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Human Trafficking in Northern Ireland

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This paper outlines the legislative framework relevant to human trafficking and explores some of the main themes and issues concerning how trafficking is dealt with in Northern Ireland. The research features the views of key stakeholders relevant to human trafficking in Northern Ireland.

Executive Summary

There has been significant interest in the issues of human trafficking in the Northern Ireland Assembly, including the establishment of an all-party group and a motion on 7 February 2012 calling on the Executive to address the demand for sexual and labour exploitation, increase penalty levels, adopt a victim-centred approach and to implement preventative measures.

In the light of these developments and the announcement of the Justice Minister that legislation is to be introduced in relation to human trafficking, research has been carried out to explore the main issues relating to trafficking in Northern Ireland. This paper looks at issues using information from NGOs working with victims of trafficking in Northern Ireland.

A Department of Justice report in 2009 stated that the sex industry in Northern Ireland and human trafficking are 'fundamentally linked' and that 40-100 women were involved in prostitution at any one time. It has been reported that 75 victims of human trafficking have been rescued in Northern Ireland since 2009, but there has been one conviction of a trafficker to date¹. Most of those rescued in recent years have been Chinese, with fewer numbers from Africa, South America and Europe, including the UK.

Human trafficking is the facilitation of the movement of individuals using force, threats, coercion or deception for the purposes of exploitation. Human smuggling is the movement of persons with their consent, although lack of consent does not have to be proven in the case of children to constitute trafficking. The distinction is less clear where there is a continuum of consensual assisted irregular migration that leads to exploitative work which finally leads to a situation of forced labour or the provision of sexual services under duress.

The UK has obligations to prevent and detect human trafficking, protect victims and prosecute perpetrators of trafficking under international frameworks, including the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (2000), the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and EU Council Directive 2011/36/EU against human trafficking.

Legislation associated with the immigration dimensions of trafficking is from Westminster, including the following:

- Section 145 of the Nationality, Immigration and Asylum Act 2002, which provides for the offence of trafficking for prostitution
- Sections 57-60 of the Sexual Offences Act 2003, which provide for the offence of trafficking for sexual exploitation, amended in Northern Ireland by the Sexual Offences (Northern Ireland) Order 2008

¹ Matyas Pis was sentenced to three years (18 months custodial, 18 months on licence) on 23 April 2012.

- Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, which provides for the offence of trafficking for exploitation
- Section 71 of the Coroners and Justice Act 2009, which provides for offences relating to slavery, servitude and forced or compulsory labour

This legislation is being amended to take account of the EU Directive against trafficking, particularly in the area of the prosecution of UK nationals who traffic people elsewhere in the world and the prosecution of individuals for internal trafficking, that is, where movement is within in UK. These amendments are brought forward in the Protection of Freedoms Act 2012 in Great Britain and a consultation for similar proposals in Northern Ireland was published by the Department of Justice in April 2012.

A Private Members' Bill against human trafficking has been introduced by Lord McColl is being considered by the Westminster Parliament and Lord Morrow has announced his intention to introduce Private Members' Bill in the Northern Ireland Assembly.

The following discussion points for consideration have been derived from themes raised during a series of interviews with key stakeholders associated with supporting victims of human trafficking in Northern Ireland:

Prevention

- Criminalisation of the procurement of sex.
- A review of the Blue Blindfold campaign in Northern Ireland with a view to assessing how greater awareness could be raised of trafficking in this jurisdiction, including the possibility of additional training for front line workers to identify victims.

Detection

- Separation of the assessment of victims, which is a criminal justice function, and actions relating to immigration status, currently both carried out by UKBA, for example, initial assessment might be carried out by an independent agency, using local evidence provided by the PSNI.
- Oversight of certain UKBA functions in line with policing and justice provisions in Northern Ireland, particularly in respect of the screening of people passing through the Larne immigration detention centre for the identification of potential trafficking victims.
- Greater understanding, detection and action taken against trafficking for forced labour.

Support of Victims

- Centralisation of specialist expertise in immigration, asylum and the support of traumatised trafficking victims with diverse language needs in the form of a regional human trafficking centre or agency, pooling legal, language and psychological support resources as a single point of contact for advice and expertise, including a helpline.
- A dedicated accommodation site for trafficking victims, with appropriate security arrangements and access to appropriate expertise, perhaps maintained by a community based agency with the appropriate skills and experience (such as Women's Aid), but not supplanting accommodation required for core service use.
- Regularisation of the current temporary or charitable arrangements for supporting trafficking victims might be regularised through legislation, including beyond the 45 day reflection period, including incorporation of the relevant articles of the Trafficking Convention into legislation, or guidelines to ensure the Convention is incorporated into judicial processes.

Prosecution

- Greater co-ordination between agencies to maximise the detection and evidence gathering processes required for prosecutions and a review of the resources devoted to addressing trafficking.
- A fast-track process for dealing with trafficking.

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1 Introduction

The United Nations defines ‘human trafficking’ in the following terms²:

Human trafficking is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them.

In contrast, ‘people smuggling’ is defined as follows:

Smuggling migrants involves the procurement for financial or other material benefit of illegal entry of a person into a State of which that person is not a national or resident.

The relevant concept is that being trafficked is involuntary, whereas people smuggling involves the consent of the individual being smuggled. Defining who is trafficked and who has been willingly smuggled into the country can be problematic, particularly where someone has been smuggled, but the circumstances in which individuals find themselves in the destination country are different from expectations. Regardless of the initial intention on the part of the person entering the country, if there is any form of coercion, force, threat or deception involved which leads to the person undertaking work or providing services unwillingly, then this becomes trafficking.

Human trafficking is therefore defined in terms of the **act** (the movement of persons), the **means** (by coercion or deception) and the **purpose** (for exploitation). In the case of children, the means is irrelevant, only movement for the purposes of exploitation being sufficient to constitute trafficking.

The definition has further implications with regard to the issue of forced labour. If an individual has been brought into the country and is defined under the International Labour Office (ILO) indicators as being subject to forced labour (see Section 3 below), then they become victims of trafficking.

Due to the covert nature of trafficking, the extent of the problem in Northern Ireland is not fully known, with significant gaps in knowledge for both statutory agencies and community-based groups working with trafficking victims, mostly women trafficked into the sex trade³. The Department of Justice estimates that there are 40-100 women involved in prostitution in Northern Ireland at any one time and trafficking and the sex industry are ‘fundamentally linked’. This includes people who have been internally trafficked, i.e. women pressed into the industry locally, and Northern Ireland is both a destination country for women brought from other countries and a transit country between the UK and the Republic of Ireland⁴.

² United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/human-trafficking/index.html>.

³ Agnieszka Martynowicz, Sarah Toucas and Anne Caughey (2009), *The Nature and Extent of Human Trafficking in Northern Ireland: A Scoping Study*, Belfast: Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission, pp.7, 29, 36: <http://www.equalityni.org/archive/pdf/ECNIHRCtraffickingReport.pdf>; Department of Justice (2011), *Research paper investigating the issues for women in Northern Ireland involved in prostitution and exploring best practice elsewhere*, p.2.

⁴ Department of Justice (2011), pp.2-3, 9.

In terms of who is trafficked and by whom, it is difficult to say with any certainty, but it is suggested that there is significant involvement of Chinese Snakehead gangs trafficking Chinese women and African, South American and East European women being trafficked by groups linked to organised crime and paramilitary organisations⁵. Certainly the trafficked women recovered in the last few years are a small part of the real figure of women in this situation.

In 2008/09, the Police Service for Northern Ireland (PSNI) recovered 11 potential victims of trafficking, three for forced labour, six for sexual exploitation and two for domestic servitude⁶. In 2009/10, 25⁷ were recovered, of whom five were trafficked for forced labour, 17 for sexual exploitation, one for domestic servitude and the remaining two absconded prior to interview⁸.

Twenty three potential trafficking victims were recovered in 2010/11, of which five were trafficked for forced labour and 18 for sexual exploitation. Eight of the victims have been repatriated and two minors are being supported by Social Services. Four of the victims received support through the Migrant Helpline and eight received support through Women's Aid. The remainder of victims have been integrated into communities and/or are receiving asylum support⁹. The majority of victims reported in 2010 and 2011 were Chinese, with fewer numbers from Africa, South America and Europe (including UK nationals). In all, 75 individuals are reported to have been rescued from trafficking by the PSNI since 2009¹⁰. At the time of writing, coordinated operations against organised prostitution were taking place across Northern Ireland and the Republic of Ireland¹¹.

Research in Northern Ireland looking at the mushroom, fishing, catering and domestic service industries has identified a variety of forms of coercion and deception experienced by workers brought into the country to undertake exploitative work. However, the borderline between exploitation and forced labour is sufficiently blurred

⁵ Ibid., pp.30, 35, 41; Rebecca Dudley (2006), *Crossing Borders: Preliminary Research on Human Trafficking in Northern Ireland*, Belfast: Women's Aid, p.18.

⁶ Organised Crime Task Force (2009), *2009 Annual Report and Threat Assessment: Organised Crime in Northern Ireland*, p.19: <http://www.octf.gov.uk/getattachment/cc694aeb-3a3a-4e00-9a63-218e5b570b0d/Publication-3.aspx>.

⁷ Northern Ireland Assembly Question AQW2229/11 answered 2 December 2010.

⁸ Northern Ireland Assembly Question AQW7920/10 answered 29 June 2010. Figures from the OCTF Annual Report 2010 differ slightly in reporting two victims of domestic servitude, three of forced labour, 17 for sexual exploitation and three 'unclear' (p.8).

⁹ Organised Crime Task Force (2011), *2011 Annual Report and Threat Assessment: Organised Crime in Northern Ireland*, p.12: <http://www.octf.gov.uk/getattachment/10e3c2f2-9152-4682-b0a3-25d94ed72387/Annual-Report---Threat-Assessment-2011.aspx>.

¹⁰ Presentation by Philip Marshall, PSNI, at the seminar 'Human Trafficking and Racial Hate Crime' organised by the Northern Ireland Council for Ethnic Minorities (NICEM) at the Long Gallery, Parliament Buildings, Stormont, 10 January 2012.

¹¹ 'Three Women Charged after Irish Prostitution Raids', BBC News 30 May 2012: <http://www.bbc.co.uk/news/uk-northern-ireland-18258312>; 'Three Women to Face Brothel-Keeping Charges in NI after 'Operation Quest' Raids', RTE News 30 May 2012: <http://www.rte.ie/news/2012/0530/eight-held-in-organised-prostitution-operation.html>.

for this form of trafficking to receive widespread recognition. According to the report, it is immigration status that makes people vulnerable to exploitation¹².

On 7 February 2012 the Northern Ireland Assembly passed the following motion¹³:

That this Assembly expresses concern at the increase in human trafficking where people are brought in illegally and forced into a life of sexual exploitation, forced labour or domestic servitude; or are transported onward to other jurisdictions for similar purposes; and calls on the Executive to use all their powers to raise public awareness of this crime to ensure that the perpetrators are brought to justice and that victims are given the support and help they need, regardless of whether they are co-operating with the law enforcement authorities; and further calls on the Executive to meet the obligations set out by the Council of Europe convention (2005) and the new EU directive (2011) on action against trafficking in human beings by addressing the demand for sexual and labour exploitation, increasing penalty levels, adopting a victim-centred approach and implementing effective preventative measures.

An all-party group has been established in the Northern Ireland Assembly to look at the issue of trafficking¹⁴. There is an All-Party Group in the House of Commons¹⁵, a Cross-Party Group in the Assembly for Wales¹⁶ and a proposed Cross-Party Group in the Scottish Parliament¹⁷.

This paper outlines the legislative framework relevant to human trafficking and explores some of the main themes and issues concerning how trafficking is dealt with in Northern Ireland, based on interviews with representatives of NGOs working with victims of human trafficking in Northern Ireland. These themes are formulated into points for discussion.

¹² Les Allamby, John Bell, Jennifer Hamilton, Neil Jarman, Michael Potter and Sorina Toma (2011), *Forced Labour in Northern Ireland: Exploiting Vulnerability*, York: Joseph Rowntree: <http://www.jrf.org.uk/publications/forced-labour-northern-ireland-exploiting-vulnerability>.

¹³ NI Assembly Official Report 7 February 2012 Volume 72 No 2: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-11-12/07-February-2012/#a6>.

¹⁴ All Party group in Human Trafficking: <http://www.niassembly.gov.uk/Your-MLAs/All-Party-Groups/All-Party-Group-on-Human-Trafficking/>.

¹⁵ Chaired by Peter Bone MP, members include Mark Durkan MP from Northern Ireland: <http://www.publications.parliament.uk/pa/cm/cmllparty/memi01.htm>.

¹⁶ Chaired by Joyce Watson: <http://www.senedd.assemblywales.org/mgOutsideBodyDetails.aspx?ID=250>.

¹⁷ The first meeting of the proposed group was on 15 May 2012: <http://www.scottish.parliament.uk/mmps/30017.aspx>.

2 The International Framework

This section sets out the frameworks at the United Nations, Council of Europe and European Union in respect of trafficking.

United Nations

The UN Convention on the Rights of the Child (1989) requires states to protect children¹⁸. Article 11(1) seeks to prevent the illicit transfer of children abroad and Article 19(1) seeks to protect children from exploitation and abuse and, in particular, Article 34 seeks to protect children from sexual exploitation and Article 35 from trafficking:

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

In terms of measures specific to trafficking, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (2000)¹⁹, provides a definition of trafficking (Article 3(a)), as follows:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Here, coercion or deception are key to defining trafficking, except in the case of children, where neither are necessary.

¹⁸ UN Convention on the Rights of the Child: <http://www2.ohchr.org/english/law/pdf/crc.pdf>, ratified by the UK 1991.

¹⁹ UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf, ratified by the UK 2006.

The Protocol concerns the criminalisation of trafficking, the protection of victims and international co-operation aimed at preventing trafficking. In particular, Article 6 requires the protection and support of victims of trafficking, Article 8 that measures should be in place to enable trafficking victims to remain in the country temporarily or permanently and Article 9 that return to a country origin should 'preferably' be voluntary.

The United Nations Global Initiative to Fight Human Trafficking (GIFT) co-ordinates networks, programmes and resources aimed at combatting human trafficking around the world²⁰.

Council of Europe

The key Council of Europe instrument in trafficking is the Convention on Action against Trafficking in Human Beings (2005)²¹, which carries the same definition as the UN Protocol above (Article 4). The Convention uses similar language and provisions as the Protocol for prevention of trafficking, protection of victims, legal processes, international and national co-operation and monitoring, but with more detail, for example, the issuing of residence permits to victims (Article 14).

The Council of Europe also undertakes campaigns and activities to prevent trafficking and there is a Group of Experts on Action against Trafficking in Human Beings (GRETA), which carries out country visits²². GRETA visited the UK, including Northern Ireland, in October 2011, but the final report on the UK has not yet been published²³.

Article 4 of the European Convention on Human Rights (ECHR)(1950)²⁴ states:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.

In practical terms, case law in the European Court of Human Rights has demonstrated trafficking as a form of slavery and/or forced labour²⁵:

The Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention.

²⁰ GIFT website: <http://www.ungift.org/knowledgehub/>.

²¹ Council of Europe Convention on Action against Trafficking in Human Beings: http://www.coe.int/T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf, ratified by the UK 2008.

²² Council of Europe Action against Trafficking in Human Beings web pages: http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp.

²³ GRETA visit to the United Kingdom: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/News/UK_web_article_en.asp#TopOfPage.

²⁴ Convention on the Protection of Human Rights and Fundamental Freedoms: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf.

²⁵ Judgement of Application 25965/05, 7 January 2010, Rantsev v. Cyprus and Russia, paragraph 282: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=25965/04&sessionid=81434995&skin=hudoc-en>.

Therefore, the obligation for states to protect people from slavery is also contained within the ECHR.

European Union

Article 5 of the Charter of Fundamental Rights of the European Union²⁶ goes further than the ECHR by prohibiting slavery and forced labour and also human trafficking:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

However, Protocol 30 provides that the Charter is not justiciable in the UK or Poland except regarding those rights which are already in national law.

A series of initiatives have been introduced in the EU to address trafficking in human beings, the most recent of which is Council Directive 2011/36/EU²⁷ on preventing and combating trafficking in human beings and protecting its victims, which requires Member States to legislate to make the following acts punishable (Article 2.1):

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The Directive goes on to outline how victims should not be prosecuted or punished (Article 8), but protected (Article 12) and supported (Article 13).

The Directive replaces previous EU legislation in this area²⁸ and sits in a wider context of legal instruments and policy initiatives to prevent and punish trafficking and assist victims²⁹. In its deliberations over whether to opt into to the Directive, the UK Government concluded that “The measures contained within the Directive are broadly in line with the existing UK practice and legislation on human trafficking and safeguarding victims”³⁰. Consequently, only minor legislative adjustments were deemed necessary to comply with the Directive (see Section 4 below).

²⁶ Charter of Fundamental Rights of the European Union: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

²⁷ Directive 2011/36/EU of the European Parliament and of the Council 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims: <http://ec.europa.eu/anti-trafficking/download.action?nodetd=9c9ba3cd-794b-4a57-b534-ad89effac575&fileName=Directive+THB+L+101+15+april+2011.pdf&fileType=pdf>.

²⁸ Council Framework Decision on combatting trafficking in human beings (2002): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF>.

²⁹ See Oireachtas/Northern Ireland Assembly Research North-South Parliamentary Forum Joint Working Group Meeting papers 22 September 2011, Paper 106/11, *Human Trafficking and Illegal Immigration*, p.36: <http://www.niassembly.gov.uk/researchandlibrary/2011/10611.pdf#page=33>.

³⁰ Explanatory Memorandum (EM) on European Union Document 2010/0065(COD) PE-CONS 69/10 1 April 2011, paragraph 25.

Furthermore, the European Commission has stated that it intends to bring forward in 2012 an “EU Strategy against trafficking in human beings”, the overarching aim of which is to formulate a comprehensive policy framework with the main goals of significantly preventing and reducing the phenomenon of trafficking in human beings, prosecuting criminals, and providing better protection for victims.³¹

A comparative table of the obligations of the UN Protocol, the Council of Europe Convention and the EU Directive on trafficking is at Appendix 1.

The Organisation for Security and Co-operation in Europe (OSCE) has a Special Representative and Co-ordinator for Combating Trafficking in Human Beings, who visited the UK in March 2011. Her report of 18 January 2012 contained the following recommendations³²:

1. Develop a more effective multi-agency approach to victim identification
2. Ensure that quality standards for victim services are maintained while centralising the co-ordination and the management of the provision of care
3. Safeguard the human rights of victims, avoid further victimisation and encourage them to act as witnesses
4. Enhance the role of the Gangmasters Licensing Authority (GLA)
5. Enhance prevention of trafficking for the purpose of domestic servitude
6. Evaluate the human rights impact of anti-trafficking policy and legislation

The report makes no mention of the situation in Northern Ireland.

³¹ See European Commission (2011), *Commission Work Programme 2012: Annex*: http://ec.europa.eu/atwork/programmes/docs/cwp2012_annex_en.pdf

³² Maria Grazia Giammarinaro (2012), *Report by OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to the UK, 7-10 March 2011*, Vienna: OSCE: <http://www.osce.org/cthb/87057>.

3 The UK Legislative Framework

Although human trafficking is partly dealt with in UK legislation connected with immigration and is therefore an excepted matter as far as devolved administrations are concerned, justice issues are devolved in Northern Ireland, and therefore offences connected with trafficking are the responsibility of the Department of Justice. Also, aspects of the impacts of trafficking have to be dealt with locally. For example, the Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2008³³, which provides for health care services to victims of trafficking. The safeguarding of all children in need of protection is already a requirement under the Children (Northern Ireland) Order 1995³⁴.

The key pieces of UK legislation are:

- Nationality, Immigration and Asylum Act 2002³⁵, which provides for the offence of trafficking for prostitution (Section 145)
- Sexual Offences Act 2003³⁶, which provides for the offence of trafficking for sexual exploitation (Section 57-60)
- Asylum and Immigration (Treatment of Claimants, etc.) Act 2004³⁷, which provides for the offence of trafficking for exploitation (Section 4)
- Coroners and Justice Act 2009³⁸, which provides for offences relating to slavery, servitude and forced or compulsory labour (Section 71)
- Protection of Freedoms Act 2012³⁹, which further defines the offences of trafficking for sexual exploitation and for labour and other exploitation (Sections 109-110)

The 2003 Act refers to offences of trafficking people into, within or out of the UK with the intention that a 'relevant offence' may be committed, whether or not it is considered an offence in the country where it takes place. The Sexual Offences (Northern Ireland) Order 2008⁴⁰ amends the 2003 Act with regard to certain sexual offences and where offences are committed outside the UK.

Section 4 of the 2004 Act broadens the scope to any form of exploitation⁴¹:

³³ Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2008: <http://www.legislation.gov.uk/nisr/2008/377/made>.

³⁴ Children (Northern Ireland) Order 1995: <http://www.legislation.gov.uk/nisi/1995/755/contents/made>.

³⁵ Nationality, Immigration and Asylum Act 2002: <http://www.legislation.gov.uk/ukpga/2002/41/contents>.

³⁶ Sexual Offences Act 2003: <http://www.legislation.gov.uk/ukpga/2003/42/contents>.

³⁷ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004: <http://www.legislation.gov.uk/ukpga/2004/19/contents>.

³⁸ Coroners and Justice Act 2009: <http://www.legislation.gov.uk/ukpga/2009/25/contents>.

³⁹ Protection of Freedoms Act 2012: <http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>.

⁴⁰ Sexual Offences (Northern Ireland) Order 2008: <http://www.legislation.gov.uk/nisi/2008/1769/contents>.

⁴¹ Asylum, Immigration (Treatment of Claimants, etc.) Act 2004 Explanatory Notes, p.7: <http://www.legislation.gov.uk/ukpga/2004/19/notes/division/14/1/4>.

Section 4 introduces new criminal offences of trafficking people into, within or out of the UK for the purpose of exploitation. A person found guilty of an offence under section 4 is liable, on conviction on indictment, to imprisonment for up to fourteen years, to a fine or to both, or on summary conviction, to imprisonment for up to twelve months, to a fine not exceeding the statutory maximum or to both. A person commits an offence if he arranges for a person to arrive in or depart from the UK and he intends to exploit that person or believes that another person is likely to do so. The offence is also committed if a person arranges travel within the UK by a person if he believes that the person has been brought into the UK to be exploited, and he intends to exploit that person or believes that another person is likely to do so.

In this case, 'exploitation' is taken to include any services provided under threat or force, but also due to deception. Therefore, for example, it appears that an individual who consents to being smuggled for the purposes of work but is exploited through deception to provide another form of work or under different conditions is entitled to protection and support as a trafficked person.

The 2009 Act adds to the legislation to include 'slavery or servitude or requiring a person to perform forced or compulsory labour', as construed by Article 4 of the European Convention on Human Rights (ECHR). The International Labour Office (ILO) describes 'forced labour' according to the following indicators⁴²:

- i). Threats or actual physical harm to the worker;
- ii). Restriction of movement and confinement, to the workplace or to a limited area;
- iii). Debt bondage (where the worker works to pay off a debt or loan, and is not paid for his or her services. The employer may provide food and accommodation at such inflated prices that the worker cannot escape the debt);
- iv). Withholding of wages or excessive wage reductions that violate previously made agreements;
- v). Retention of passports and identity documents so that the worker cannot leave or prove his/her identity and status;
- vi). Threat of denunciation to the authorities, where the worker is in an irregular immigration status.

However, guidance to the implementation of Section 71 of the 2009 Act contained in Ministry of Justice Circular 2010/07 lists the six ILO indicators of forced labour, adding threats against the worker's family as evidence of coercion. The guidance also adds a range of additional indicators of forced labour, including⁴³:

⁴² International Labour Office (2005), *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement*, Geneva: ILO, p.20.

⁴³ Ministry of Justice (2010), *Slavery, servitude or compulsory labour: Implementation of section 71 of the Coroners and Justice Act 2009*, Circular 2010/07, London: MoJ, paragraph 11.

- the worker being given false information about employment rights
- excessive working hours
- hazardous working conditions
- lack of safety equipment
- unwarranted or unexplained deductions from wages tax or National Insurance contributions not being paid in full
- poor accommodation
- poor or misleading information about the nature of employment
- isolation from others
- exchange of money between employers for the worker's services without the worker's agreement

The guidance therefore clearly brings a range of employment rights abuses into the definition of forced labour and in so doing broadens the scope of the related offence of trafficking where it is undertaken for the purposes of exploitation.

The 2012 Act contains the current definitions of offences for human trafficking for exploitation, bringing Great Britain into line with the EU Directive. These offences (Sections 109-110) are reproduced at Appendix 2.

In Northern Ireland, the Justice Minister has signalled his intention to introduce legislation to bring the devolved provisions into line with the EU Directive. These proposals were published for consultation in April 2012 to provide for amendments to the Sexual Offences Act 2003 and Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in compliance with Article 10 of the Directive, which have already been provided for in Great Britain in the 2012 Act, as follows⁴⁴:

- To create an offence where a UK resident has been trafficked within the UK
- To create an offence where a UK national traffics an individual somewhere outside the UK

In addition, Lord Morrow has signalled his intention to bring forward a Private Members' Bill to tackle trafficking⁴⁵.

⁴⁴ Department of Justice (2012), *Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc.) Act 2004: Consultation Document*, Belfast: DoJ, paragraph 6.1.

⁴⁵ 'Morrow Welcomes first NI Conviction on Human Trafficking', Democratic Unionist Party website: <http://www.dup.org.uk/articles.asp?ArticleNewsID=4455>; 'Human Trafficking and Prostitution Searches Carried out in Cookstown', Mid-Ulster Mail 18 March 2012; see also comments by Lord Morrow in the Assembly debate on 7 February 2012 (Note 2).

Lord McColl introduced the Human Trafficking (Further Provisions and Support for Victims) Bill, which received its first reading in the House of Lords on 15 May 2012⁴⁶, and Lord Eames introduced a debate in the House of Lords on 2 February on human trafficking⁴⁷. A proposed bill to criminalise the purchase of sex in Scotland fell at dissolution for the last election, but a new proposal for this bill has been introduced by Rhoda Grant MSP in the current Session⁴⁸.

⁴⁶ Human Trafficking (Further Provisions and Support for Victims) Bill : <http://services.parliament.uk/bills/2012-13/humantraffickingandexploitationfurtherprovisionsandsupportforvictims.html>.

⁴⁷ House of Lords Official Report 2 February 2012 Volume 734 No 261 Column 1705: <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120202-0001.htm#12020238000531>.

⁴⁸ Proposed Criminalisation and Purchase of Sex (Scotland) Bill: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/51148.aspx>.

4 Measures for Addressing Human Trafficking in Northern Ireland

Human Trafficking Policy in the UK

In policy terms, the UK Border Agency⁴⁹ has the overall responsibility for control of the UK border, which divides its operations into six regions, one of which covers Scotland and Northern Ireland. The current UK strategy for tackling trafficking was launched in 2011, focussing on the four key areas of⁵⁰:

1. Improved victim care arrangements
2. Enhanced ability to react early, before the harm has reached the UK
3. Smarter multi-agency action at the border
4. Better co-ordination of law enforcement efforts within the UK

The UK Border Agency opened an office in Belfast in July 2009 and in July 2011, a holding centre for people held on immigration charges was opened in Larne, where before, people were initially detained in police cells and removed to detention centres in Great Britain.

The Organised Crime Task Force⁵¹, established in Northern Ireland in 2000, has an Immigration and Human Trafficking Sub-Group which deals with organised immigration crime, which has been noted as making use of the border for the purposes of moving individuals and evading detection⁵². The OCTF brings together police, customs and other law enforcement agencies, along with Government Departments, the Policing Board and the local business community to combat organised crime. In December 2010, the Cross-Border Policing Strategy⁵³ was launched jointly with An Garda Síochána which, although it does not mention trafficking explicitly, has been referred to as being a key component in addressing it⁵⁴.

The Crown Prosecution Service has guidelines for the prosecution of cases of human trafficking⁵⁵. This guidance lists the relevant UK legislation and this is reproduced at Appendix 3.

⁴⁹ UK Border Agency website: <http://www.ukba.homeoffice.gov.uk/>.

⁵⁰ Home Office (2011), *Human Trafficking: The Government's Strategy*, London: HM Government, p.7.

⁵¹ Organised Crime Task Force website: <http://www.octf.gov.uk/Home.aspx>.

⁵² Police Service of Northern Ireland and An Garda Síochána (2010), *Cross-Border Organised Crime Assessment 2010*, pp.16-17: <http://www.octf.gov.uk/getattachment/7029767f-4016-4cee-bf71-3d7b13c4db37/Cross-border-crime-assessment-2010.aspx>.

⁵³ PSNI and An Garda Síochána (2010), *Cross Border Policing Strategy*: <http://www.garda.ie/Documents/User/Cross%20Border%20Policing%20Strategy.pdf>.

⁵⁴ Northern Ireland Assembly Question AQW3623/11 answered 25 January 2011.

⁵⁵ Crown Prosecution Service (2011), *CPS Policy for Prosecuting Cases of Human Trafficking*, London: CPS: http://www.cps.gov.uk/publications/docs/policy_for_prosecuting_cases_of_human_trafficking.pdf.

The National Referral System (NRM)⁵⁶

In 2009 the National Referral Mechanism (NRM) was introduced as a framework where organisations such as the police, UK Border Agency, local authorities and NGOs can work together to identify possible victims of trafficking and provide protection and support. The Council of Europe Convention on trafficking includes a two-stage process for identifying whether people were victims of trafficking. A **Reasonable Grounds** decision is given, followed by a more considered **Conclusive Decision** that a person has or has not been trafficked.⁵⁷

The NRM is not localised in Northern Ireland, taking into account the specificity of Northern Ireland's structures.⁵⁸

Frontline organisations, designated as **First Responders**, refer people showing signs of having been trafficked to **Competent Authorities (CA)** through the NRM. Adults must give permission before they are referred through the NRM. Children must first be referred to **Social Services**.

In Northern Ireland, Health and Social Care trusts can act as first responders, whereas in the rest of the UK it is local authorities. Consequently some feel that there should be a central point of contact in Northern Ireland for the NRM and a single coordinator with oversight of all the different processes that a trafficked person goes through.

The Process

- Referral to a Competent Authority (CA) (see below) by a First Responder
- Children are referred to Social Services
- The CA aims to make an initial decision within 5 working days.
- The CA makes a 'reasonable grounds' decision on whether an individual is a potential victim of human trafficking.
- The individual is given a 45-day period for reflection and recovery. This allows time for more thorough evaluation of the case.
- A 'conclusive decision' is then made on whether the person is indeed a victim of trafficking.
- If the individual is found not to be a victim of trafficking the individual's immigration status may be considered, or an outstanding asylum application continued.

⁵⁶ See Appendix 3 for a diagram of the referral process.

⁵⁷ UK Border Agency, *Victims of Trafficking: Guidelines for Frontline Staff Agency*
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/trafficking-guidance?view=Binary>.

⁵⁸ Anti-Trafficking Monitoring Group (2010), *The Wrong Kind of Victim? One Year On: An Analysis of UK Measures to Protect Trafficked Persons* (London: Anti-Slavery International) P.p. 100-105:
http://www.amnesty.org.uk/uploads/documents/doc_21111.pdf.

- When a trafficked person is cooperating with the police (e.g. in giving evidence against a trafficker) the police must apply for leave for them to remain for 12 months.
- A residence permit is issued.
- If the person chooses to go home they may do so voluntarily.
- If a person does not choose to cooperate with the police they may still be granted temporary leave to remain, depending on their circumstances.

First Responders in Northern Ireland include⁵⁹

- PSNI
- UK Border Agency
- Social Services
- Gangmasters Licencing Authority
- Health Service

Women's Aid is not a First Responder in Northern Ireland although similar organisations in the rest of the UK are.

Competent Authorities for Northern Ireland cases⁶⁰

- UK Border Agency (where there are immigration & asylum issues)
- UK Human Trafficking Centre in Sheffield (where the victim is not subject to immigration control)

Care of Rescued Trafficked people in Northern Ireland

Specialist PSNI officers have been trained to debrief rescued people and all front line police officers are supposed to be trained to recognise the key indicators that people may have been exploited.

Once a potential trafficking victim is subject to the NRM they are then looked after by three organisations in NI. The **Women's Aid Federation Northern Ireland** looks after adult female victims of trafficking recovered and **Migrant Help** supports adult male victims of trafficking.⁶¹ **Northern Ireland Health and Social Care Trusts** are responsible for the care of child victims of trafficking.

⁵⁹ Email from Migrant Help, 3 November 2011.

⁶⁰ DHSSPS and PSNI (2010), *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking: Guidance issued by the Department of Health, Social Services and Public Safety and the PSNI*, February: http://www.dhsspsni.gov.uk/oss_working_arrangements_for_the_welfare_safeguarding_of_child_victims_of_human_trafficking.pdf.

⁶¹ Organised Crime Taskforce (2009), "Goggins Announces Extensive New Support services for Victims of Human Trafficking", 25 March 2009: <http://www.octf.gov.uk/News/Goggins-announces-extensive-new-support-services-f.aspx>.

5 Human Trafficking in the Republic of Ireland

Northern Ireland is the only part of the UK with a land border with another jurisdiction, which is largely porous and unmonitored. Therefore, it is relatively easy for traffickers to move people between north and south. In 2010, there were 69 cases with 78 alleged victims of trafficking reported to An Garda Síochána⁶². More than half of these (42) were from Africa, others being from the EU (17), Asia (10), Ireland (6) and non-EU Europe (3). Three victims of sex trafficking in 2007 and four in 2008 were trafficked through or into Northern Ireland⁶³.

The key legislation in this jurisdiction is as follows:

- Child Trafficking and Pornography Act 1998⁶⁴, which provides for the offence of facilitating the entry, exit or transit through the state, or detention, of a child for the purposes of sexual exploitation
- Criminal Law (Human Trafficking) Act 2008⁶⁵, which provides for the offence of trafficking, including of children, for exploitation in general

An Anti-Human Trafficking Unit was established in the Department for Justice and Equality in 2008 to co-ordinate responses to human trafficking⁶⁶. A National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland outlines comprehensively how the state intends to address trafficking through⁶⁷:

- Prevention through awareness raising, training, legislation, co-operation and data collection
- Protection of victims through services for victims⁶⁸
- Prosecution and investigation of offenders

This involves a multi-agency approach and international co-operation for tackling trafficking⁶⁹.

⁶² Anti-Human Trafficking Unit (2011), *Annual Report of Trafficking of Human Beings in Ireland for 2010*, Dublin: Department of Justice and Equality, p.8:

<http://www.justice.ie/en/JELR/AHTU%202010%20Annual%20Report.pdf/Files/AHTU%202010%20Annual%20Report.pdf>.

⁶³ Department of Justice (2011), *Research paper investigating the issues for women in Northern Ireland involved in prostitution and exploring best practice elsewhere*, p.17: http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/final_research_paper_-_women_in_northern_ireland_involved_in_prostitution.pdf.

⁶⁴ Child Trafficking and Pornography Act 1998: <http://www.irishstatutebook.ie/1998/en/act/pub/0022/index.html>.

⁶⁵ Criminal Law (Human Trafficking) Act 2008: <http://www.irishstatutebook.ie/2008/en/act/pub/0008/index.html>.

⁶⁶ Anti-trafficking measures web pages: <http://www.justice.ie/en/JELR/Pages/WP09000005>.

⁶⁷ Department of Justice, Equality and Law Reform (2009), *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland*, Dublin: DJELR,

<http://www.justice.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf>.

⁶⁸ There were plans for a 'reflection period' in legislation, but the Immigration, Residence and Protection Bill which contained the proposals was withdrawn in 2010.

⁶⁹ For more details of provision in the Republic of Ireland see Oireachtas/Northern Ireland Assembly Research North-South Parliamentary Forum Joint Working Group Meeting papers 22 September 2011, Paper 106/11, *Human Trafficking and Illegal Immigration*, pp.37-42: <http://www.niassembly.gov.uk/Documents/RalSe/Publications/2011/General/10611.pdf>.

Council Directive 2011/36/EU to tackle human trafficking across the EU has not yet been transposed into law in the Republic of Ireland.

6 Stakeholder Views on the Effectiveness of Current Measures in Northern Ireland

Interviews were carried out with a range of NGOs working in the area of human trafficking to ascertain views on the effectiveness of current legislation, policy and practice for preventing human trafficking and caring for victims. The following themes reflect the views of community-based stakeholders which emerged from the interviews:

- Multiple routes for victims: Victims of trafficking are assigned different routes depending on their status, leading to some confusion:
 - Those who choose to do so are sent home
 - EEA citizens go directly to the UK Human Trafficking Centre⁷⁰
 - Female non-EEA citizens are supported by Women's Aid
 - Male non-EEA citizens are supported by Migrant Help⁷¹
- Length of the 45-day reflection period: Some feel that the 45-day period is too long, keeps potential victims in limbo and places an extended burden on service providers to support potential victims. Others feel the 45-day period is far too short, as victims are still coming to terms with the impact of what has happened to them, understanding the process that is happening to them, beginning to build trust with those supporting them and still in need of psychological, emotional and physical support.

The EU Directive does not specify a reflection period, but the Trafficking Convention (Article 13) recommends at least 30 days. However, the Directive refers in Article 11.6 to Directive 2004/81/EC, which states⁷²:

Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

- Complexity of issues: Agencies that come into contact with or are charged with supporting victims have to deal with issues requiring specialist knowledge, including immigration, asylum, trafficking and social security policy, practice and legislation⁷³. In addition, several different legal processes can be running concurrently, potentially including asylum processes, criminal law, civil

⁷⁰ Website of the UK Human Trafficking Centre: <http://www.soca.gov.uk/about-soca/about-the-ukhtc>.

⁷¹ The first six male victims of trafficking for forced labour in Northern Ireland were rescued in 2011 (Migrant Help, 26 January 2012).

⁷² Council Directive 2004/81/EC of 29 April 2004, Article 6: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>.

⁷³ The lack of availability of specialised legal advice on these issues is raised in Lois Hamilton and Catherine Robinson (2011), 'Human Trafficking in Northern Ireland' in Parosha Chandran (ed), *Human Trafficking Handbook: Recognising Trafficking and Modern-Day Slavery in the UK*, London: Lexis Nexis, p.147.

proceedings, employment tribunal, etc. This is sufficiently confusing for practitioners, let alone often traumatised individuals encountering a foreign justice system.

Article 12.2 of the EU Trafficking Directive requires Member States to ensure victims have access to legal counselling and legal representation and Directive 2004/81/EC (Article 6) requires victims to be in a position to make an 'informed decision' about legal proceedings. Article 12.4 also requires that victims receive 'specific treatment aimed at preventing secondary victimisation' avoiding, inter alia, unnecessary repetition of interviews during investigation, prosecution or trial.

- Support issues: Agencies have to deal with traumatised individuals needing long-term psychological care, speaking different languages with access to a telephone interpreting which has its limitations in intimate situations. There are also significant trust issues for people often with irregular status, not fully understanding the distinction between statutory and NGO sectors or having an acquired distrust of the authorities.

Article 11.5 of the EU Trafficking Directive commits Member States to providing assistance and support that shall include:

at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

- Post-reflection period: After the 45-day reflection period has expired, although it has been extended on some occasions, there are different outcomes for victims, which leads to confusion and stress on the part of victims, and victims are treated as irregular migrants. In many cases, traumatised individuals are just ready to avail of psychological and emotional support, when the statutory commitment to such support is finishing. While there is a fund from the Office of the First Minister and deputy First Minister (OFMdfM) to support people without access to public funds and support agencies have been known to be flexible with financial help, these funds are limited and are a temporary arrangement. Outcomes for victims can include the following:
 - Deportation to country of origin
 - Voluntary repatriation
 - Discretionary leave to remain
 - Application for asylum: Transfer to the National Asylum Support Service (NASS)

- Remain in irregular status vulnerable to destitution and further exploitation
- Return to situation of exploitation

Article 11.1 of the EU Trafficking Directive requires Member States to ensure support and assistance to victims ‘before, during and for an appropriate period after’ criminal proceedings.

- Dual assessment role: The UK Border Agency (UKBA) has the dual role of initially assessing potential victims of trafficking within 5 days and assessing applications for asylum. It has been argued that the main function of UKBA is related to border security and immigration control, which could be at odds with assessing victims of trafficking. Furthermore, UKBA is a UK-wide body, yet evidence to support victims of trafficking is at the local level. A designated alternative body, such as an NGO, might be better placed to assess victims of trafficking.

Article 11.2 of the Directive requires ‘the competent authorities’ to decide a ‘reasonable grounds indication’ that trafficking has occurred.

- Demand: Trafficking for sexual exploitation would not be profitable if there was no demand. The criminalisation of knowingly procuring the services of a sex worker who has been trafficked has not been sufficient to deter users. Many organisations define this as rape: having sexual relations with someone against their will. It has been suggested by some that using the services of any sex worker should be criminalised.

Article 18 of the Directive lists measures to be taken to ‘discourage and reduce demand’, including to “consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation” (Article 18.4).

- Prosecutions: Convicting traffickers has been very difficult and there have been few prosecutions, leading to trafficking being regarded as a relatively low-risk crime. Indeed, there has to date only been one conviction in Northern Ireland (although Northern Ireland related convictions have taken place in other jurisdictions)⁷⁴.

Article 9 of the Directive requires Member States to take necessary measures to ensure those responsible for investigating and prosecuting people involved in trafficking “are trained accordingly” and have “effective investigative tools” which are used in organised or other serious crime cases.

⁷⁴ As of March 2012, there were also four cases pending involving offences of human trafficking, Northern Ireland Assembly Question AQW 9790/11-15 answered 30 March 2012.

- Awareness and training: Questions have been raised as to the effectiveness of current awareness-raising efforts, such as the Blue Blindfold campaign⁷⁵, and there was considered to be a need for more training among front-line workers in areas such as health, policing, immigration, etc., in the recognition of potential trafficking victims. There are also those who have felt that the Organised Crime Task Force (OCTF) has not been active enough in addressing the situation or that there needs to be more awareness of trafficking issues at the Public Prosecution Service (PPS).

Article 18 of the Directive requires taking action such as (Article 18.2):

information and awareness raising campaigns, research and education programmes, where appropriate in cooperation with civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking.

In addition, Article 18.3 Member States shall promote:

regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

- Impact on NGOs: Funding for NGOs in Northern Ireland tends to be precarious, which is a general issue, rather than specific to those involved in helping trafficking victims. However, work contracted for the support of trafficking victims is limited in timescale and can displace the regular work of the organisation on which it relies in the long term.
- Operational awareness: While the flexibility of some agencies and departments has been praised, there was concern that there is a lack of understanding among departmental officials of the circumstances of support to trafficking victims, requiring more policy and financial flexibility and practical awareness. This extends to policymakers, who were invited to visit NGOs working in this area to discover the realities of the work themselves.
- Joined up approach: It has been commented that there are too many agencies involved in the process, which is confusing for many, and it has been variously suggested that there should be a single lead agency or that agencies should work in a more co-ordinated way, although there were also comments praising the degree to which agencies work together. Currently, only the PSNI rescues trafficking victims in Northern Ireland, whereas both UKBA and the Gangmasters Licencing Authority (GLA) could have the capacity to do so, if given the remit and training. It was also suggested that the powers of the GLA

⁷⁵ Website of the Blue Blindfold campaign: <http://www.blueblindfold.co.uk/>.

be extended to all parts of the economy⁷⁶. In addition, data sharing and the availability of data were raised as issues.

- Compensation: While there are processes in place for victims to receive compensation, these are not being availed of due to a range of reasons, such as lack of information or victims leaving the country before compensation processes are put into motion.

Article 17 of the Trafficking Directive states:

Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crime.

- Permanent shelter: Currently, refuges and accommodation for rescued trafficking victims are temporary, whereas a more sustained, specialised approach is needed. This would provide an opportunity for specialist skills to be applied to the care of trafficking victims and put less strain on adapting existing services⁷⁷.

Article 12.3 of the Trafficking Directive requires victims receive 'appropriate protection' on the basis of an 'individual risk assessment'.

- Identification of victims: Ideally, anyone earmarked to be removed from the UK should be screened to establish whether they are a victim of trafficking. Concerns were raised that this was not done as a matter of course, for example, whether UKBA's priority is to remove undocumented individuals or to identify victims. For example, the question was asked as to what procedures were in place to identify trafficking victims at the immigration detention centre in Larne.

Article 18.4 of the Trafficking Directive requires Member States to:

take the necessary measures to establish appropriate mechanisms aimed at early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

- Oversight and jurisdiction: There is confusion over what elements of legislation are devolved and what matters are reserved or excepted. What is nominally national policy and law has considerable implications for services and policies

⁷⁶ A Private Members' Bill was introduced into the Westminster Parliament in 2010 to extend the remit of the GLA to the construction industry, but this has not progressed beyond the First Reading. Gangmasters Licensing (Extension to Construction Industry) Bill: <http://services.parliament.uk/bills/2010-12/gangmasterslicensingextensiontoconstructionindustry.html>.

⁷⁷ The Poppy Project was referred to as an example of good practice (http://www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php), although the UK Government contract for the work was moved to the Salvation Army in April 2011 (The Guardian 17 April 2011). A link to the Sojourner Project was also made, which provides support for women victims of abusive partners, where the women have no access to public funds: http://www.wrc.org.uk/what_we_do/campaigns/women_with_no_recourse_to_public_funds/the_sojourner_project.aspx.

at the regional level, such the support of victims of trafficking, and justice processes, such as conviction of traffickers, are devolved. For example, it was unclear how legal aid can be secured for people with irregular status where Justice is devolved, but the relevant legislation is national. In addition, there were serious concerns regarding the oversight of national functions, such as those operated by UKBA, in the regional context. For example, it was raised whether the Larne centre should come under scrutiny by bodies such as the Criminal Justice Inspectorate, Police Ombudsman or Prisons Ombudsman.

The UK human trafficking strategy does not refer to Northern Ireland specifically, but alludes to 'close and regular communication' between HM Government and the devolved administrations⁷⁸.

- The border: The extent of north-south co-operation to tackle trafficking is an issue as is the impact of the border itself. The transition between jurisdictions complicates intervention and adds to the disorientation of victims.

Articles 19 and 20 of the Trafficking Directive refer to the appointment of a national rapporteur and coordination of the EU strategy against trafficking through an Anti-Trafficking Coordinator.

- Forced labour: While the media focus is on trafficking for sexual exploitation, an apparently more common outcome for trafficking victims is for forced labour, although for some women, there is often a connection between the two. However, proving forced labour is very difficult, as the line between exploitative labour and forced labour is ill-defined and flexible, as migrant workers can be caught in a 'continuum of exploitation'⁷⁹, which may begin as voluntary and legal, but develop into coercive and illegal treatment.
- Cycle of exploitation: The reality of trafficking can be more complex than a linear notion of coercion – trafficking – exploitation – rescue – return home. Victims may be caught in circumstances of paying off a debt to traffickers, so are forced to return to a situation of exploitation, even if they are rescued. There may be a situation of threats to family in the home country, or a sense of shame on return. Some victims have had to make difficult choices, such as sex work for a shorter period of time or other work for longer.
- Judiciability of the Convention: An issue was raised with regard to the extent to which the Trafficking Convention is generally regarded as judiciable in courts in Great Britain but not in Northern Ireland.

⁷⁸ Home Office (2011), *Human Trafficking: The Government's Strategy*, London: HM Government, p.8: <http://www.homeoffice.gov.uk/crime/human-trafficking-strategy/>.

⁷⁹ Klara Skřivánková (2010), *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation*, York: Joseph Rowntree Foundation.

7 Key Questions from the Research

The following discussion points emerged from the stakeholder interviews:

Prevention

- The trafficking of human beings for sexual exploitation would not exist without demand. The current legislation which criminalises users of sexual services of trafficked women is not a sufficient deterrent. The evidence from interviews suggested that the criminalisation of the procurement of sex in general would be more effective.
- More work could be undertaken to raise awareness of human trafficking. The evidence from interviews suggested that the effectiveness of the Blue Blindfold campaign in Northern Ireland could be reviewed with a view to assessing how greater awareness could be raised of trafficking in this jurisdiction. Additional training for front line workers to identify victims was also suggested.

Detection

- There may be a potential conflict of interest between the role of UKBA as the lead agency for immigration control and assessing whether someone is a victim of trafficking. The evidence from interviews suggests that consideration might be given to separating the assessment of victims, which is a criminal justice function, and actions relating to immigration status. Initial assessment might be carried out by an independent agency, using local evidence provided by the PSNI.
- UKBA carries out policing and justice functions in Northern Ireland without oversight from devolved safeguards, for example, the Police or Prisons Ombudsman offices, the Policing Board of Criminal Justice Inspectorate. The evidence from interviews suggests that oversight provisions might be considered, particularly in respect of the screening of people passing through the Larne immigration detention centre for the identification of potential trafficking victims.
- Trafficking for sexual exploitation is more widely known, but people are also (probably more commonly) trafficked for forced labour, although this dimension is more complex, where the defining lines between exploitative labour and forced labour, and between trafficking for exploitation and assisted irregular migration, are blurred. The evidence from interviews suggests that there is a greater need for understanding, detecting and taking action against trafficking for forced labour than is currently the case.

Support of Victims

- Local agencies are under-equipped for dealing with what can be very complex cases and victims with very complex needs. The evidence from interviews

suggested that specialist expertise in immigration, asylum and the support of traumatised trafficking victims with diverse language needs might be centralised in the form of a regional human trafficking centre or agency. This would pool legal, language and psychological support resources and be a single point of contact for advice and expertise, including a helpline.

- Accommodation and support is currently provided on an ad hoc basis. The evidence from interviews suggested there may be a case for a dedicated accommodation site for trafficking victims, with appropriate security arrangements and access to appropriate expertise, perhaps maintained by a community based agency with the appropriate skills and experience (such as Women's Aid), but not supplanting accommodation required for core service use.
- Physical support is a major concern of people who have irregular or undocumented status, such as trafficking victims, having no official access to public funds. The evidence from interviews suggested that the current temporary or charitable arrangements for supporting trafficking victims might be regularised through legislation, including beyond the 45 day reflection period. This might include incorporation of the relevant articles of the Trafficking Convention into legislation, or guidelines to ensure the Convention is incorporated into judicial processes.

Prosecution

- There has only been one prosecution for trafficking in Northern Ireland, despite 75 victims of trafficking having been rescued since 2009. The evidence from interviews suggested greater co-ordination between agencies would maximise the detection and evidence gathering processes required for prosecutions and also it was suggested that there might be a review of the resources devoted to addressing trafficking in Northern Ireland, as it was thought there was insufficient effort devoted to dealing with the issue.
- Legal processes associated with dealing with trafficking are lengthy and time-consuming, leading to additional stress on the part of victims and additional costs associated with supporting victims with interim or temporary status. The evidence from interviews suggested consideration of a fast-track process for dealing with trafficking.

There are additional issues that arose in the research that are not within the competencies of the devolved administration. Examples of these are as follows:

- Victims are treated as irregular migrants and have the option of applying for one year's discretionary leave to remain. The evidence from interviews suggested that immigration status is a significant stressor for victims of trafficking, many of whom may be enduring considerable psychological pressures associated with

the experience of having been trafficked and exploited and with any associated legal processes. However, immigration status is not a devolved matter.

- The Gangmasters Licensing Authority (GLA) is limited in the areas of the economy it can operate, the kind of employment agency it can deal with and in its actions, for example, not being a lead agency for rescuing victims. The evidence from interviews suggested that the remit of the GLA might be expanded to the whole economy and to cover all kinds of employment agencies, registered and unregistered. However, the role and remit of the GLA is provided for in UK legislation.

Appendix 1: Summary of Relevant International Commitments Regarding Trafficking in Human Beings

<i>Commitment</i>	<i>UN Protocol 2000 articles</i>	<i>Council of Europe Convention 2005 articles</i>	<i>Directive 2011/36/EU articles</i>
Criminalisation of trafficking, aiding trafficking and procuring the services of a victim	5	18-21	2-7
Protection of the privacy of victims	6.1	11, 30	
Assistance and information for court proceedings	6.2	15.1	
Provisions for the physical, psychological and social recovery of victims	6.3	12.1	11
Appropriate protection and provision for vulnerable groups, such as older people, women, children and people with disabilities	6.4	5.5, 12.7, 17	11.7, 13-16
Protection of the physical safety of victims	6.5	12.2, 28, 30	12
Provisions for compensation of victims and legal redress	6.6	15.2	12.2, 17
Measures to permit victims to remain	7	14	
Return of victims to their own country, where this is voluntary	8	16	
Policies and practices to prevent and combat trafficking	9.1	5.2	
Involvement of NGOs	9.3	5.6, 12.5, 35	
Co-operation between agencies	10	5.1, 29.2	

Border arrangements to prevent and detect trafficking	11	7	
Human rights-based approach		5.3	
Raise awareness and provision of training		6, 29.3	18
Discourage demand		6	
Measures to identify victims		10	
Assistance not conditional on willingness to be a witness		12.6	11.3
Reflection period of at least 30 days		13	
Independent, specialised entities to combat trafficking and care for victims		29	
Investigation and prosecution not to be solely dependent on reporting by victims			9
Non-prosecution of victims		26	8

Appendix 2: Sections 109-110 of the Protection of Freedoms Act 2012

109 Trafficking people for sexual exploitation

(1) The Sexual Offences Act 2003 is amended as follows.

(2) For sections 57 to 59 (trafficking people for sexual exploitation) substitute—

“59A Trafficking people for sexual exploitation

(1) A person (“A”) commits an offence if A intentionally arranges or facilitates—

- (a) the arrival in, or entry into, the United Kingdom or another country of another person (“B”),
- (b) the travel of B within the United Kingdom or another country, or
- (c) the departure of B from the United Kingdom or another country, with a view to the sexual exploitation of B.

(2) For the purposes of subsection (1)(a) and (c) A’s arranging or facilitating is with a view to the sexual exploitation of B if, and only if—

- (a) A intends to do anything to or in respect of B, after B’s arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence, or
- (b) A believes that another person is likely to do something to or in respect of B, after B’s arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence.

(3) For the purposes of subsection (1)(b) A’s arranging or facilitating is with a view to the sexual exploitation of B if, and only if—

- (a) A intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or
- (b) A believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.

(4) A person who is a UK national commits an offence under this section regardless of—

- (a) where the arranging or facilitating takes place, or
- (b) which country is the country of arrival, entry, travel or (as the case may be) departure.

(5) A person who is not a UK national commits an offence under this section if—

- (a) any part of the arranging or facilitating takes place in the United Kingdom, or
- (b) the United Kingdom is the country of arrival, entry, travel or (as the case may be) departure.

(6)A person guilty of an offence under this section is liable—

(a)on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;

(b)on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(7)In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (6)(a) to 12 months is to be read as a reference to 6 months.”

(3)For subsection (1) of section 60 (sections 57 to 59: interpretation) substitute—

“(1)In section 59A—

“country” includes any territory or other part of the world;

“relevant offence” means—

(a)any offence under the law of England and Wales which is an offence under this Part or under section 1(1)(a) of the Protection of Children Act 1978, or

(b)anything done outside England and Wales which is not an offence within paragraph (a) but would be if done in England and Wales;

“UK national” means—

(a)a British citizen,

(b)a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom, or

(c)a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.”

(4)Omit section 60(2) (sections 57 to 59: jurisdiction).

(5)Accordingly, the title of section 60 becomes “Section 59A: interpretation”.

110 Trafficking people for labour and other exploitation

(1)The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 is amended as follows.

(2)For subsections (1) to (3) of section 4 (trafficking people for labour and other exploitation) substitute—

“(1A)A person (“A”) commits an offence if A intentionally arranges or facilitates—

(a)the arrival in, or entry into, the United Kingdom or another country of another person (“B”),

(b)the travel of B within the United Kingdom or another country, or

(c)the departure of B from the United Kingdom or another country, with a view to the exploitation of B.

(1B)For the purposes of subsection (1A)(a) and (c) A’s arranging or facilitating is with a view to the exploitation of B if (and only if)—

(a) A intends to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world, or

(b) A believes that another person is likely to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world.

(1C) For the purposes of subsection (1A)(b) A's arranging or facilitating is with a view to the exploitation of B if (and only if)—

(a) A intends to exploit B, during or after the journey and in any part of the world, or

(b) A believes that another person is likely to exploit B, during or after the journey and in any part of the world.”

(3) In section 4(4)—

(a) in paragraph (b)—

(i) omit “under the Human Organ Transplants Act 1989 (c. 31) or”, and

(ii) after “2004” insert “as it has effect in the law of England and Wales”,

(b) in that paragraph, the words from “as a result” to the end of the paragraph become sub-paragraph (i), and

(c) after that sub-paragraph insert “or

(ii) which, were it done in England and Wales, would constitute an offence within sub-paragraph (i),”.

(4) After section 4(4) insert—

“(4A) A person who is a UK national commits an offence under this section regardless of—

(a) where the arranging or facilitating takes place, or

(b) which country is the country of arrival, entry, travel or (as the case may be) departure.

(4B) A person who is not a UK national commits an offence under this section if—

(a) any part of the arranging or facilitating takes place in the United Kingdom, or

(b) the United Kingdom is the country of arrival, entry, travel or (as the case may be) departure.”

(5) Omit section 5(1) (section 4: jurisdiction).

(6) In section 5(3) (section 4: interpretation)—

(a) for “In section 4(4)(a)” substitute “In section 4—

“country” includes any territory or other part of the world,”

(b) the words from ““the Human Rights Convention” to the end of the subsection become the next definition in a list, and

(c)after that definition insert—

““UK national” means—

(a)a British citizen,

(b)a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom, or

(c)a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.”

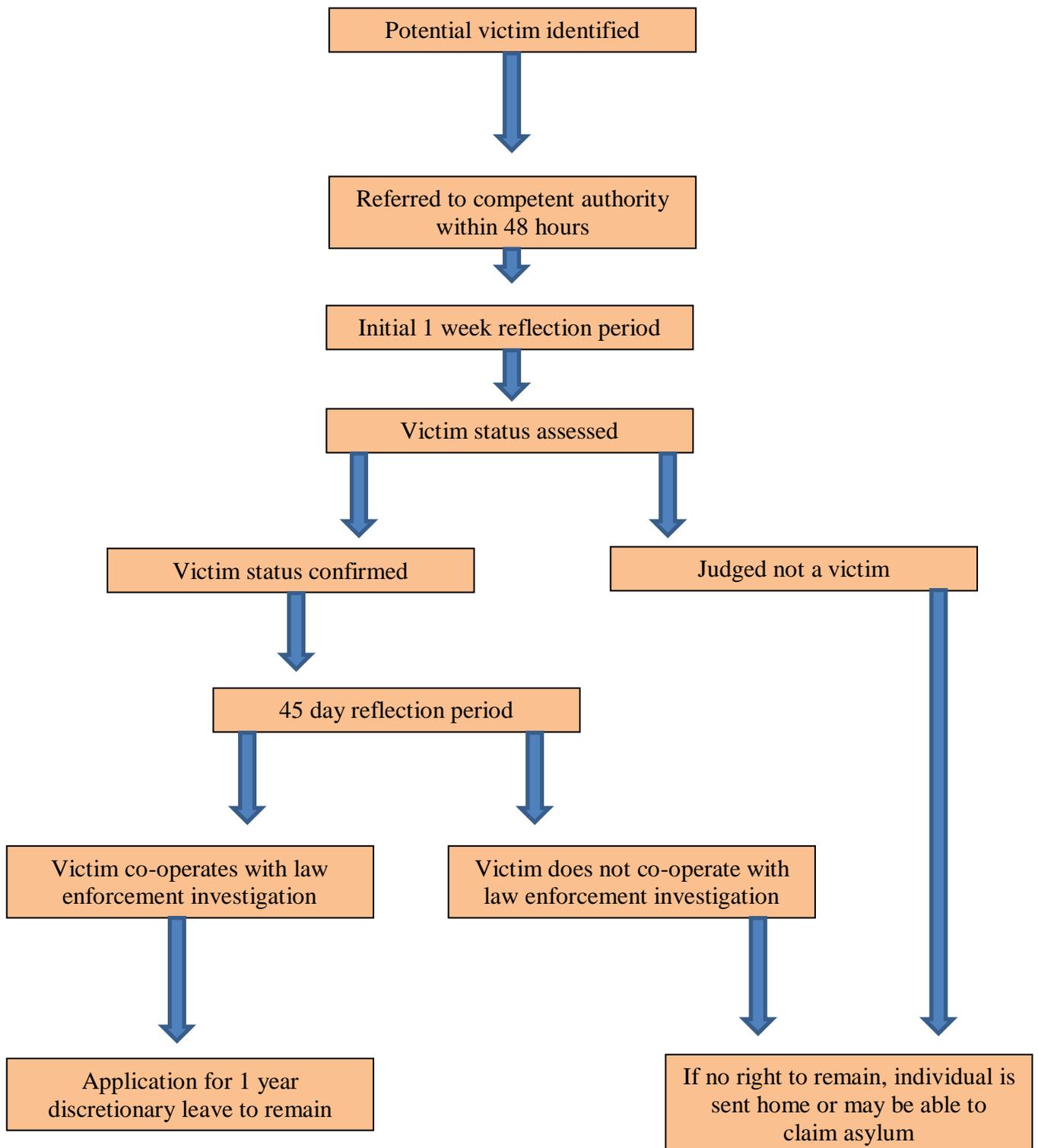
Appendix 3: UK Legislation for Cases Involving Victims of Human Trafficking⁸⁰

LEGISLATION	OFFENCE
<p>Sexual Offences Act 2003</p> <p>Section 57</p> <p>Section 58</p> <p>Section 59</p> <p>Sections 52 and 53</p> <p>Section 53A</p> <p>Section 1</p> <p>Sections 4-14</p> <p>Section 47</p> <p>Section 48</p> <p>Section 49</p>	<p>Trafficking into the UK for exploitation</p> <p>Trafficking within the UK for exploitation</p> <p>Trafficking out of the UK for exploitation</p> <p>Causing or inciting prostitution for gain</p> <p>Paying for the services of a prostitute subjected to force or exploitation</p> <p>Rape</p> <p>Rape and other offences of causing sexual activity and sexual assault against children under 18</p> <p>Paying for the sexual services of a child</p> <p>Causing or inciting child prostitution</p> <p>Controlling or arranging child prostitution</p>
<p>Asylum and Immigration (Treatment of Claimants) Act 2004</p> <p>Section 4(1), (2) and (33)</p>	<p>Trafficking into (1), within (2) and out of (3) the UK for exploitation: slavery or forced labour, human organ donation, to provide services or provide another person with benefits</p>
<p>Coroners and Justice Act 2009</p> <p>Section 71</p>	<p>Holding another person in slavery or servitude or requiring them to perform forced or compulsory labour</p>

⁸⁰ Derived from Crown Prosecution Service (2011), *CPS Policy for Prosecuting Cases of Human Trafficking*, London: CPS, pp.33-35.

<p>Immigration Act 1971</p> <p>Section 25</p>	<p>Facilitation of immigration law (smuggling)</p>
<p>Sexual Offences Act 1956</p> <p>Section 33A</p> <p>Section 34</p> <p>Sections 35 and 36</p>	<p>Managing or assisting in the management of a brothel</p> <p>To let premises for use as a brothel</p> <p>Allowing a tenant to use premises as a brothel or for the purposes of prostitution</p>
<p>Offences Against the Persons Act 1861</p> <p>Section 16</p> <p>Section 47</p> <p>Section 20</p> <p>Section 18</p>	<p>Threats to kill</p> <p>Assault occasioning actual bodily harm</p> <p>Unlawful wounding/inflicting grievous bodily harm</p> <p>Unlawful wounding/inflicting grievous bodily harm with intent</p>
<p>Common Law</p>	<p>Kidnap</p> <p>False imprisonment</p> <p>Aiding and abetting a criminal offence</p>
<p>Proceeds of Crime Act 2002</p> <p>Sections 327-329</p>	<p>Money laundering</p>
<p>Violent Crime Reduction Act 2006</p> <p>Section 54</p>	<p>Forfeiture to seize and forfeit land vehicles, ships and aircraft used for the trafficking of human beings</p>

Abduction Act 1984 Section 2	Child abduction
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Appendix 4: Process for Dealing with Victims of Trafficking⁸¹

⁸¹ Derived from Department of Justice (2011), *Research paper investigating the issues for women in Northern Ireland involved in prostitution and exploring best practice elsewhere*, p.47.