



CRIMINAL JUSTICE BILL BRIEFING FOR MEMBERS OF THE JUSTICE COMMITTEE

Summary

CARE in Northern Ireland supports the principle of the new human trafficking offences in the Criminal Justice Bill to meet obligations under the European Directive on Human Trafficking.

The Northern Ireland proposals seek to copy England and Wales in the substance of the change that it is seeking to introduce, **but it achieves it through a different means, with the outcome that there will be more trafficking offences applicable in Northern Ireland than in England and Wales. The rationale for this complexity is not clear.**

However, the proposals in this Bill reflect a very minimalist approach to implementing the European Directive, casting aside the opportunity for Northern Ireland to build on its great heritage of opposing slavery by developing robust laws and leading the way in the UK. This is a terrible missed opportunity. This submission suggests amendments for the Committee's consideration in the light of the requirements of the European Directive and recommendations made by the monitoring committee of the European Council of Europe Convention on Action against Trafficking in Human Beings in their September 2012 report which was published yesterday.

Introduction to Clauses 5 and 6

The Criminal Justice Bill contains two clauses, Clause 5 (trafficking for sexual exploitation) and Clause 6 (trafficking for labour and other exploitation), to take extraterritorial powers giving prosecuting authorities in Northern Ireland the ability to charge UK nationals and habitual residents of Northern Ireland with trafficking offences that occur completely outside of the UK. Clause 6 would also change the law so that it would be a trafficking offence to move an individual within the UK without the victim having first to enter the country (which is the current position).

These changes would ensure Northern Ireland meets the requirements of Article 10 of the European Directive on Human Trafficking.

CARE in Northern Ireland supports the principle of including trafficking within the UK for labour exploitation in the definition of trafficking offences, as this will improve the situation in Northern Ireland for victims of trafficking. We also support the extension of extraterritorial powers to prosecute UK citizens for trafficking offences committed abroad, which may not directly impact victims in Northern Ireland but elsewhere.

The changes to extraterritorial powers were enacted for England and Wales through the Protections of Freedoms Act 2012. The Department of Justice has taken **a different approach** to bringing in these requirements to that adopted within the Protection of Freedoms Act 2012:

- England and Wales **substituted** previous multiple offences with a new single offence for sexual exploitation and a single new offence for labour exploitation.
- The Northern Ireland approach is to **add** offences to both the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004. Scotland amended the Asylum Act in a similar way in 2010.

It is not clear whether there are significant benefits to one system over another but it does mean that trafficking legislation within the UK is becoming more divergent.

We raise a **practical point of implementation of extraterritorial jurisdiction**: how will it be decided where a UK citizen who has committed a trafficking offence abroad would be prosecuted in the UK since there are different offences in the different UK jurisdictions, and in particular what factors will make it more likely that an offence is prosecuted in Northern Ireland.

A Missed Opportunity: Room for Amendments

While Clauses 5 and 6 are a welcome move, we are extremely concerned that there is, as yet, no reference to how Northern Ireland will make itself **compliant with all the other parts of the Directive**. The Northern Ireland Executive seems to be acting as if these two changes are the only changes it need make in order to become compliant with the Directive. The minimalism of this approach is extremely concerning because in the first instance the British Government suggested that the UK did not need to opt in to the Directive. There was a major campaign between June 2010 and March 2011 to persuade the government to opt in. Now that that campaign has succeeded with the decision to opt-in, it is very important to make sure that proper rather than minimalist compliance is achieved.

The scope of this Bill in relation to human trafficking is not clear. The long title says the Bill is to “amend the law relating to...human trafficking”, which suggests there could be a wide scope to tackle many of the issues related to trafficking from offences to providing support. If the scope is taken as narrowly to matters dealing with human trafficking offences since this is a criminal justice bill, CARE in Northern Ireland suggests the Committee gives consideration to the following **criminal justice issues**:

- a) **Extension of the definitions of exploitation** within Asylum and Immigration Act 2004 to meet the requirements of the European Directive on Human Trafficking Articles 2(1) to 2(4), eg to include forced begging, consent will be irrelevant where coercion, threats or fraud etc is used to achieve the consent for the purposes of exploitation.

Lord Morrow’s Draft Human Trafficking Bill covers these issues in Clauses 1 and 3.

- b) **Setting out aggravating factors that would increase the penalty for human trafficking offences – both for sexual and labour exploitation.** We recommend that the aggravating factors listed under Article 4(2) of the European Directive – committed against a particularly vulnerable victim, endangering the life of the victim

etc - should be specified in the legislation governing Northern Ireland in order for it to be compliant with the Directive, rather than being provided in sentencing guidelines.

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 2.

c) **Protection of victims in criminal proceedings**

Adequate protection for victims of trafficking during the investigation and prosecution of an offence should be enshrined in the legislation, including amendments to the Criminal Evidence (Northern Ireland) Order 1999 to ensure "special measures" for trafficking victims acting as witnesses (Article 12(4)). Yesterday's GRETA report urged action to protect victims during the pre-trial and court proceedings.¹

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 12.

We note, however:

- at the Second Stage debate the Minister for Justice, said that he would "*look to see what is within the scope of this Bill, we will look to see what is needed in policy work and in secondary legislation, and if there are further proposals for primary legislation, then I am certainly open to consideration of them*" (p347, 3 July 2012); and
- when the Protection of Freedoms Bill long title included the words "to make provision about the trafficking on people for exploitation", the House of Lords debated amendments to bring in a legal advocate for trafficked children.

Both of these points suggest that there could be a scope to include wider human trafficking issues in this Bill. If the Committee adopted this approach, CARE in Northern Ireland recommends the Bill should be extended to cover:

d) **Requirement for investigations and proceedings**

The Directive mandates that the proceedings should not be dependent on the reporting or accusation of the victim, and that the proceedings should be able to continue if the victim withdraws their statement (Article 9(1)). Given the circumstances and difficulties faced by most trafficking victims, these are key provisions to ensure improvements in the number of successful convictions, but they are not set out in the legislation governing Northern Ireland.

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 5.

e) **Requirement for resources for investigation and prosecution**

Northern Ireland may already be complying with the provisions under the Directive's Articles 9(3) and 9(4) regarding training and the availability of proper investigative tools at a policy level. However, if this is not contained in the legislation, there is a risk that these services are vulnerable to cuts. GRETA also stressed the need for training across the board in dealing with trafficking victims, including the importance

¹ Greta (Group of Experts on Action Against Trafficking in Human Beings), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, GRETA(2012)6, 12 September 2012, recommendation 35, page 88

of ensuring that all First Responders are fully trained in the processes for making a referral to the National Referral Mechanism (NRM).²

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 6.

f) **Assistance and support for victims**

There is support being provided by the Migrant Helpline and Women's Aid³, but it is not clear if this support would be available to children. CARE in Northern Ireland is concerned that without placing the Article 11 obligations to provide assistance and support to victims on a statutory footing, there is a risk of non-compliance, should any programmes be withdrawn. GRETA also made recommendations on the need for clear standards for care and assistance for victims of trafficking.⁴

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 8.

g) **Provisions relating to child victims**

Northern Ireland does not currently have specific legislation covering a number of the provisions relating to the treatment of child victims of trafficking, who should receive special measures to protect, support and assist them for their long-term welfare (Articles 13-16 of the Directive). We are especially concerned that the need for a **Guardian or Representative for Trafficked Children** (Article 14(2) & 16(3)) should be addressed. In England and Wales the government has argued that there is no need for a new role, but the evidence of a large number of trafficked children lost in England and Wales between 2007 and 2010 (301 out of 942) raises significant questions about the effectiveness of current arrangements.

We note that the GRETA report raised concerns about the number of children that go missing, stated that *"a system of guardianship is essential to ensure the children's protection and rehabilitation, assist in severing links with traffickers and minimise the risk of children going missing"* and urged action to *"ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian"*.⁵

The UN is encouraging governments *"to assign guardians or representatives a specific duty to advocate for the best interest of the child on a regular basis, to act as an advocate for the child as well as a bridge and focal point for the child's interaction with other authorities and actors. The guardian or representative should also be provided with a role in ensuring that the child is able to participate in decisions."*⁶

Northern Ireland has an opportunity to implement a more robust scheme and lead the way in the UK. Currently, it appears there are only a small number of children

² Concerns about lack of clarity for First Responders in Northern Ireland was raised in the GRETA Report, *Op Cit*, page 53, para 225 and also raised in concern to identifying trafficking victims who arrive through immigration, page 53, para 229. Recommendations on training are contained in recommendations 9 and 10 on page 84, recommendation 21 on page 86 and recommendation 34 on page 88.

³ See [answer](#) to AQW 1201/11-15, tabled 22/5/2012.

⁴ Greta Report, *Op Cit*, page 86, recommendation 26.

⁵ Greta Report, *Op Cit*, pages 56-58, paragraphs 240, 245, 247, page 86, recommendations 22 and 23.

⁶ Prevent. Combat. Protect. [Human Trafficking](#). Joint UN Commentary on the EU Directive – A Human Rights-Based Approach. See pages 76-7.

trafficked into Northern Ireland. A system of advocates/guardians would ensure (at very little cost) that the expertise necessary is available to support these vulnerable children through the care system in Northern Ireland.

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 11.

h) Introducing a National rapporteur or equivalent mechanism

There is scope to take a more fulsome approach to implementing the Directive than has been adopted in England and Wales to meet the requirements of Article 19 – introducing a national rapporteur or equivalent mechanism.

The UN has encouraged “*clear accountability processes for their National Rapporteurs or equivalent mechanisms.*”⁷ The UK has an interdepartmental ministerial group in place which, it has been maintained, together with the UK Human Trafficking Centre, fulfils the UK obligations. However, this monitoring system is not **independent** of government nor does the Ministerial group produce **public reports**. While neither of these requirements is explicit in the Directive, the common understanding of a National Rapporteur is that they are independent of government – that is the whole point – and reports are placed in the public domain. Other EU countries, such as Holland, which have created an independent overseer, have seen real success in the quality of information available to the government and the profile of trafficking in their parliaments.

In implementing the Directive, Northern Ireland has the opportunity to follow best practice in Europe and to lead the way in the UK with a functional, independent rapporteur who will be able to undertake the kind of research, reporting and accountability role envisioned in Article 19.

A National Rapporteur could also ensure good liaison with NGOs and the Children's Commissioner for Northern Ireland thereby meeting two of the GRETA report recommendations for improved “formalised arrangements with NGOs and civil society” in Northern Ireland.⁸

Conclusion

Clauses 5 and 6 are a welcome start to ensuring Northern Ireland's compliance with the European Directive but there is a considerable way to go to ensure full compliance. CARE in Northern Ireland hopes that the Committee will recommend further legislative proposals to improve the tackling and prevention of trafficking in Northern Ireland. We commend Lord Morrow's Draft Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill to the Committee.

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⁷ *Ibid*, pages 100-101

⁸ Greta Report, *Op Cit*, page 30, para 97 and page 32, para 107.