

Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Bill

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. These explanatory notes refer to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Bill (Northern Ireland) 2014, as amended during Further Consideration Stage of the Bill on 1 December 2014. They have been prepared by the Department of Justice in conjunction with the Bill's sponsor, the Lord Morrow MLA, to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill, so where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Human trafficking and slavery are heinous crimes and an unacceptable abuse of basic human rights. The objective of the Bill, as introduced was to provide Northern Ireland with a more robust legal framework in relation to:
 - the prosecution of traffickers and those subjecting people in Northern Ireland to conditions of slavery;
 - the provision of improved support for victims; and
 - tackling the demand for the services of trafficked victims.

4. The Bill also sought to achieve improved compliance with international obligations under the Council of Europe Convention on Action against Trafficking in Human Beings¹ and the European Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims².
5. The intent and broad effect of the Bill following Further Consideration Stage remain consistent with those of the Bill upon Introduction. However, a number of changes and additions have been included. These are, for the most part, broadly in line with equivalent measures that have been included in the Modern Slavery Bill at Westminster. Since the Bill now brings together all relevant provisions relating to human trafficking and slavery-like offences within this single piece of legislation. The Bill's original short title (the "Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill") was amended to the "Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Bill" at Consideration Stage.
6. The Bill would:
 - simplify the legislative framework surrounding offences of human trafficking and slavery;
 - enhance public protection by amending the sentencing framework for human trafficking and slavery-like offences and introducing slavery and trafficking prevention orders;
 - establish a statutory minimum sentence for those convicted of human trafficking and slavery-like offences;
 - enhance provision to facilitate the confiscation of criminal assets that have been accumulated as a result of human trafficking and slavery-like offences;
 - enable courts to order individuals convicted of human trafficking and slavery-like offences to pay reparation to their victims;
 - reinforce the criminal justice system's capacity in terms of prevention and enforcement of trafficking and slavery-like offences;
 - make it a criminal offence to pay for the sexual services of a person;

¹ Council of Europe Treaty Series No 197, 2005

² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011

- extend the criminal law in Northern Ireland to forced marriage;
- make statutory provision in respect of the assistance and support for victims and potential victims of human trafficking;
- make statutory provision in respect of those who wish to leave prostitution;
- introduce independent guardians for child victims and potential victims of human trafficking as well as separated children; and
- introduce new measures aimed at protecting victims of human trafficking and slavery-like offences during investigations and criminal proceedings, including the introduction of a statutory defence for slavery or trafficking victims who have been compelled to commit certain offences.

CONSULTATION

7. The Bill's sponsor, the Lord Morrow MLA, carried out an eight week consultation on the policies behind the Bill from August to October 2012, before its Introduction. A total of 147 responses were received. Of those, a majority of respondents acknowledged the need for further action and in the vast majority of cases agreed that aspects of the Bill would make a positive difference in Northern Ireland.
8. In addition, between January and April 2014, the Department of Justice ran a public consultation on further proposals to strengthen the response to human trafficking and slavery in Northern Ireland. These proposals were informed by measures in the draft Westminster Modern Slavery Bill, which was published by the Home Secretary in December 2013. A total of 40 responses were received, with the majority of those who responded being in favour of the proposals.³
9. During Committee Stage of the Bill, the Committee for Justice received written submissions from more than 140 individuals and organisations and took oral evidence from a wide range of stakeholders, including government departments, interested

³ A copy of the consultation document and summaries of the responses to it can be found at: <http://www.dojni.gov.uk/human-trafficking-and-slavery-strengthening-northern-irelands-response>

organisations and individuals and from the Bill's sponsor, as part of its consideration of the Bill⁴.

OVERVIEW

10. The Bill has 28 Clauses and five Schedules and is divided into five Parts.

Part 1

11. Clauses 1 to 4 establish new offences of human trafficking and slavery, servitude and forced or compulsory labour. The principle aim of these clauses is to simplify the legislative framework to make it easier for investigators and prosecutors to bring cases against perpetrators. They are intended to replace the existing offences of human trafficking (under sections 57 to 59 of the Sexual Offences Act 2003 and section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004) and of slavery, servitude and forced or compulsory labour (under section 71 of the Coroners and Justice Act 2009). Together these clauses would:

- introduce a new offence of slavery, servitude and forced or compulsory labour which would be triable on indictment only;
- introduce a new consolidated offence of human trafficking which would also be triable on indictment only;
- define what constitutes exploitation, for the purposes of an offence of human trafficking; and
- introduce a new preparatory offence, of committing an offence with intent to commit a human trafficking or slavery-like offence.

12. Clauses 5 to 7 make provision in relation to the sentencing of offenders convicted of an offence under clauses 1 and 2 and will enhance the range of sentencing options available to the courts. Clause 5 specifies the new offences as serious offences under Schedule 1 to the Criminal Justice (Northern Ireland) Order 2008 and as violent or

⁴ A copy of the Committee's subsequent report, agreed on 10 April 2014 can be found at: <http://www.niassembly.gov.uk/Assembly-Business/Committees/Justice/Reports/Report-on-the-Human-Trafficking-and-Exploitation-Further-Provisions-and-Support-for-Victims-Bill-NIA-2611-15/>

sexual offences under Schedule 2 to that Order (as appropriate). This will allow the courts to hand down life sentences, indeterminate custodial sentences and extended custodial offences. Clause 6 sets out a range of aggravating factors which the courts must consider when passing a sentence for an offence of human trafficking or slavery, servitude and forced or compulsory labour. Clause 7 sets out that the courts must sentence adult offenders, who have been convicted of an offence of human trafficking or of slavery, servitude and forced or compulsory labour, to a minimum of two years in prison, unless exceptional circumstances apply.

13. Clauses 8 to 10 make provision for a range of orders that courts could impose upon conviction for a human trafficking or slavery-like offence. Clause 8 amends the Proceeds of Crime Act 2002 insofar as it relates to Northern Ireland to specify human trafficking and slavery-like offences as “criminal lifestyle offences”. This will improve the court’s ability to order the confiscation of criminal assets and so help to undermine the economic motivation that fuels the exploitation of people. Clause 9 introduces Schedule 1 to the Bill and makes provision for the forfeiture of a vehicle, ship or aircraft used, or intended for use, in connection with a human trafficking or slavery-like offence. Clause 10 introduces Schedule 2 to the Bill and makes provision for courts in Northern Ireland to order perpetrators of human trafficking or slavery-like offences to pay compensation to their victims.

14. Clauses 11 to 14 make provision in respect of prevention and enforcement relating to human trafficking and slavery-like offences. Clause 11 makes provision for the introduction of Slavery and Trafficking Prevention Orders, under Schedule 3 to the Bill, which would enable courts to restrict the behaviour of any individual convicted of a human trafficking or slavery like offence where it is considered necessary. Clause 12 requires the Department of Justice to publish an annual strategy to tackle human trafficking and slavery, servitude and forced or compulsory labour. Clause 13 is intended to enhance our understanding of the scale and nature of human trafficking and slavery-type practices in Northern Ireland by placing a duty on specified public authorities to notify the National Crime Agency of any suspected victims of these

offences. Clause 14 makes clear that the investigation and prosecution of relevant offences is not contingent upon a report by a victim or their co-operation in criminal proceedings.

Part 2

15. Clause 15 creates a new offence of purchasing sexual services to reduce demand for trafficked individuals and combat exploitation.
16. Clause 16 introduces a new offence of forced marriage.

Part 3

17. Clauses 17 to 21 make provision in respect of the assistance and support that is to be made available to victims and potential victims of human trafficking. Clause 17 sets out definitions for this part of the Bill.
18. Clause 18 places a statutory duty on the Department of Justice to provide assistance and support to adults who are potential victims of human trafficking, during a 45 day “recovery and reflection” period, pending determination of their status as victims by a competent authority. This is in line with the United Kingdom’s responsibilities under Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings (under which the United Kingdom has established a National Referral Mechanism for the identification of victims of human trafficking).
19. Clause 19 requires the Department for Health, Social Services and Public Safety to prepare and publish a strategy, in conjunction with other Northern Ireland Departments, which will provide a programme of assistance and support made available to a person who wishes to leave prostitution. Each Department will be responsible for delivering the aspects of the programme which fall within their remit.
20. Clause 20 requires the Department of Justice to produce guidance in respect of compensation for victims of human trafficking. Clause 21 makes provision for an independent guardian to be appointed for a child who is a victim, or a potential victim, of human trafficking, or who is determined to be a separated child.

Part 4

21. Clauses 22 to 24 are intended to protect victims of human trafficking and slavery-like offences in criminal investigations and proceedings.
22. Clause 22 creates a statutory defence for victims of human trafficking and slavery-like offences who have been compelled to commit certain other offences as a direct consequence of their trafficking or slavery situation. The defence would not apply in cases where the offence in question would attract a maximum sentence of five years or more. Clause 23 places a duty on the Chief Constable to ensure that, during an investigation of a human trafficking or slavery-like offence, the complainant receives specific treatment aimed at preventing secondary victimisation. Clause 24 amends the Criminal Evidence (Northern Ireland) Order 1999 to ensure that victims human trafficking and slavery-like offences are automatically eligible for special measures in court when giving evidence.

Part 5

23. Clauses 25 to 28 of the Bill make supplementary provision covering interpretation; amendments, repeals and consequential provision; orders; short title and commencement.

COMMENTARY ON CLAUSES

Clause 1: Slavery, servitude and forced or compulsory labour

Clause 1 creates a new offence of slavery, servitude and forced or compulsory labour which is intended to replace the equivalent existing offence under Section 71 of the Coroners and Justice Act 2009. It makes it an offence to knowingly hold another person in slavery or servitude or to knowingly require another person to perform forced or compulsory labour.

Subsection (2) defines what is meant by slavery, servitude and forced or compulsory labour by reference to Article 4 of the Human Rights Convention.

Subsections (3) and (4), taken together, provide that in determining whether a person is a victim of an offence under this clause regard may be had to that individual's personal circumstances and, in particular, to any circumstances which would make them more vulnerable than others to being exploited.

Subsection (5) clarifies that the victim's consent to any part of an offence under this clause is irrelevant. Subsection (6) makes offences of slavery, servitude and forced or compulsory labour in Northern Ireland triable on indictment only. This is in line with the arrangements for human trafficking offences in Northern Ireland under the Criminal Justice Act (Northern Ireland) 2013.

Clause 2: Human Trafficking

Clause 2 creates a new consolidated offence of human trafficking which is intended to replace the existing separate offences of human trafficking for the purposes of sexual exploitation and human trafficking for other forms of exploitation which are currently provided for under sections 57 to 59 of the Sexual Offences Act 2003 and Section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 respectively. This clause makes it an offence to arrange or facilitate the travel of another person with a view to them being exploited. The offence covers all kinds of exploitation, as defined under Clause 3 (Meaning of exploitation for purpose of clause 2).

Subsection (2) clarifies that arranging or facilitating travel may include transporting, transferring, harbouring or receiving the victim, or transferring or exchanging control over them.

Subsection (3) makes it clear that an offence has been committed whether the person intends to exploit the victim themselves or whether they know or ought to know that another person is likely to exploit them. Subsection (4) defines travel to mean entering into, departing from or traveling within any country. Subsection (5) ensures that a victim's consent to any act forming part of the offence is irrelevant.

Subsections (6), (7) and (8) taken together address the international dimension of human trafficking. In line with the existing offences of human trafficking, subsection (9) ensures that an offence under this clause is triable on indictment only.

Clause 3: Meaning of exploitation for purposes of Clause 2

Clause 3 defines exploitation for the purposes of a human trafficking offence under Clause 2.

Subsection (2) defines exploitation as including behaviour that would constitute an offence of slavery, servitude and forced or compulsory labour. Subsection (3) defines the range of sexual exploitation relevant to a human trafficking offence under Clause 2. It provides that a person is exploited if they are a victim of conduct that would constitute an offence under article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs of children) or any offence under the Sexual Offences (Northern Ireland) Order 2008 (sexual offences).

Subsection (4) defines relevant exploitation relating to organ removal or for the sale of human tissue and provides that a person is exploited in this way if they are encouraged, required or expected to do anything which involves the commission (either by them or by another person) of an offence under sections 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors). Equivalent conduct done outside Northern Ireland would also fall within the definition.

Subsection (5) defines exploitation as including subjecting a person to force, threats, abduction, coercion, fraud or deception in order to compel them to provide services of any kind, or to provide another person with benefits of any kind, or to enable another person to acquire benefits of any kind. Subsection (5)(c) clarifies that the term “benefits” under this subsection includes the proceeds of forced begging or of criminal activities.

Subsection (6) defines exploitation using or attempting to use a child, vulnerable adult, family member or a person who is subject to a position of trust to provide services or benefits of any kind, having chosen them on the grounds that they are a child or a vulnerable adult etc. and that a person who was not a child, vulnerable adult, etc. would be likely to refuse to be used for that purpose.

Clause 4: Committing offence with intent to commit an offence under Clause 1 or 2

Clause 4 makes it an offence to commit an offence with the intention of committing a slavery-like or human trafficking offence under Clauses 1 or 2. Clause 4 mirrors the effect of Article 66 of the Sexual Offences (Northern Ireland) Order 2008, which makes provision in respect of offences preparatory to relevant sexual offences, whilst also extending the “preparatory offence” provision to all slavery-like or human trafficking offences, not just those which are committed for the purposes of sexual exploitation. Such preparatory offences would include offences of aiding, abetting, counselling or procuring such a human trafficking or slavery-like offence.

Subsection (2) sets out that an offence under this Clause would ordinarily attract a maximum sentence of ten years on indictment or six months and/or a fine on summary conviction. However, subsection (3) provides that, where the offence is committed by kidnapping or false imprisonment, it would attract a maximum sentence of life imprisonment.

Clause 5: Offences to be “serious offences” for the purposes of sentencing

Clause 5 amends the Criminal Justice (Northern Ireland) Order 2008 relating to sentencing provision for human trafficking and slavery-like offences.

Subsection (2) amends Schedule 1 to the 2008 Order to specify offences of slavery, servitude and forced or compulsory labour and of human trafficking under Clauses 1 and 2 of the Bill respectively as serious offences for the purposes of sentencing dangerous offenders.

Subsection (3) amends Schedule 2 to the 2008 Order to specify human trafficking and slavery-like offences as violent offences under Part 1 of that Schedule and Subsection (4) amends Part 2 of Schedule 2 to specify human trafficking for sexual exploitation as a specified sexual offence for the purposes of sentencing dangerous offenders.

In doing so, Clause 5 brings these new offences under the ambit of the public protection sentencing framework provided for under Articles 13 and 14 of the 2008 Order so that, where the court considers it necessary for the purposes of public protection, it can impose a life sentence, an indeterminate custodial sentence or an extended custodial sentence. Individuals subject to such sentences would also be subject to the relevant release, license and recall arrangements.

Clause 6: Aggravating factors

Clause 6 sets out a list of factors that the court is required to treat as aggravating factors when considering the seriousness of a human trafficking or slavery-like offence, for the purposes of sentencing.

Clause 7: Minimum sentence for offence under clauses 1 or 2

Clause 7 sets out that the courts must sentence adult offenders convicted of an offence of human trafficking or slavery, servitude and forced or compulsory labour to a minimum of two years in prison (with or without a fine) unless exceptional circumstances apply. Subsections (3) and (4) require that if exceptional circumstances apply that justify either a lower sentence or a suspended sentence, the court must state these in open court and the reasons must be recorded by the Chief Clerk. Subsection (5) defines a custodial sentence as excluding a suspended sentence. Subsections (6) to (8) enact a number of consequential amendments to other legislation relating to the sentencing framework.

Clause 8: Confiscation of assets

Clause 8 amends Schedule 5 to the Proceeds of Crime Act 2002 (POCA) to specify offences of slavery, servitude and forced or compulsory labour and of human trafficking under Clauses 1 and 2 as criminal “lifestyle offences”.

POCA sets out a strict chronology for making confiscation orders and the question of whether a person has a criminal lifestyle is central to this legal process. If an individual is convicted of a lifestyle offence specified under POCA then the courts can find that they have obtained the benefit of “general criminal conduct” which then allows the court to undertake an enquiry beyond the normal statutory six year limitation period into all prior criminal activities. By specifying these offences as “lifestyle offences” Clause 8 will improve the courts’ ability to confiscate criminal assets and so help to undermine the economic motivation that fuels the exploitation of people.

Clause 9: Detention and forfeiture of certain vehicles, ships and aircraft

Clause 9 gives effect to Schedule 1 to the Bill, which makes provision to enable courts in Northern Ireland to order the forfeiture of land vehicles, ships or aircraft used or intended for use in connection with human trafficking or slavery-like offences under Clauses 1 and 2.

Schedule 1 also provides a power for the police to detain a relevant land vehicle, ship or aircraft, where there are reasonable grounds to believe that a court could order its forfeiture in the event of a conviction. These new powers replicate equivalent powers that already apply in respect of the existing offences of human trafficking whilst extending the powers so that they also apply in respect of slavery-like offences.

Clause 10: Slavery and trafficking reparation orders

Clause 10 gives effect to Schedule 2 to the Bill which makes provision for courts in Northern Ireland to be able to impose slavery and trafficking reparation orders, under which offenders convicted of a slavery-like or trafficking offence under Clauses 1, 2 or 4 of the Bill would be required by the courts to pay reparation to his or her victim.

Clause 11: Slavery and trafficking prevention orders

Clause 11 gives effect to Schedule 3 to the Bill which makes provision for courts to be able to impose new civil orders - slavery and trafficking prevention orders (STPOs)

- either upon sentencing, or following an application by the PSNI. STPOs are intended to protect the public from the harm caused by those involved in slavery and human trafficking by enabling the courts to respond swiftly by regulating the actions of those who have been convicted of these offences, where it is necessary to do so.

Clause 12: Strategy on offences under Clauses 1 or 2

Clause 12 requires the Department of Justice to publish an annual strategy to tackle human trafficking and slavery-like offences. Subsection (2) requires the Department, in drawing up the strategy to consult with other relevant organisations and have regard to the views that they express. Subsection (3) sets out the purpose of the strategy as being to raise awareness of relevant offences in Northern Ireland and to contribute to a reduction in the number of such offences. Subsection (4) requires the strategy to cover arrangements for multi-agency cooperation; the training and equipment of investigators or prosecutors; and provisions aimed at raising awareness of the rights and entitlements of the victims of these offences.

Clause 13: Duty to notify National Crime Agency about suspected victims of offences under section 1 or 2

Clause 13 places a duty on specified public authorities in Northern Ireland to notify the United Kingdom Human Trafficking Centre (UKHTC) which is part of the National Crime Agency (NC) where there is reason to believe that a person may be a victim of a human trafficking or slavery-like offence under Clauses 1 and 2.

Subsection (2) requires the Department of Justice to issue guidance about the signs and indicators that a person may be a victim of an offence under Clause 1 or 2. Subsection (3) provides a power for the Department of Justice to make regulations prescribing the information that must be included in a notification to the UKHTC under subsection (1).

Subsection (4) specifies that any regulations made by the Department must provide that where the suspected victim is 18 or over, any information included in a notification to UKHTC must be anonymised, unless the person has consented to the

inclusion of information that may identify them. In the case of child potential victims, this information can be provided without their consent. Subsection (5) sets out that regulations made under this clause cannot require the disclosure of information in contravention of the Data Protection Act 1998.

Subsection (6) provides an Order-making power for the Department of Justice to substitute the reference to the National Crime Agency with a reference to another body or person (to be specified in the Order). This provision is intended to future-proof the Bill against any possible changes to the national reporting structures. Subsection (7) provides a power for the Department of Justice to specify in regulations the public authorities to whom the duty applies.

Clause 14: Investigation and prosecution of offences under clause 1 or 2

Clause 14 clarifies that an investigation or prosecution of a human trafficking or slavery-like offence is not dependent on the victim reporting the offence or accusing a person of committing the offence.

Subsection (2) clarifies that proceedings for an offence under Clauses 1 or 2 may be commenced or continued even in cases where the victim of the offence has withdrawn their statement.

Clause 15: Paying for sexual services of a person

Clause 15 creates a new offence of paying for sexual services of a person. It is intended to reduce demand for individuals trafficked into sexual exploitation and to combat sexual exploitation. It amends various Articles of the Sexual Offences (Northern Ireland) Order 2008 and adds a duty in the Bill to raise public awareness of the new offence and report to the Assembly on the operation and impact of both the new offence and offences related to human trafficking.

Subsection (2) amends Article 58 so that the definition of payments does not apply to Article 64A.

Subsection (3) repeals the offence of loitering or soliciting for prostitution under Article 59.

Subsection (4) introduces a new Article 64A, so that:

- paragraph (1) makes it an offence to obtain sexual services from a person in exchange for payment (either made or promised), whether payment is made directly or through a third party, as long as the person obtaining the services knows or believes they have been paid for;
- paragraph (2) sets out the penalties for the offence;
- paragraph (3) defines payment;
- paragraph (4) provides that an offence can only occur when the two parties are physically present with each other and sexual touching occurs, or, when the person providing the sexual services touches himself or herself in a sexual manner for the sexual gratification of the purchaser and the two parties are physically present with each other;
- paragraph (5) ensures that the person who is selling sex is not guilty of aiding and abetting, counselling or procuring this offence, conspiracy to commit the offence, or encouraging or assisting the commission of the offence;

Subsection (5) requires the Department of Justice to raise public awareness of the change to the law in subsection (4) before it comes into operation;

Subsection (6) requires the Department of Justice to collect data to review the operation of the offence and assess its impact on the safety and well-being of persons selling sexual services, and on the extent to which it has reduced human trafficking for sexual exploitation. It also requires the Department to collect data to review the operation of the offences at sections 2 and 4.

Clause 16: Offence of forced marriage

Clause 16 makes provision for forced marriage to be a criminal offence in Northern Ireland.

Subsection (1) provides that it is an offence for a person to use violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage without his or her free and full consent.

Subsection (2) provides that the conduct which is prohibited under subsection (1) may be directed at the victim of the offence or another person. This will ensure that threats against wider family members or loved ones are also covered.

Subsection (3) provides that, if, due to a mental disorder, the victim lacks the capacity to consent, the offence in subsection (1) will be committed by any conduct which is intended to cause the victim to marry, whether or not it amounts to violence, threats or any other form of coercion.

In accordance with subsection (4) “marriage” will include any religious or civil ceremony of marriage recognised by the customs of the parties to it or the laws of any country in which it is carried out, whether or not it would be legally binding according to the law of Northern Ireland. Subsection (4) also provides that the term “mental disorder” is to be interpreted in accordance with the Mental Health (Northern Ireland) Order 1986.

Subsection (5) provides that it is an offence to practise any form of deception which is designed to cause another person to leave the United Kingdom (“UK”) to travel to another country and be subjected to conduct that is an offence under subsection (1) or would be such an offence if the victim were in Northern Ireland.

Subsection (6) establishes when the courts in Northern Ireland will have jurisdiction. If the acts which are prohibited by subsections (1) or (5) are carried out outside Northern Ireland by a UK national or a person who is habitually resident in Northern Ireland or against a UK national or person habitually resident in Northern Ireland, they will constitute an offence under domestic law and will be triable in Northern Ireland. “UK national” is defined in Clause 27.

Subsection (7) sets out the maximum penalties for the new offences in subsection (1) and (5). On summary conviction the maximum penalty is a fine not exceeding the statutory maximum and/or imprisonment for up to six months. On conviction on indictment the maximum penalty is imprisonment for seven years.

Clause 17: Interpretation of this part

Clause 17 sets out definitions relevant to Part 3 of the Bill.

Subsection (1) provides a definition of the term “conclusive determination” by reference to the identification process under the National Referral Mechanism (NRM), as required by Article 10 of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. Subsection (2) includes definitions of the term “competent authority” and of “trafficking in human beings.”

Clause 18: Assistance and support pending determination by competent authority

Clause 18 places a statutory duty on the Department of Justice to provide assistance and support to adult potential victims of human trafficking in accordance with the provisions set out in the remainder of the clause.

Subsection (2) establishes who is eligible for support and assistance under Clause 18 with the effect that assistance and support is to be made available to persons aged 18 or over (or, in a case where the age is uncertain, where there is a reasonable belief that the person is aged 18 or over) and who have been referred, or who are about to be referred into the NRM for a conclusive determination as to whether they are a victim of human trafficking.

Subsection (3) provides that assistance and support should continue to be provided until either:

- there is a determination that there are not reasonable grounds to believe the individual is a victim of trafficking; or

- that there is a conclusive determination, either way, about whether the person is or is not a victim of trafficking.

In cases where a positive conclusive determination is reached (ie, that the person has been trafficked) subsections (3) and (4) would require the Department to continue to provide support until the end of a 45 day period (the NRM's "Recovery and Reflection Period").

Subsections (5) and (6) make provision about how the support under this clause is to be provided, including that it:

- must not be conditional on a person acting as a witness in criminal proceedings;
- must be dependent on the agreement of the person;
- must be provided in a manner that takes due account of the needs of the person as regards safety and protection from harm;
- must be provided to meet the assessed needs of that person; and
- must be offered from a person of the same gender as the person receiving it.

Subsection (7) makes provision in respect of the types of assistance and support that should be provided under the clause, according to assessed need and sets out a non-exhaustive list which includes:

- appropriate and safe accommodation;
- material assistance;
- assistance in obtaining healthcare services;
- appropriate information;
- translation and interpretation services;
- assistance in obtaining legal advice or representation; and
- assistance with repatriation.

Subsection (8) provides a discretionary power to enable the Department to continue to provide support to potential victims in specific cases where an individual is relocated to another jurisdiction on the advice of the PSNI (for example, because of concerns

about their personal safety or security if they were to remain in Northern Ireland). Subsection (9) provides a further discretionary power which would ensure that the Department is able to continue to provide support to an individual beyond the point where a Conclusive Determination is made, where that is considered necessary.

Subsection (10) clarifies that the requirements and powers specific to the Department of Justice under Clause 18 do not affect the individual's other existing rights to assistance from other Departments or agencies.

Clause 19: Assistance and support for exiting prostitution

Clause 19 makes provision in respect of assistance and support for individuals wishing to leave prostitution.

Subsection (1) requires the Department for Health, Social Services and Public Safety (DHSSPS) to prepare and publish a strategy, in conjunction with other Northern Ireland Departments, which will provide a programme of assistance and support made available to a person who wishes to leave prostitution. Each Department will be responsible for delivering the aspects of the programme which fall within their remit.

Subsection (2) requires the strategy to be published within 10 months of Royal Assent, and the programme to be in place on or before 1 April 2016.

Subsection (3) makes provision about how the support under this section is to be provided to the person, including that it:

- is not conditional on a person acting as a witness;
- shall be provided on the agreement of the person; and
- shall take due account of the needs of the person as regards safety and protection from harm.

Subsection (4) states that the assistance and support must be offered from a person of the same gender as the person who is wishing to exit prostitution.

Subsection (5) requires DHSSPS to review the strategy in conjunction with other Departments at least once every three years. This allows for more frequent review if necessary to reflect learning during the initial years of the programme.

Subsection (6) clarifies that the strategy and programme of support under this clause does not affect the individual's other existing rights to assistance. Subsection (7) defines prostitution.

Clause 20: Guidance as to compensation for victims

Clause 20 requires the Department of Justice to issue guidance setting out the procedures to be followed by a person who has received a positive conclusive determination that they are a victim of human trafficking, to enable them to apply for compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 2002. The guidance will also set out the grounds on which compensation may be awarded under that Order and the arrangements available to assist and support such a person in applying for compensation.

Clause 21: Independent guardian

The purpose of clause 21 is to provide for an Independent Guardian to be appointed for a child who is a victim, or a potential victim, of human trafficking, or who is determined to be a separated child.

Subsection (1) conveys a duty on the Regional Health and Social Care Board (HSCB) to make arrangements for the provision of an Independent Guardian to assist, represent and support a child to whom the Section applies.

Under subsection (2) a child will become eligible for an Independent Guardian as soon as a referral has been made, or is about to be made, to the National Referral Mechanism. This ensures that the Independent Guardian will be appointed at the earliest opportunity, provided there is no-one else available to effectively exercise parental responsibility over them (this complies with Article 10(4)(a) of the European Convention on Action against Trafficking in Human Beings, in respect of Child

Trafficking Guardians (CTG), which states that the CTG should be appointed “as soon as an unaccompanied child is identified as a victim”). Eligibility for a CTG under subsection (2) does not end until any judicial review proceedings against a negative conclusive determination are completed.

Subsection (3) provides that a child also becomes eligible for an Independent Guardian if it appears to the HSCB that they are a ‘separated child’, as defined in subsection (11). The HSCB has developed guidance in relation to separated children in conjunction with other organisations, including the Health and Social Care Trusts, Border Force, PSNI, UKVI and VOYPIC. The current document, ‘Pathway for Safeguarding and Promoting the Welfare of Separated / Unaccompanied Children’, which is under review, is intended to assist the HSCB staff in their determination of whether there is reason to believe that a child is ‘separated’.

Subsection (4) outlines the arrangements to be made by the HSCB, as referred to in subsection (1). The arrangements will be made with a registered charity, which will appoint an Independent Guardian to each eligible child. Guardians must be employees of that charity, and meet the qualification and training requirements set out in Regulations under subsection (5).

The Independent Guardian will only be appointed where there is no-one available to effectively exercise parental responsibility for the child. This does not include parental responsibility conferred by a Care Order, to ensure the Independent Guardian can be in place if necessary when an HSC Trust holds parental responsibility for the child. The role of the Independent Guardian will continue as long as the child’s individual circumstances require it. Termination of the role takes place when the child is no longer one to whom the clause applies, that is:

- where it has been confirmed they are not a victim of human trafficking and, if appropriate, any judicial review of this decision is completed;
- where the person(s) who has parental responsibility for them becomes able to exercise it;

- when they turn 18 (or, via subsection (11), when they turn 21 subject to the consent of the young person for the arrangement to continue when they enter adulthood); and
- where the HSCB, after consulting with the Independent Guardian, believes the Independent Guardian is no longer needed because long-term arrangements have been made for the child.

Subsection (5) requires the Department to make regulations to outline the training and qualifications which an Independent Guardian must hold, and the support and supervision which must be in place for them. These regulations will be subject to negative resolution. Subsection (6) requires the Independent Guardian to always act in the best interests of the child.

Subsection (7) contains the specific functions of the Independent Guardian, which are crafted to ensure that duplication does not occur between organisations or individuals who have existing statutory duties in relation to the child, for example the Guardian Ad Litem or a Health and Social Care Trust. Among other functions, subsection (6)(b)(ii) provides for representations to be made on behalf of the child to any body or person responsible for making decisions in relation to the child, including any court or tribunal with whom the child engages. The role will allow the Independent Guardian to obtain legal advice, assistance and representation on behalf of the child and, where necessary, appoint and instruct the child's legal representatives. The Independent Guardian will provide a physical presence with the child where necessary, and provide a link between the child and any services they receive.

Subsection (8) requires those providing services to the child, or making administrative decisions with respect to the child, to pay due regard to the functions of the Independent Guardian and, where legally permitted, provide them with information relating to the child. Information could include any physical documents or any electronically held information required to enable the Independent Guardian to carry out their functions effectively.

Subsection (9) allows the Department to add to the functions of the Independent Guardian by means of regulations. These regulations will be subject to affirmative resolution.

Subsection (10) allows for the Independent Guardian role to continue for a young person between the ages of 18-21 provided they consent to this.

Subsection (11) provides the necessary definitions for this section. The definition of “administrative decision” is required to ensure subsection (8) does not impact on the independence of the judiciary. The definition of parental responsibility ensures that an Independent Guardian can be put in place for a child which is subject to a Care Order. The definition for a separated child ensures that an Independent Guardian can be appointed for a child who has come to Northern Ireland and has been separated from both parents or from their legal or customary care givers, and may be at risk of harm because of that separation. This harm could include, but is not limited to, a risk of harm from abuse, exploitation or neglect. The definition also ensures those children who are in Northern Ireland in the company of adults who are not their parents or caregiver and are at no risk of harm, such as those on a school trip, do not come within scope of the Section unnecessarily.

Subsection (12) clarifies that a reference to a Guardian in other statutory provisions is not a reference to the Independent Guardian from this Section. This ensures there is no confusion over the roles of other statutory guardians due to this provision.

Clause 22: Defence for slavery and trafficking victims compelled to commit an offence

Clause 22 creates a statutory defence for victims of human trafficking and slavery-like offences who have been compelled to commit certain offences. The defence under Clause 22 does not apply in respect of more serious offences.

Subsection (1) specifies that an adult is not guilty of an offence where they have been compelled to commit it and the compulsion is attributable to slavery or to relevant

exploitation and where a reasonable person in the same situation (and having the person's relevant characteristics) would have no realistic alternative but to commit the same offence. Subsection (2) defines "relevant characteristics" for the purposes of subsection (1) as meaning age, sex and any physical or mental illness or disability. Subsection (3) clarifies that a person may be compelled to do something either by another person or by circumstances.

Subsection (4) sets out the circumstances in which compulsion is attributable to slavery or relevant exploitation as being where the compulsion is, or is part of, conduct which constitutes an offence of slavery, servitude and forced or compulsory labour or conduct which constitutes "relevant exploitation" (as defined in Clause 3 of the Bill), or where the compulsion arises as a direct consequence of the person being, or having been, a victim of a slavery-like offence or of relevant exploitation.

Subsections (6) and (7) make separate provision for victims who are children with the effect that a victim who was a child at the time when the offence took place would be able to use the defence where the offence was committed as a direct consequence of being a victim of a slavery-like offence or of "relevant exploitation" (as defined by subsections (1) to (5) of Clause 3). This would mean that a child who had been, for example, subjected to force, deception, fraud etc. would not need to show that a "reasonable person" in the same situation would have had no realistic alternative to doing the same criminal act. This is consistent with the special position of children within the criminal justice system, in line with the UN Convention on the Rights of the Child.

Subsection (8) clarifies that references within this clause to "an act" include "an omission". Subsection (9) sets out that the defence under Clause 22 (whether for adults or children) only applies to offences which attract a maximum sentence of less than five years, as well as to a small number of additional specified offences which are particularly linked with trafficking and exploitation.

Subsection 10 provides an Order-making power for the Department of Justice to amend subsection (9).

Clause 23: Protection of slavery and trafficking victims in criminal investigations

Clause 23 makes provision aimed at ensuring greater protections for victims of slavery-like offences and human trafficking during police interviews in the course of criminal investigations.

Subsection (1)(a) places an duty on the Chief Constable to ensure that, during the investigation of a human trafficking or slavery-like offence, the complainant receives specific treatment aimed at preventing secondary victimisation by avoiding, so far as possible:

- unnecessary repetition of interviews;
- visual contact between the complainant and the accused, using appropriate means including communication technology;
- unnecessary questioning concerning the complainant's private life.

Subsection (1)(b) makes separate provision in respect of the additional where the complainant is a child. These include a duty on the Chief Constable to ensure that:

- interviews with the complainant take place without unjustified delay;
- interviews take place, where necessary, in premises designed or adapted for the purpose;
- interviews with the complainant are carried out by or through persons trained for the purpose;
- if possible and where appropriate, the same persons conduct all the interviews with the complainant;
- the number of interviews with the complainant is as limited as possible and interviews are carried out only where strictly necessary for the purposes of the investigation;
- the victim may be accompanied by an adult of the complainant's choice (unless the police officer in charge takes a reasoned decision to the contrary).

Subsection (2) defines what is meant by the words “the accused” and “complainant”.

Clause 24: Special measures: amendments to the Criminal Evidence (Northern Ireland) Order 1999

Clause 24 amends the Criminal Evidence (Northern Ireland) Order 1999 to ensure that victims of offences under Clause 1 and 2, as well as any victims of the existing human trafficking and slavery offences (where those cases may still be, or may be yet to come before the courts) would be automatically eligible for special measures when giving evidence in court.

Subsection (1) amends Article 3 of the 1999 Order and defines that “a slavery or human trafficking offence” for the purposes of the 1999 Order includes both the new offences introduced under Clauses 1 and 2 of this Bill as well as existing offences of human trafficking and of slavery, servitude and forced or compulsory labour.

Subsection (2) amends Article 5(4) (witnesses eligible for assistance on grounds of fear or distress about testifying) of the 1999 Order to ensure that the complainant of a slavery or human trafficking offence is eligible for assistance in relation to those proceedings, unless they have informed the court that they do not wish to be eligible for such assistance.

Subsection (3) amends Article 13(4)(a) of the 1999 Order (evidence given in private) to ensure that where proceedings relate to a slavery or human trafficking offence a special measures direction may provide for the exclusion of persons from court when the witness is giving evidence.

Subsection (4) amends Article 21 of the 1999 Order (interpretation etc. of Part 2) to ensure that the complainant in respect of a slavery or human trafficking offence, will be presumed to be under the age of 18 if their age is uncertain and there are reasons to believe that they are under the age of 18.

Subsection (5) amends Article 22 of the 1999 Order (complainants in proceedings for sexual offences) to ensure that an individual who is charged with a slavery or human

trafficking offence may not cross-examine the complainant in person, either in connection with that offence or with any other offence (of whatever nature) with which that person is charged in the proceedings.

Subsection (6) amends Article 23 of the 1999 Order (child complainants and other child witnesses) to add slavery or human trafficking offences to the list of offences to which that article applies. Subsection (7) makes supplementary provision.

Clause 25: Interpretation

Clause 25 makes general interpretation provisions in respect of the terms included in the Bill.

Clause 26: Amendments, repeals and consequential provision

Clause 26 gives effect to Schedules 4 and 5 which set out consequential amendments and repeals, respectively.

Clause 27: Orders

Clause 27 makes provision in respect of the Order-making and regulatory powers provided for under the Bill. Subsection (1) provides that Orders and regulations made under the Bill will be subject to negative resolution, except where otherwise specified in subsections (2) to (5).

Clause 28: Short title and commencement

Clause 28 sets out the Bill's short title and provides for commencement by Order.

Schedule 1: Detention and forfeiture of certain vehicles, ships and aircraft

Schedule 1 to the Bill provides a power for the court to order the forfeiture of land vehicles, ships or aircraft that were used or intended for use in connection with human trafficking or slavery-like offences. Paragraph 2 makes provision for the police to detain a land vehicle, ship or aircraft that is believed to have been used or intended for use in connection with a human trafficking or slavery-like offence, where there were

reasonable grounds to believe that a court could order its forfeiture, in the event of a conviction for that offence.

Schedule 2: Slavery and trafficking reparation orders

Schedule 2 to the Bill provides a power for the Crown Court to impose a slavery and trafficking reparation order under which an offender convicted of a slavery-like or human trafficking offence would be required to pay reparation to his or her victim. Paragraph 1 sets out the circumstances in which a slavery and trafficking reparation order may be made and sub-paragraph (7) places a duty on the court consider whether to make such an order where it has the power to do so and to give reasons where it has determined not to do so.

Paragraphs 2 and 3 of Schedule 2 set out the effect of a reparation order and make supplementary provision, including in respect of variations and appeals.

Schedule 3: Slavery and trafficking prevention orders

Schedule 3 to the Bill makes provision for courts to be able to impose new slavery and trafficking prevention orders (STPOs) either upon sentencing for a slavery-like or human trafficking offence, or following an application by the PSNI. The policy intent is to protect the public from the harm caused by those involved in slavery and human trafficking by enabling the courts to respond swiftly by regulating the actions of those who have been convicted of these offences, where it is necessary to do so.

Part 1 of Schedule 3 provides a power for courts to impose STPOs and interim STPOs and makes provision in respect of their effect. Paragraph 1 sets out that an STPO may be imposed where the defendant is convicted of a slavery or human trafficking offence; where there is a finding that the defendant is not guilty by reason of insanity; or where there is a finding that they are unfit to plead, but have done the act charged against them. A child may not be subject to an STPO. Subparagraph (2) sets out that the court may only make an STPO if it is satisfied that there is a risk that the defendant will commit a slavery or trafficking offence and that the order is necessary to protect the public or particular individuals from likely physical or psychological

harm if that offence were to be committed. Subparagraphs (3) and (4) set out the list of qualifying offences that may trigger an STPO and provide an order making power for the Department of Justice to amend this list.

Paragraph 2 makes provision for an STPO or interim STPO to be made following an application by the Chief Constable in cases where the defendant has a previous conviction or caution for a relevant human trafficking or slavery offence (or where there has been a finding that they were not guilty by reason of insanity or unfit to plead) and where their subsequent behaviour gives rise to a risk that they may commit a human trafficking or slavery offence and that the order is necessary to protect the public or particular individuals from harm. Paragraph 3 defines the term “relevant offender” for the purposes of Paragraph 2.

Paragraph 4 makes provision regarding the effect of an STPO, specifying that it may prohibit or require the defendant from doing anything described in the order, where the court is satisfied that a prohibition or requirement is necessary to protect the public or particular persons. A prohibition contained in an STPO would last for a fixed period of at least five years, or until further notice. Paragraph 5 makes provision in respect of prohibitions on foreign travel.

Paragraphs 6, 7 and 8 include provisions in respect of the variation, renewal or discharge of an order, interim orders and appeals.

Part 2 of Schedule 3 sets out the notification requirements that a person subject to an STPO must adhere to, including the information to be provided to the police in respect of their personal details, addresses, national insurance number and any travel plans within or outside the United Kingdom. These notification requirements are necessary in order to facilitate the enforcement of orders across United Kingdom jurisdictions.

Part 3 of Schedule 3 makes supplementary provision, including setting out that any breach of an STPO or of a notification requirement under an STPO is a criminal

offence, attracting a sentence of up to five years on indictment or six months and / or a fine on summary conviction.

FINANCIAL EFFECTS OF THE BILL

24. A number of the justice proposals would have some financial impact which would be met from within the Department of Justice's budget:

- (i) Proposals relating to sentencing could attract some cost in respect of the license and supervision arrangements although we have seen only a small number of cases (three trafficking convictions so far in Northern Ireland courts) and that is unlikely to change significantly. Management of licenses is carried out by a number of agencies working together under the Public Protection Arrangements Northern Ireland (PPANI). Costs for medium risk PPANI cases are relatively low, at less than £1000 per annum. There would also be some costs to the Probation Board for Northern Ireland related to the supervision of licences;
- (ii) There would be some costs linked to the management of Slavery and Trafficking Prevention Orders, although again, given the low number of cases in Northern Ireland, and since these orders would only apply where a person had a previous conviction for a slavery or trafficking offence, the Department of Justice does not anticipate a high number of these orders being made. By way of example, the average cost of obtaining a Sexual Offences Prevention Order is £3670 and supervision / administration costs run to less than £1000 per annum.

25. The financial implications of the new offence of forced marriage is likely to be minimal, as this will introduce targeted offences in place of existing general offences which may be called on at present.

26. In regard to provision for Independent Guardians, the Department for Health, Social Services and Public Safety has advised that it will meet any financial implications in relation to clause 21.

HUMAN RIGHTS ISSUES

27. The provisions of the Bill are, in the Sponsor's view, compatible with the provisions of the Human Rights Act 1998. The Bill takes particular account of the rights of the child. The proposals would assist law enforcement in the fight against slavery and human trafficking; offer greater protections to the public against perpetrators; and enhance the support and protections that are available to victims and potential victims. In addition, they would deliver robust oversight arrangements focussed on improving our effectiveness and sharing of best practice.
28. Having conducted screening assessments the sponsor and the Department of Justice are satisfied that a full Equality Impact Assessment is not required.

LEGISLATIVE COMPETENCE

29. The sponsor of the Bill, The Lord Morrow of Clogher Valley, has made the following statement under Standing Order 30:
- "In my view the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Bill would be within the legislative competence of the Northern Ireland Assembly."*