychological harm as well as risk. In certain circumstances there may be links to the Adult Support and Protection (Scotland) Act 2007 (ASPA), its broader provisions as well as its Protection Orders. Guidance may be required for those using the Human Trafficking Bill once enacted, as to when they need to consider other legislation in this regard.

**General comments**

The need for reference to Children’s legislation is already noted above. However the agencies who may be involved in involved utilising human trafficking legislation e.g. Police, Health Boards and Local Authorities etc. are named under ASPA and have a duty to refer where they know or believe an adult is at risk of harm. Reference may need to be made in the Bill or guidance that will advise which route to follow under which circumstances. Similar considerations may require highlighting with regard to the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003. Consideration may also need to be given as to which Act takes precedence in which circumstances and whether amendments to other legislation will be required in this regard.

With Scotland
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