

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

[AS INTRODUCED]

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TO

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

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

PART 1

OFFENCES

Definition of human trafficking and slavery offences

1. In this Act—

- 5 (a) a “human trafficking offence” means—
- (i) an offence under sections 57 to 59 of the Sexual Offences Act 2003 (trafficking people for sexual exploitation), or
 - (ii) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation).
- 10 (b) a “slavery offence” means an offence under section 71 of the Coroners and Justice Act 2009 (slavery, servitude and forced or compulsory labour).

Consent irrelevant for victim of human trafficking or slavery offences

2.—(1) The consent of a victim to any action related to being a victim of a human trafficking offence or a slavery offence shall be irrelevant where the victim
15 has agreed to an action because of—

- (a) threats, the use of force or other forms of coercion,
- (b) abduction,
- (c) fraud,
- (d) deception,

20 (e) the abuse of power or of a position of vulnerability,

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- (f) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or
- (g) the victim was a child when the offence took place.

5 (2) For the purposes of this section and section 8, “a position of vulnerability” occurs when the person has no real or acceptable alternative but to submit to the abuse involved.

Aggravating factors

10 **3.**—(1) Where a court is considering for the purposes of sentencing the seriousness of a human trafficking offence or a slavery offence, the court must treat the following as aggravating factors—

- (a) the offence was committed by a public official in relation to the performance of her or his duties;
- (b) the offence was committed by a family member of the victim;
- (c) the offence was committed by a person in a position of trust;
- 15 (d) the offence was committed against a victim who was a child;
- (e) the offence was committed against a vulnerable adult;
- (f) the offence was committed by the use of threats against the victim’s family;
- (g) the offence deliberately or by gross negligence endangered the life of the victim;
- 20 (h) the offence was committed by use of serious violence or caused serious harm to the victim; or
- (i) the offence was committed by a person who has previously been convicted of a human trafficking or slavery offence.

25 (2) In this section—

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

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

30 “vulnerable adult” means a person aged 18 years or over who is, or may be, in need of community care services or is resident in a continuing care facility by reason of mental or other disability, age or illness or who is, or may be, unable to take care of him or herself or unable to protect him or herself against significant harm or exploitation.

35 **Minimum sentence for human trafficking and slavery offences**

4.—(1) This section applies where an individual is convicted of a human trafficking offence or a slavery offence.

40 (2) The court shall impose a custodial sentence for a term of at least two years (with or without a fine) unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

(3) This section applies only to offences committed after the commencement of this section.

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

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

- (a) in subsection (4)(c) after “threats” insert “, other forms of coercion, abduction, fraud”;
- 10 (b) in subsection (4)(d)(i) after “young” insert “, is subject to a position of trust relationship with a person”;
- (c) in subsection (4)(d)(ii)—
 - (i) after “youth” insert “, position of trust”;
 - (ii) after “purpose” insert “or”;
- (d) after subsection (4)(d) insert—
 - 15 “(e) another person is given or receives payments or benefits to achieve the consent of him for any purpose within paragraph (c)(i), (ii) or (iii).”;
- (e) after subsection (4B) insert—
 - 20 “(4C) For the purposes of this section—
 - (a) “services” or “benefits of any kind” can include forced begging or criminal activities;
 - (b) “position of trust” has the same meaning as in Article 29 of the Sexual Offences (Northern Ireland) Order 2008.”

Paying for sexual services of a person

25 **6.—**(1) The Sexual Offences (Northern Ireland) Order 2008 is amended as follows.

(2) For Article 64A (Paying for sexual services of a prostitute subjected to force etc.) substitute—

“64A Paying for sexual services of a person

- 30 (1) A person (A) commits an offence if A obtains sexual services from a person (B) over the age of 18 in exchange for payment—
 - (a) if the payment is made or promised by A; or
 - (b) if the payment is made or promised by a third party.
- (2) Person A guilty of an offence under this article is liable—
 - 35 (a) on summary conviction to a fine not exceeding level 3 on the standard scale;
 - (b) to imprisonment for a term not exceeding one year or a fine not exceeding the statutory maximum, or both.
- (3) In paragraph (1), “payment” means any financial advantage,
40 including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

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(4) For the avoidance of doubt, person B is not guilty of aiding, abetting or counselling the commission of an offence under this article.

(5) Within the first year of this offence coming into effect, the Department must raise awareness of this offence.

5 (6) The Department shall collect data to review the operation of this offence and report to the Assembly after this offence has been in effect for three years.”.

Investigation and prosecution

Requirements and resources for investigation or prosecution

10 7.—(1) It shall be a requirement that the Department shall take the necessary measures to ensure—

(a) persons, units or services responsible for investigating or prosecuting a human trafficking offence or a slavery offence are trained accordingly; and

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

20 (2) The investigation or prosecution of a human trafficking offence or a slavery offence shall not be dependent on reporting or accusation by a victim wherever the offence takes place.

(3) Any criminal proceedings for a human trafficking offence or a slavery offence may continue even if the victim has withdrawn his or her statement.

Non prosecution of victims of trafficking in human beings

25 8. Where the victim (A) has committed a criminal act as a direct consequence of the trafficking in human beings, no prosecution or imposition of penalties shall occur if—

(a) A has been compelled to commit the criminal act as a direct consequence of being subjected to—

30 (i) threats, the use of force or other forms of coercion,

(ii) abduction,

(iii) fraud,

(iv) deception,

(v) the abuse of power or of a position of vulnerability, or

35 (vi) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; or

(b) A was a child.

PART 2

ASSISTANCE AND SUPPORT

Victim of trafficking in human beings

5 9.—(1) In this Part and Part 3, a “victim” means a person who shall be treated as a victim of human trafficking if there are reasonable grounds to believe that the individual is such a victim and there has not been a conclusive determination that the individual is not such a victim.

10 (2) For the purposes of subsection (1) there are reasonable grounds to believe that an individual is a victim of trafficking in human beings if a competent authority has determined for the purposes of Article 10 of the Trafficking Convention (identification of victims) that there are such grounds.

15 (3) For the purposes of subsection (1) there is a conclusive determination that an individual is or is not a victim of trafficking in human beings when, on completion of the identification process required by Article 10 of the Trafficking Convention, a competent authority concludes that the individual is or is not such a victim.

(4) In this Part and Part 3—

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

20 “the accused” means a person who is alleged to have committed, or has committed, a human trafficking offence;

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

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

Requirements for assistance and support

10.—(1) The Department of Justice and the Department of Health, Social Services and Public Safety must ensure that—

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

(b) assistance and support provided under this section—

35 (i) shall be provided to the family of a child identified as a victim if they are resident in Northern Ireland if and only if they are not suspected to have committed a human trafficking offence;

(ii) is not conditional on the person’s willingness to act as a witness;

(iii) shall be provided with the agreement of the person;

40 (iv) shall take due account of the victim’s safety and protection needs, including being offered assistance from a person of the same gender; and

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(v) shall be provided to assist victims in their physical, psychological and social recovery.

(2) Notwithstanding entitlements under existing statute, for the purpose of this section, “assistance and support” shall include but not be restricted to—

- 5 (a) appropriate and safe accommodation;
- (b) material assistance, including for a person with special needs caused by pregnancy, physical or mental health, disability, or being the victim of serious psychological, physical or sexual violence;
- (c) medical treatment, including psychological assistance;
- 10 (d) counselling;
- (e) information, including on a reflection and recovery period, the possibility of granting international protection and refugee status;
- (f) translation and interpretation services;
- (g) access to education for child victims;
- 15 (h) access to education for children of victims;
- (i) legal counselling, either through legal aid or other means; and
- (j) legal representation, either through legal aid or other means.

Compensation for victims of trafficking

11. The Department shall, by order, set out—

- 20 (a) the procedures to be adopted whereby a person shall be able to apply for compensation if he or she has been determined to be a victim; and
- (b) the arrangements to be made to provide assistance and support to a person—
 - (i) applying for compensation;
 - 25 (ii) seeking leave to remain in order to claim compensation.

Child trafficking guardian

12.—(1) It shall be a requirement that each child who might be a victim of trafficking in human beings shall have a child trafficking guardian appointed to represent the best interests of that child if the person who has parental responsibility fulfils any of the conditions set out in subsection (3).

- (2) The child trafficking guardian shall have the following responsibilities to—
 - (a) advocate that all decisions taken are in the child’s best interest;
 - (b) advocate for the child to receive appropriate care, accommodation, medical treatment, including psychological assistance, education, translation and interpretation services;
 - 35 (c) advocate for the child’s access to legal and other representation where necessary;
 - (d) consult with, advise and keep the child victim informed of legal rights;
 - (e) contribute to identification of a plan to safeguard and promote the long-term welfare of the child based on an individual assessment of that child’s best interests;
 - 40

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- (f) keep the child informed of all relevant immigration, criminal or compensation proceedings;
 - (g) provide a link between the child and various organisations who may provide services to the child;
 - 5 (h) assist in establishing contact with the child’s family, where the child so wishes and it is in the child’s best interests;
 - (i) liaise with the UK Border Agency where appropriate;
 - (j) attend all police interviews with the child; and
 - (k) accompany the child whenever the child moves to new accommodation.
- 10 (3) Subsection (1) shall apply if the person who has parental responsibility for the child—
- (a) is suspected of taking part in the trafficking of human beings;
 - (b) has another conflict of interest with the child;
 - (c) is not in contact with the child; or
 - 15 (d) is in a country outside the United Kingdom.
- (4) In subsection (1), a child trafficking guardian may be—
- (a) an employee of a statutory body;
 - (b) an employee of a recognised charitable organisation; or
 - (c) a volunteer for a recognised charitable organisation.
- 20 (5) Where a child trafficking guardian is appointed under subsection (1), it shall be a requirement that any relevant agency recognises the authority of the child trafficking guardian in relation to the child.
- (6) In subsection (5), a “relevant agency” means a person or organisation—
- (a) which provides services to the child; or
 - 25 (b) to which the child needs access in relation to being a victim.
- (7) The Department of Health, Social Services and Public Safety—
- (a) shall by order set out the arrangements for the appointment of a child trafficking guardian as soon as possible after identification of a trafficked child;
 - 30 (b) may make rules about the training courses to be completed before a person may exercise functions as a child trafficking guardian; and
 - (c) shall by order designate organisations as a “recognised charitable organisation” for the purpose of this section.
- 35 (8) In this section “parental responsibility” has the same meaning as in Article 6 of the Children (Northern Ireland) Order 1995.

PART 3

PROTECTION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN
CRIMINAL INVESTIGATION AND PROCEEDINGS

Protection of victims in criminal investigations

5 **13.** Without prejudice to the rights of the accused, and in accordance with an individualised assessment of the personal circumstances of the victim, the chief officer of police shall ensure that during an investigation of a human trafficking offence—

- 10 (a) the victim receives specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible—
- (i) unnecessary repetition of interviews;
 - (ii) visual contact between the victim and the accused, using appropriate means including communication technologies;
 - (iii) unnecessary questioning concerning the victim’s private life.
- 15 (b) In addition to (a) if the victim is under the age of 18—
- (i) interviews with the victim take place without unjustified delay after the facts have been reported;
 - (ii) interviews with the victim take place, where necessary, in premises designed or adapted for the purpose;
 - 20 (iii) interviews with the victim are carried out, where necessary, by or through professionals trained for the purpose;
 - (iv) if possible and where appropriate, the same persons conduct all the interviews with the victim;
 - (v) the number of interviews with the victim is as limited as possible and
25 interviews are carried out only where strictly necessary for the purposes of the investigation;
 - (vi) the victim may be accompanied by an adult of the victim’s choice, unless a reasoned decision has been made to the contrary in respect of that adult.

30 **Amendments to the Criminal Evidence (Northern Ireland) Order 1999**

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

- 35 (a) In Article 5(4) (witnesses eligible for assistance on grounds of fear or distress about testifying), after the words “sexual offence”, insert “or any offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004”;
- (b) In Article 13(4)(a) (evidence given in private), after the words “sexual offence”, insert “or any offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004”;
- 40 (c) In Article 21 (interpretation etc. of Part II), after paragraph (4) insert—

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“(5) For the purposes of this Part as it applies in relation to a witness who is the victim in respect of a human trafficking offence, where the age of the witness is uncertain and there are reasons to believe that the witness is under the age of 18, that witness is presumed to be under the age of 18.

- 5 (6) In paragraph (5) “human trafficking offence” means—
- (a) an offence under sections 57 to 59 of the Sexual Offences Act 2003;
 - (b) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.”.
- 10 (d) In Article 22 (victims in proceedings for sexual offences), after the words “sexual offence”, insert “or any offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for labour and other exploitation)”;
- (e) In Article 23 (child victims and other child witnesses)—
- 15 (i) in paragraph (3), after sub-paragraph (cc) insert—
- “(cd) any offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.”.
- (ii) in paragraph (4)(a)—
- (a) omit “or” before “(cc)”;
 - 20 (b) after “(cc)” insert “or (cd)”.
- (f) In Article 39 (general supplementary provisions), after paragraph (3) insert—
- “(4) Paragraph (3) is subject to Article 21(5) of this Order.”.

PART 4

25 PREVENTION AND REPORTING

Prevention

15 **15.** It shall be a requirement that the Department shall publish a strategy every year on raising awareness of and reducing trafficking in human beings and slavery offences in co-operation with non-governmental organisations and other relevant organisations.

Northern Ireland Rapporteur

16. The Department shall, by order, establish an independent body to report to the Assembly on the performance of this Act in Northern Ireland and on related matters.

35 PART 5

GENERAL

General interpretation

17.—(1) The following apply for the purposes of this Act.

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(2) A “child” shall have the same meaning as in Article 2(2) of the Children (Northern Ireland) Order 1995.

(3) If the age of the person is uncertain and there are reasons to believe the person is a child, the person shall be presumed to be a child.

5 (4) “The Department” means the Department of Justice.

Orders

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

Short title and commencement

10 19.—(1) This Act may be cited as the Human Trafficking and Exploitation (Further Provisions and Support for Victims) (Northern Ireland) Act 2013.

(2) This Act comes into force in accordance with provision made by the Department by order.