

PROPOSED CHANGES IN THE LAW TO TACKLE HUMAN
TRAFFICKING

CONSULTATION PAPER

AUGUST 2012

FOREWORD



Human trafficking is a serious and growing problem all over the world and Northern Ireland is not exempt from its scourges. In Northern Ireland we have witnessed a concerning increase in trafficked people, many of whom end up being abused and harmed. Many are trafficked into what amounts to little more than slave labour, or into prostitution, sexual exploitation and a life of crime.

I believe it is important that we must prevent Northern Ireland being an attractive place to those responsible for human trafficking, but also that we should be doing all that we can to prevent the danger, pain and harm that is caused to the many vulnerable victims of human trafficking. In particular, it is often children and young people who are the victims.

The current Criminal Justice Bill from the Department of Justice addresses some of the needs to strengthen the human trafficking offences but there is still more that should be done to offer the best protection against human trafficking. I am therefore proposing a private members Bill to improve:

assistance and support to victims, provisions for addressing demand and investigations and prosecutions. A draft Bill is annexed to this consultation document.

To help me in this piece of legislation, I am seeking your views on what the law should say and do on these important and serious issues. I hope you will take the time to answer the questions outlined in this document. Thank you for your interest in this issue.

THE CONSULTATION WILL CLOSE AT 5pm ON THURSDAY 18th OCTOBER 2012.

LORD MORROW

DEMOCRATIC UNIONIST PARTY

AUGUST 2012

INTRODUCTION

Human trafficking is a growing problem for Northern Ireland. Easier access to travel across states along with a range of other issues has made this into a significant and serious problem.

Year	Victims of Human Trafficking	Sexual Exploitation	Forced Labour	Domestic Servitude	Unknown
2008/09 ¹	11	6	3	2	
2009/10 ²	25	17	5	1	2
2010/11 ³	23	18	5		
2011/12 ⁴	27	18			

The Northern Ireland Assembly has shown that it is concerned about human trafficking with a [debate](#) on 7 February 2012, formation of an All Party Group on Human Trafficking in February 2012, Assembly Questions and the Second Stage [debate](#) of the Criminal Justice Bill on 3 July 2012. The Research and Information Services produced a [research paper](#) on Human Trafficking in Northern Ireland in June 2012. In 2012, there have also been a [Department of Justice consultation](#) on human trafficking offences and a Public Prosecution Service [consultation](#) on prosecuting trafficking offences.

There is growing support to do more to tackle this problem.

¹ Data quoted from different sources in Northern Ireland Assembly Research Paper, Human Trafficking in Northern Ireland, page 12

² [Department of Justice Press Release](#), 22 March 2011

³ Data from the [Organised Crime Task Force website](#), accessed 18 May 2012

⁴ [Department of Justice Press Release](#), 15 May 2012

THE ISSUE

The Assembly needs to ensure that Northern Ireland is prosecuting traffickers and caring for victims. Northern Ireland should be meeting its obligations to reduce demand, successfully prosecute cases and support victims under the [European Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims](#). The Department of Justice has proposed new offences in the current [Criminal Justice Bill](#) to ensure that:

- a) when offences are carried out abroad, individuals can be prosecuted in Northern Ireland;
- b) internal trafficking within the UK is made a crime.

However, more should be done to improve investigations and prosecutions, tackle demand and support victims.

THE PROPOSAL

It is proposed that a Bill should be introduced in the Assembly to enable Northern Ireland to meet its international obligations to reduce demand, tackle trafficking and support victims. This consultation includes a proposed draft Bill which would:

- Allow courts to take aggravating factors into consideration when passing sentence;
- Extend the definition of other exploitation to include forced begging;
- Bring in a new offence of paying for the sexual services of a prostitute;
- Ensure no prosecution is brought for a criminal offence committed by a trafficking victim as a direct consequence of being trafficked;
- Require training and investigative tools to be made available for police and prosecutors;
- Define a victim of trafficking;
- Set out what assistance and support is required for victims of trafficking;

- Set out what civil legal services should be available to victims of trafficking;
- Require clear compensation procedures;
- Require each child victim to have a legal advocate to support them through the relevant criminal, immigration and compensation procedures and ensure they receive suitable assistance;
- Provide “special measures” for trafficking victims if they act as witnesses;
- Require the Department of Justice to produce an annual strategy on raising awareness and reducing trafficking in human beings.

This legislation would ensure that Northern Ireland is at the forefront of tackling human trafficking and supporting victims within the UK. Without this legislation, there is no guarantee that resources will be put into reducing human trafficking and caring for victims over the long term.

Question: *Do you agree that there is a case for further legislation to prevent and tackle human trafficking and support victims?*

Yes

No

Unsure

Comments: _____

CONSENT OF THE VICTIM TO BE TRAFFICKED (Clause 1(2) of my Draft Bill)

If someone is caught trafficking people then they will be prosecuted. However, that person may claim that the trafficked people agreed to be trafficked. The proposed Bill will make evidence of consent or agreement irrelevant where it was based on:

- Threats, the use of force or other forms of coercion;
- Abduction;
- Fraud;
- Deception;
- Abuse of power or of a position of vulnerability;
- Giving or receiving of payment or benefits to a person responsible for another person, to achieve agreement to traffic that person.

This change would meet the requirements of Article 2(4) of the European Directive.

Questions on Consent

I would welcome your views on the following:

Do you agree that there should be a list of circumstances outlining when evidence of agreement to travel and be trafficked is irrelevant?

Yes

No

Unsure

Comments: _____

Do you agree that there should be a list of circumstances outlining when evidence of agreement to travel and be trafficked is irrelevant?

Yes

No

Unsure

Comments: _____

Which ones to you think are the most important?

Comments: _____

Are there any that you think should not be included?

Comments: _____

AGGRAVATING FACTORS (Clause 2 of my Draft Bill)

An aggravating factor is something the court must take into account when sentencing a criminal convicted of human trafficking. Article 4 of the European Directive sets out a list of things that make the crime more serious and therefore the crime will get a longer sentence.

The Bill proposes including this list of aggravating factors that **MUST** be taken into account. They are:

- That the crime was committed by a public official when they were doing their duties;
- The victim was a child;
- The victim was a vulnerable adult;
- The criminal was part of a criminal organisation;
- The life of the person trafficked was endangered;
- There was use of serious violence or serious harm was caused to the victim.

Questions on Aggravating Factors.

I would welcome your views on the following:

Do you agree the Judge should be forced to take into account certain factors that make the crime worse?

Yes No Unsure

Comments: _____

Do you agree that these factors make the crime worse?

Yes No Unsure

Comments: _____

Are there any other circumstances that make trafficking humans worse?

Yes No Unsure

Comments: _____

Should some of these proposed factors be removed?

Yes No Unsure

Comments: _____

Do you agree that these factors should mean that the Judge must give longer sentences?

Yes No Unsure

Comments: _____

EXPANDING THE DEFINITIONS OF EXPLOITATION (Clause 3 of my Draft Bill)

The Bill proposes to expand some of the definition set out in the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 to meet the requirements of Article 2 of the European Directive, including:

- “force” and “threats” to cover coercion, abduction and fraud for offences “abuse of power” to include an abuse of trust relationship;
- defining services that a person might be forced to provide to include forced begging and criminal activities;
- Defining exploitation to include a third person being given or receiving payments or benefits to achieve the consent of a victim of trafficking.

Question on Expansion of Definitions

I would welcome your views on the following:

Do you agree the definitions related to exploitation should be expanded as proposed above?

Yes

No

Unsure

Comments: _____

**MAKING PAYING FOR SEXUAL SERVICES ILLEGAL IN NORTHERN IRELAND
 (Clause 4 of my Draft Bill)**

Demand for paid sex is one of the main drivers of trafficking to Northern Ireland. It is illegal to buy sex from someone in Northern Ireland if they are coerced.⁵ Some might respond to this by stating the law already covers trafficking. Technically that is correct but in practice the current offence presents real challenges because it requires proof of coercion which can be

⁵ Article 64A of the Sexual Offences (Northern Ireland) Order 2008

difficult to provide. The truth is that at present the majority of rescued victims of trafficking in Northern Ireland are those brought here for sexual exploitation. I believe that we can do better.

In Sweden in 1999 they introduced a simpler offence that my Bill also proposes, namely making the purchase of sex an offence. In this context where the law has sent the very clear message of zero tolerance for the purchase of sex, it has had a clear impact on trafficking. The police in Sweden have intercepted phone calls between traffickers indicating that traffickers consider Sweden a “bad market” and victims report that “traffickers talk about Sweden as a poor market”.⁶ I want to see Northern Ireland benefit from similar legislation.

The UN Anti-Trafficking Rapporteur has said “prostitution as actually practised in the world usually does satisfy the elements of trafficking” and is often as a result of an abuse of power and/or vulnerability.⁷ Most people involved in prostitution do so as a result of a series of unfortunate events. For many who make the choice rather than being forced into it, it is a decision of desperation. I want these people to find the help they need, and not resort to selling sex. There are many dangers to prostitution. I believe those who pay for it should be punished, instead of the focus only being on those who sell.

⁶ See Kajsa Wahlberg, Swedish National Rapporteur on Human Trafficking and Detective inspector at the National Police Board, on page 20 of the [Report from the European Conference on Human Trafficking](#), December 2009.

⁷ Integration of the Human Rights of Women and a Gender Perspective, [Report](#) of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda, 2006, page 9, para 42

Incidentally, Dublin is very wisely currently considering introducing such a law.⁸ If they do and we keep our laws simply stating that it is an offence to buy sex from someone who is coerced, we could find sex tourists coming from the South to buy sex in the North where they know that the legal framework is more relaxed. The reverse would undoubtedly be true if we had tougher laws than the South.

If Northern Ireland takes this step we will be the first to do so in the UK.

Questions on Making Paying for Sexual Services Illegal

I would welcome your views on the following:

Do you agree that paying for sexual services of a prostitute should be illegal?

Yes No Unsure

Comments: _____

Do you agree that promising to pay for sexual services of a prostitute should be illegal, even if the act as not taken place?

Yes No Unsure

Comments: _____

⁸ <http://www.irishexaminer.com/breakingnews/ireland/anti-prostitution-billboard-campaign-launched-563269.html>

If you disagree that it should be made illegal, why?

Comments: _____

PROTECTING THE VICTIM FROM PROSECUTION (Clause 5(3) of my Draft Bill)

If the police catch a criminal who has been involved in human trafficking then it is important that we protect the victim of this trafficking. If that victim has been engaged in criminal activity related to being trafficked e.g. commercial cannabis consultation, then the victim has committed a crime. My Bill seeks to protect the victim in those circumstances. The Bill would ensure no prosecution or penalty would happen in certain circumstances, as recommended in Article 8 of the European Directive. This would include if the victim had been forced to commit a crime as a direct consequence of:

- Threats, the use of force or other forms of coercion;
- Abduction;
- Fraud;
- Deception;
- Abuse of power or position of vulnerability;
- Giving/receiving of payments or benefits to someone with control over the trafficked person to get their consent;

This would only be for those crimes that happened as a direct consequence of being trafficked.

I am proposing that there is a total exemption if that victim was a child.

Questions on Protecting Victims from Prosecution

I would welcome your views on the following:

Do you agree that the victim of trafficking should not be punished for crimes committed in specified circumstances?

Yes

No

Unsure

Comments: _____

Do you agree these exemptions should only apply in very limited circumstances where those crimes were the DIRECT CONSEQUENCE of the trafficking?

Yes

No

Unsure

Comments: _____

Do you agree that children (up to the age of 18 years) should get an exemption for crimes committed that were a DIRECT CONSEQUENCE of the trafficking?

Yes

No

Unsure

Comments: _____

INVESTIGATION, PROSECUTION AND REDUCING TRAFFICKING (Clause 6 of my Draft Bill)

Trafficking offences are often difficult to investigate and prosecute because of their complexities. My Bill would require effective investigative tools and training be made available for investigators and prosecutors. It would also ensure that the Department of Justice had to produce an annual strategy for raising awareness and reducing trafficking so that there would be a continuing focus on tackling this crime. These proposals would meet the requirements of Articles 9 and 18 of the European Directive.

Questions on Investigation, Prosecution and Reducing Trafficking

Do you agree that investigative tools and training be made available for investigators and prosecutors of human trafficking cases?

Yes No Unsure

Comments: _____

Do you agree there should be a legal requirement for the Department of Justice to produce an annual strategy on raising awareness and reducing trafficking in human beings as part of the prevention measures?

Yes No Unsure

Comments: _____

SUPPORTING AND ASSISTING THE VICTIM INTO RECOVERY (Clauses 8-12 of my Bill)

It is vital that victims of human trafficking are given suitable assistance and support to make a full recovery, be able to act as witnesses and have access to compensation. My Bill sets out how Northern Ireland would support victims, whether they are adults or children, and meets the requirements of Articles 11 to 17 of the European Directive.

My Bill would ensure that victims could receive support regardless of their willingness to act as witness for up to three months after any criminal proceedings.

General and Legal Support (Clauses 8 and 9, covering Articles 11-16 of the European Directive)

Assistance and support would include:

- appropriate and safe accommodation;
- 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;
- medical treatment, including psychological assistance;
- counselling;
- information, including on a reflection and recovery period, the possibility of granting international protection and refugee status;
- translation and interpretation services;
- access to education for child victims and children of victims;
- legal counselling, either through legal aid or other means;

- legal representation, either through legal aid or other means; and
- assistance in applying for compensation.

My Bill would ensure that legal aid is available to trafficking victims in three circumstances, which reflect recent changes in the law in England and Wales:

- for an application for leave to enter or remain in the UK;
- a claim under employment law; and
- a claim for damages.

Last year, there was a review of legal aid provision in Northern Ireland.⁹ The proposals for change have not yet been finalised. Ahead of any potential changes, my Bill would set out a minimum provision of civil legal aid for trafficking victims.

Compensation for victims (Clause 10, covering Article 17 of the European Directive)

The provision of compensation for victims of trafficking is vital both for the provision of some sense of restitution and in order to help them rebuild their shattered lives. My Bill would require the Department for Justice to set out how a trafficking victim could apply for compensation, for instance through compensation orders, an application to the [Compensation Agency](#), civil litigation or, potentially, before an employment tribunal.

Legal advocates for child victims (Clause 11, covering Articles 14 and 16 of the European Directive)

⁹ See Northern Ireland Courts and Tribunals Service website, <http://www.courtsni.gov.uk/en-gb/aboutus/a2jreview/Pages/default.aspx>

Currently the number of children that are trafficked into Northern Ireland is small – it was estimated that 7 children were identified as trafficked in the first nine months of 2011¹⁰ – but they nevertheless need all our support. My Bill would seek to provide that support for child victims who have no parental figure available by requiring the appointment of a legal advocate who would safeguarding the child’s best interests.

The term that is generally used in international instruments for the role outlined in my Bill is ‘guardian’. However, in our legal system, guardian has a different meaning (a parental responsibility figure) so I have used the term legal advocate to discriminate it from a legal guardian, whilst covering the role referred to as ‘guardian’ by international instruments, which state that *“The role of a guardian is to be an advocate for the child in a wide range of discussions and decisions about what should happen to the child, in particular to ensure that the decision-making process primarily considers the best interests of the child. The role is also to be a link between the child and the various agencies the child comes into contact with, to ensure the child is kept informed of any relevant developments with respect to him or her, and to accompany the child in a physical way, in particular when she or he is moved between various places.”*¹¹

¹⁰ See [Child Trafficking Update](#), CEOP, October 2011, pages 3 and 13. 202 children were identified as trafficked into and within the UK between 1 Jan 2011 and 15 Sept 2011; 7 of which were identified in Northern Ireland.

¹¹ See [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 and [Guidelines on the Protection of Child Victims of Trafficking](#), UNICEF technical notes, September 2006, section 4.2, page 17

“Special measures” for human trafficking victims acting as witnesses (Clause 12 covering Article 12 the European Directive)

Finally my Bill would also seek to increase the assistance available to trafficking victims should they act as witnesses in cases where a trafficker is prosecuted. There is already provision for some of these so-called “special measures” (eg. evidence by live link or screening the witness from the accused) for victims of trafficking for sexual exploitation. My Bill would extend these to trafficking for other types of exploitation.

Questions on Supporting and Assisting a Victim into Recovery

I would welcome your views on the following:

Do you agree that legislation should set out what assistance and support is required for victims of trafficking covering Article 11 of the European Directive?

Yes

No

Unsure

Comments: _____

Do you agree that legislation should require clear compensation procedures in line with Article 17 of the European Directive?

Yes

No

Unsure

Comments: _____

Do you agree that each child trafficking victim should have a legal advocate to support them and ensure they receive suitable assistance, in line with Articles 14 and 16 of the European Directive?

Yes

No

Unsure

Comments: _____

Do you agree that there should be “special measures” for trafficking victims if they act as witnesses, in line with Articles 12 and 15 of the European Directive?

Yes

No

Unsure

Comments: _____

Questions on Human Rights & Equality Implications

I would welcome your views on the following:

How do you think the proposed legislation will impact on human rights?

Positively

Negatively

Not at all/not significantly

Unsure

Comments: _____

How do you think the proposed legislation will impact on equality of opportunity?

Positively Negatively Not at all/not significantly Unsure

Comments: _____

Other Questions

I would welcome your views on the following:

Do you have any comments on the likely cost / financial implications of the proposed legislation?

Comments: _____

Do you have any other comments on the proposed draft legislation?

Comments: _____

Contact details of person responding to consultation:

Name: _____

Organisation (if applicable): _____

Address: _____

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Consultation response/contact details:

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