

Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

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TO

Make provision about human trafficking offences and exploitation, measures to prevent and combat human trafficking and provision of support for victims.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

OFFENCES

1 Human trafficking offences

- (1) In this Act, a “human trafficking offence” means—
 - (a) an offence under sections 57 to 59 of the Sexual Offences Act 2003 (trafficking people for sexual exploitation), or
 - (b) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation).
- (2) The consent of a victim to any action related to trafficking in human beings shall be irrelevant where the victim has agreed to an action because of—
 - (a) threats, the use of force or other forms of coercion,
 - (b) abduction,
 - (c) fraud,
 - (d) deception,
 - (e) the abuse of power or of a position of vulnerability,
 - (f) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; orbecause the victim was a child when the trafficking took place.
- (3) For the purposes of this section and section 5, “a position of vulnerability” occurs when the person has no real or acceptable alternative but to submit to the abuse involved.

2 Aggravating factors

(1) Where a court is considering for the purposes of sentencing the seriousness of a human trafficking offence, the court must treat the following as aggravating factors—

- (a) the offence was committed by a public official in relation to the performance of her or his duties;
- (b) the offence was committed against a victim who was a child;
- (c) the offence was committed against a vulnerable adult;
- (d) the offence was committed by a person participating in a criminal organisation;
- (e) the offence deliberately or by gross negligence endangered the life of the victim; or
- (f) the offence was committed by use of serious violence or caused serious harm to the victim.

(2) In this section —

“serious harm” has the same meaning as in Article 3 of the Criminal Justice (Northern Ireland) Order 2008;

“vulnerable adult” has the same meaning as in Article 3 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

3 Amendments to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation) is amended as follows—

- (a) in subsection 4(c) after “threats” insert “other forms of coercion, abduction, fraud”;
- (b) in subsection 4(d)(i) after “young” insert “, is subject to a position of trust relationship with a person”;
- (c) in subsection 4(d)(ii) —
 - (i) after “youth” insert “, position of trust”;
 - (ii) after “purpose” insert “or”;
- (d) after subsection 4(d) insert—
 - “(e) another person is given or receives payments or benefits to achieve the consent of him for any purpose within paragraph (c)(i), (ii) or (iii).”;
- (e) after subsection (4B) (as introduced by the Criminal Justice Bill) insert—
 - “(4C) For the purposes of this section—
 - (a) “services” or “benefits of any kind” can include forced begging or criminal activities;

- (b) “position of trust” has the same meaning as in Article 29 of the Sexual Offences (Northern Ireland) Order 2008.”.

4 Paying for sexual services of a prostitute

- (1) The Sexual Offences (Northern Ireland) Order 2008 is amended as follows.
- (2) For Article 64A (Paying for sexual services of a prostitute subjected to force etc.) substitute—

“64A Paying for sexual services of a prostitute

- (1) A person (A) commits an offence if makes or promises payment for the sexual services of a prostitute.
- (2) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

Investigation and prosecution

5 Requirements for investigation or prosecution

- (1) The investigation or prosecution of a human trafficking offence shall not be dependent on reporting or accusation by a victim wherever the offence takes place.
- (2) Any criminal proceedings may continue even if the victim has withdrawn his or her statement.
- (3) Where the victim (A) has committed a criminal act as a direct consequence of the trafficking in human beings, no prosecution or imposition of penalties shall occur if—
 - (a) A has been compelled to commit the criminal act as a direct consequence of being subjected to—
 - (i) threats, the use of force or other forms of coercion,
 - (ii) abduction,
 - (iii) fraud,
 - (iv) deception,
 - (v) the abuse of power or of a position of vulnerability, or
 - (vi) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or
 - (b) A was a child.

6 Requirements for resources for investigation or prosecution

It shall be a requirement that the Department shall take the necessary measures to ensure—

- (a) persons, units or services responsible for investigating or prosecuting trafficking in human beings are trained accordingly; and

- (b) effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating trafficking in human beings.

PART 2

ASSISTANCE AND SUPPORT

7 Victim of trafficking in human beings

- (1) In this Act, a “victim” means a person who shall be treated as a victim of human trafficking if there are reasonable grounds to believe that the individual is such a victim and there has not been a conclusive determination that the individual is not such a victim.
- (2) For the purposes of subsection (1) there are reasonable grounds to believe that an individual is a victim of trafficking in human beings if a competent authority has determined for the purposes of Article 10 of the Trafficking Convention (identification of victims) that there are such grounds.
- (3) For the purposes of subsection (1) there is a conclusive determination that an individual is or is not a victim of trafficking in human beings when, on completion of the identification process required by Article 10 of the Trafficking Convention, a competent authority concludes that the individual is or is not such a victim.
- (4) In this Act—

"competent authority" means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention;

"the Trafficking Convention" means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005);

"trafficking in human beings" has the same meaning as in the Trafficking Convention."

8 Requirements for assistance and support

- (1) The Department must ensure that—
 - (a) as soon as there are reasonable grounds to believe that an individual is a victim and there has not been a conclusive determination that the individual is not such a victim, they must be provided, and continue to be provided, assistance and support until three months after criminal proceedings are completed;

- (b) for a child identified as a victim there shall be a plan to safeguard and promote the long-term welfare of that child based on an individual assessment of their best interests;
 - (c) if the family of a child identified as a victim are resident in Northern Ireland they shall be entitled to assistance and support under this section; and
 - (d) assistance and support provided under this section—
 - (i) is not conditional on the person’s willingness to act as a witness; and
 - (ii) shall be provided with the agreement of the person;
 - (iii) shall take due account of the victim’s safety and protection needs; and
 - (iv) shall be provided to assist victims in their physical, psychological and social recovery.
- (2) For the purpose of this section, “assistance and support” shall include but not be restricted to—
- (a) appropriate and safe accommodation;
 - (b) material assistance, including for a person with special needs caused by pregnancy, physical or mental health, disability, or being the victim of serious psychological, physical or sexual violence;
 - (c) medical treatment, including psychological assistance;
 - (d) counselling;
 - (e) information, including on a reflection and recovery period, the possibility of granting international protection and refugee status;
 - (f) translation and interpretation services;
 - (g) access to education for child victims and children of victims;
 - (h) legal counselling, either through legal aid or other means;
 - (i) legal representation, either through legal aid or other means; and
 - (j) assistance in applying for compensation.

9 Civil legal services for victims of trafficking

- (1) The Access to Justice (Northern Ireland) Order 2003 (NI 10) is amended as follows.
- (2) At the end of article 10(3) insert—

“(3A) Civil legal services are to be available for victims of trafficking in human beings as described in Schedule 4.”.

- (3) At the end of Schedule 3 insert—

“SCHEDULE 4 CIVIL LEGAL SERVICES FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS

- (1) Civil legal services shall be available to an individual in relation to an application by the individual for leave to enter, or to remain, in the United Kingdom where—

- (a) there has been a conclusive determination that the individual is a victim of trafficking in human beings, or
 - (b) there are reasonable grounds to believe that the individual is such a victim and there has not been a conclusive determination that the individual is not such a victim.
- (2) Civil legal services shall be available in relation to a claim under employment law arising in connection with the exploitation of an individual who is a victim of trafficking in human beings, but only where—
- (a) the services are provided to the individual, or
 - (b) the individual has died and the services are provided to the individual's personal representative.
- (3) Civil legal services shall be available in relation to a claim for damages arising in connection with the trafficking or exploitation of an individual who is a victim of trafficking in human beings, but only where—
- (a) the services are provided to the individual, or
 - (b) the individual has died and the services are provided to the individual's personal representative.

Exclusions

- (4) This Schedule is subject to the exclusions in Schedule 2.

Definitions

- (5) For the purposes of paragraph (1)(b) there are reasonable grounds to believe that an individual is a victim of trafficking in human beings if a competent authority has determined for the purposes of Article 10 of the Trafficking Convention (identification of victims) that there are such grounds.
- (6) For the purposes of paragraph (1) there is a conclusive determination that an individual is or is not a victim of trafficking in human beings when, on completion of the identification process required by Article 10 of the Trafficking Convention, a competent authority concludes that the individual is or is not such a victim.
- (7) In this paragraph—

“competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention;

“employment” means employment under a contract of employment or a contract personally to do work and references to “employers” and “employees” are to be interpreted accordingly;

“employment law” means an enactment or rule of law relating to employment, including in particular an enactment or rule of law conferring powers or imposing duties on employers, conferring rights on employees or otherwise regulating the relations between employers and employees;

“exploitation” means a form of exploitation described in section 4(4) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (trafficking people for exploitation);

“personal representative”, in relation to an individual who has died, means—

- (a) a person responsible for administering the individual’s estate under the law of England and Wales, Scotland or Northern Ireland, or
- (b) a person who, under the law of another country or territory, has functions equivalent to those of administering the individual’s estate;

“the Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005);

“trafficking in human beings” has the same meaning as in the Trafficking Convention.”.

- (4) Nothing in this section precludes other services being provided under section 8 of this Act.

10 Compensation for victims of trafficking

The Department shall, by order, set out—

- (a) the procedures to be adopted whereby a person shall be able to apply for compensation if he or she has been determined to be a victim; and
- (b) the arrangements to be made to provide assistance and support under section 8(2)(j) to a person seeking leave to remain.

11 Legal advocate for child

- (1) It shall be a requirement that each child who might be a victim of trafficking in human beings shall have a legal advocate appointed to represent the best interests of that child if the person who has parental responsibility fulfils any of the conditions set out in subsection (3).
- (2) The legal advocate shall have the following responsibilities to—
 - (a) advocate that all decisions taken are in the child’s best interest;
 - (b) advocate for the child to receive appropriate care, accommodation, medical treatment, including psychological assistance, education, translation and interpretation services;
 - (c) advocate for the child’s access to legal and other representation where necessary;
 - (d) consult with, advise and keep the child victim informed of legal rights;

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- (e) contribute to identification of a plan to safeguard and promote the long-term welfare of the child based on an individual assessment of that child's best interests;
 - (f) keep the child informed of all relevant immigration, criminal or compensation proceedings;
 - (g) provide a link between the child and various organizations who may provide services to the child;
 - (h) assist in establishing contact with the child's family, where the child so wishes and it is in the child's best interests;
 - (i) attend all police interviews with the child; and
 - (j) accompany the child whenever the child moves to new accommodation.
- (3) Subsection (1) shall apply if the person who has parental responsibility for the child—
- (a) is suspected of taking part in the trafficking of human beings;
 - (b) has another conflict of interest with the child;
 - (c) is not in contact with the child; or
 - (d) is in a country outside the United Kingdom.
- (4) In subsection (1), a legal advocate may be—
- (a) an employee of a statutory body;
 - (b) an employee of a recognised charitable organisation; or
 - (c) a volunteer for a recognised charitable organisation.
- (5) Where a legal advocate is appointed under subsection (1), it shall be a requirement that any relevant agency recognises the authority of the legal advocate in relation to the child.
- (6) In subsection (5), a "relevant agency" means a person or organisation—
- (a) which provide services to the child; or
 - (b) to which the child needs access in relation to being a victim.
- (7) The Department—
- (a) shall by order set out the arrangements for the appointment of a legal advocate;
 - (b) may make rules about the training courses to be completed before a person may exercise functions as a legal advocate; and
 - (c) shall by order designate organisations as a "recognised charitable organisation" for the purpose of this section.
- (8) In this section—
- “parental responsibility” has the same meaning as Article 6 of the Children (Northern Ireland) Order 1995.

PART 3

SPECIAL MEASURES FOR WITNESSES

12 Amendments to the Criminal Evidence (Northern Ireland) Order 1999

The Criminal Evidence (Northern Ireland) Order 1999 (NI 8) shall be amended as follows—

- (a) In Article 5(4) (witnesses eligible for assistance on grounds of fear or distress about testifying), after the word “sexual”, insert “or any offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for labour and other exploitation)”;
- (b) In Article 9(1)(b)(ii) (special provisions relating to child witnesses) after the word “(c)”, insert “, (cd)”;
- (c) In Article 10(1)(b)(ii) (extension of provisions of section 21 to certain witnesses over 17) after the word “(c)”, insert “, (cd)”;
- (d) In Article 22 (complainants in proceedings for sexual offences), after the word “sexual”, insert “or any offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for labour and other exploitation)”;
- (e) In Article 23 (child complainants and other of child witnesses) —
 - (a) in paragraph (3), after sub-paragraph (cc) insert—

“(cd) any offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004;”.
 - (b) In paragraph (4)(b)(a) —
 - (i) omit “or” before “(cc)”;
 - (ii) after “(cc)” insert “or (cd)”.

PART 4

PREVENTION

13 Prevention

It shall be a requirement that the Department shall annually publish a strategy on raising awareness of and reducing trafficking in human beings.

PART 5

GENERAL

14 General interpretation

- (1) The following apply for the purposes of this Act.
- (2) A "child" shall mean any person below 18 years of age.
- (3) If the age of the person is uncertain and there are reasons to believe the person is a child, the person shall be presumed to be a child.

15 Orders

Orders made by the Department under this Act shall be subject to affirmative resolution.

16 Short title, commencement and extent

- (1) This Act may be cited as the Human Trafficking and Exploitation (Further Provisions and Support for Victims) (Northern Ireland) Act 2012.
- (2) This Act comes into force in accordance with provision made by the Department by order.