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Human Trafficking & Exploitation (Further Provisions and Support for Victims) Bill 2013

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This paper summarises the provisions of the Human Trafficking & Exploitation (Further Provisions and Support for Victims) Bill 2013 and explores some of the key issues associated with the legislative proposals.

Key Points

The Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill was introduced as a Private Member's Bill by Lord Morrow on 24 June 2013. The Bill passed its Second Reading on 24 September 2013. The purpose of the Bill is to:

provide Northern Ireland with a more robust legal framework in relation to:

- *the prosecution of traffickers and those subjecting people in NI to conditions of slavery;*
- *the provision of improved support for the victims of trafficking; and*
- *for tackling the demand for trafficking.*

While the EU Directive on human trafficking places certain requirements on the UK as member state, a number of provisions contained in this Bill go beyond what the Government views is required to transpose the directive into domestic law. The Directive relates to both devolved matters and 'non-devolved' matters.

The Bill contains provisions which reflect recommendations contained in reports from organisations such as the Group of Experts on Action Against Trafficking in Human Beings (GRETA) and the Anti-Trafficking Monitoring Group. Responses to the consultation exercise conducted by Lord Morrow on his proposals were mostly positive.

The Department of Justice (DoJ) has planned to legislate to ensure what it considers necessary for transposition of the EU Directive and has expressed concern about certain elements of the Bill in terms of: unnecessary duplication; threats to judicial or prosecutorial discretion; legislating for areas that are already undertaken in practice; and the potential for unintended consequences. A similar approach has been adopted in other parts of the UK.

In other legislatures considered in this paper, private members' bills which seek to extend legislative provision beyond the minimum requirements of the Directive have been introduced but to date no bill has successfully completed the legislative process.

The EU Directive does not address the purchase of sexual services in general. The Bill contains such a provision based upon the experience of the operation in Sweden of a similar ban. There is, however, a clear lack of consensus on the impact of the Swedish ban on the prevalence of prostitution and its impact on human trafficking. This lack of consensus may be due to the inherent difficulties involved in carrying out research on the sex industry and on trafficking and to the opposing moral and theoretical views on prostitution of those engaged in the debate.

It has been suggested that, in addition to the demand for sexual services, there is scope to address the demand for other forms of exploitation related to human trafficking through legislative reform.

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1 Introduction

The Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill was introduced as a Private Member's Bill by Lord Morrow on 24 June 2013¹. Prior to its introduction, a consultation exercise on the legislative proposals was undertaken between August 2012² and October 2012. A summary of responses to the consultations was published in June 2013³.

The overall purpose of the Bill is stated as follows⁴:

The objective of this Bill is to provide Northern Ireland with a more robust legal framework in relation to:

- *the prosecution of traffickers and those subjecting people in NI to conditions of slavery;*
- *the provision of improved support for the victims of trafficking; and*
- *for tackling the demand for trafficking.*

Lord Morrow has presented the Bill at the Justice Committee and the Department of Justice given a response to the Bill on 12 September 2013⁵. The Second Reading of the Bill began on 23 September 2013⁶ and concluded on 24 September 2013⁷.

This paper examines the clauses of the Bill and discusses some key issues and relevant themes⁸.

¹ Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill web page:

<http://www.niassembly.gov.uk/Assembly-Business/Legislation/Current-Non-Executive-Bill-Proposals/Human-Trafficking-and-Exploitation-Further-Provisions-and-Support-for-Victims-Bill/>.

² Lord Morrow (2012), *Proposed Changes in the Law to Tackle Human Trafficking – Consultation Paper*, August 2012:

<http://dev.mydup.com/images/uploads/publications/HumanTrafficking.pdf>.

³ Lord Morrow (2013), *Consultation Responses to Proposed Changes in the Law to Tackle Human Trafficking*, June 2013:

http://dev.mydup.com/images/uploads/publications/Human_Trafficking_and_Exploitation_Bill_Consultation_Response_Document%281%29.pdf.

⁴ Explanatory and Financial Memorandum, p.1: <http://www.niassembly.gov.uk/Documents/Legislation/Bills/Private-Members-Bills/Session-2012-13/EFM%20-%20As%20Introduced.pdf>.

⁵ Justice Committee meeting 12 September 2013: <http://www.niassembly.gov.uk/Assembly-Business/Committees/Justice/Minutes-of-Evidence/>.

⁶ Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill Second Reading plenary debate 23 September 2013: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/23-September-2013/#11>.

⁷ Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill Second Reading plenary debate 24 September 2013: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-September-2013/#11>.

⁸ The paper supplements previous recent papers by the Research and Information Service:

- Briefing Paper 149/12 *Supplementary Briefing on Human Trafficking*, 1 October 2012: <http://www.niassembly.gov.uk/Documents/RalSe/Publications/2012/justice/14912.pdf>.
- Research Paper 130/12 *Issues raised in relation to the Department of Justice legislative proposals on Human Trafficking*, 3 September 2012: <http://www.niassembly.gov.uk/Documents/RalSe/Publications/2012/justice/13612.pdf>.
- Research Paper 100/12 *Human Trafficking in Northern Ireland*, 12 June 2012: <http://www.niassembly.gov.uk/Documents/RalSe/Publications/2012/ofmdfm/10012.pdf>.

2 Background

The UK is committed to implementing the Council of Europe Convention on Action against Trafficking in Human Beings 2005, which has the following purposes⁹:

1. to prevent and combat trafficking in human beings, while guaranteeing gender equality;
2. to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
3. to promote international cooperation on action against trafficking in human beings.

The UK also has an obligation to transpose the provisions of EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims¹⁰ into UK law. The articles of the Directive are reproduced at Appendix 1.

Human trafficking legislation in Northern Ireland derives primarily from UK-wide legislation, as immigration is not a devolved matter. However, legislation relating to justice and provision of support to victims of trafficking lies within the competence of the devolved administration.

Key pieces of legislation relating to human trafficking in Northern Ireland are as follows:

- Nationality, Immigration and Asylum Act 2002¹¹, which provides for the offence of trafficking for prostitution (Section 145)
- Sexual Offences Act 2003¹², which provides for the offence of trafficking for sexual exploitation (Section 57-60)
- Asylum and Immigration (Treatment of Claimants, etc.) Act 2004¹³, which provides for the offence of trafficking for exploitation (Section 4)
- The Sexual Offences (Northern Ireland) Order 2008¹⁴, which refines the definition of certain sexual offences and offences related to sexual offences (e.g. trafficking) as well as criminalizing sex with a prostitute subject to force, as well as offences outside the UK

⁹ Council of Europe Convention on Action against Trafficking in Human Beings, Article 1:
<http://www.conventions.coe.int/Treaty/EN/treaties/Html/197.htm>.

¹⁰ EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>.

¹¹ Nationality, Immigration and Asylum Act 2002: <http://www.legislation.gov.uk/ukpga/2002/41/contents>.

¹² Sexual Offences Act 2003: <http://www.legislation.gov.uk/ukpga/2003/42/contents>.

¹³ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004: <http://www.legislation.gov.uk/ukpga/2004/19/contents>.

¹⁴ Sexual Offences (Northern Ireland) Order 2008: <http://www.legislation.gov.uk/nisi/2008/1769/contents>.

- Coroners and Justice Act 2009¹⁵, which provides for offences relating to slavery, servitude and forced or compulsory labour (Section 71)
- Criminal Justice Act (Northern Ireland) 2013¹⁶, which provides for offences of trafficking within and outside the UK, and that trafficking offences are always tried on indictment (Sections 6-8)

¹⁵Coroners and Justice Act 2009: <http://www.legislation.gov.uk/ukpga/2009/25/contents>.

¹⁶ Criminal Justice Act (Northern Ireland) 2013: <http://www.legislation.gov.uk/nia/2013/7/contents>.

3 Trafficking Legislation in other Jurisdictions

The Bill has been introduced in a context of legislative processes elsewhere and this section briefly outlines developments in England and Wales, Scotland and the Republic of Ireland.

England and Wales

Much UK legislation¹⁷ in relation to human trafficking applies to Northern Ireland. The following do not apply to Northern Ireland:

- Sections 109-100 of the Protection of Freedoms Act 2012¹⁸, which provide for the offences of trafficking outside the UK and within the UK without the need for prior trafficking into or out of the UK
- The Trafficking People for Exploitation Regulations 2013¹⁹, which provides for additional protections for victims of trafficking to avoid secondary victimisation and the extension of 'special protection measures' to all victims of trafficking

Both of these pieces of legislation were introduced to comply with the EU Human Trafficking Directive.

Lord McColl of Dulwich introduced the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill in the House of Lords on 15 May 2012²⁰. The provisions of the Bill include:

- Human trafficking offences
- Aggravating factors
- Requirements for investigation and prosecution
- Assistance and support for victims of trafficking
- Special measures for witnesses
- Requirements for prevention and monitoring

A second reading has yet to be scheduled.

In a review of human trafficking legislation in 2012, the UK Government considered, but rejected, consolidating human trafficking law²¹:

¹⁷ For background on UK legislation relating to trafficking, see House of Commons Library Standard Note SN/HA/4324 *Human Trafficking: UK Responses* 8 March 2013:

<http://www.parliament.uk/Templates/BriefingPapers/Pages/BPPdfDownload.aspx?bp-id=sn04324>.

¹⁸ Protection of Freedoms Act 2012: <http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>.

¹⁹ The Trafficking People for Exploitation Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/554/body/made>.

²⁰ Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill page:

<http://services.parliament.uk/bills/2012-13/humantraffickingandexploitationfurtherprovisionsandsupportforvictims.html>.

²¹ HM Government (2012), Report on the Internal Review of Human Trafficking Legislation, London: HM Government, p.11: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97846/human-trafficking-legislation.pdf.

In consultation with the Crown Prosecution Service, the Attorney General's Office, the Police, and the Devolved Administrations, the UK Government does not believe that wholesale change to legislation is required, given the changes already being made to domestic legislation to comply with the EU Directive on trafficking in human beings and the minor amendment being proposed as part of this internal review. Whilst introducing a new human trafficking bill to consolidate existing legislation into one Act would be administratively neater, the UK Government does not consider it necessary or proportionate to effectively bring to justice those who seek to exploit others.

However, the Home Secretary, Theresa May, has recently referred to plans for a Modern Slavery Bill, which is intended to²²:

- Consolidate in a single act the offences that are used to prosecute slave-drivers
- Introduce trafficking prevention orders to restrict the activities of people released after a trafficking-related offence
- Encourage companies to make a commitment not to use suppliers who use slave labour
- Establish a Modern Slavery Commissioner

Scotland

As in Northern Ireland, immigration matters are not devolved in Scotland and legislation on trafficking has broadly followed a UK model, with Scottish legislation for devolved matters. The main legislation is as follows:

- Criminal Justice (Scotland) Act 2003²³, which provides for offences of trafficking for the purposes of sexual exploitation (Section 22)
- Asylum and Immigration (Treatment of Claimants, etc.) Act 2004²⁴, which provides for the offence of trafficking for exploitation (Section 4)
- Criminal Justice and Licensing (Scotland) Act 2010²⁵, which extends trafficking offences to those trafficked within the UK and outside the UK, creates a new offence of holding someone in slavery or servitude, or requiring someone to perform forced or compulsory labour (Sections 46-7, 99)

²² Theresa May (2013), 'Modern Slave Drivers, I'll End your Evil Trade' in *The Sunday Times* 25 August 2013.

²³ Criminal Justice (Scotland) Act 2003: <http://www.legislation.gov.uk/asp/2003/7/contents>.

²⁴ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004: <http://www.legislation.gov.uk/ukpga/2004/19/contents>.

²⁵ Criminal Justice and Licensing (Scotland) Act 2010: <http://www.legislation.gov.uk/asp/2010/13/contents>.

The Scottish Government convened a Trafficking in Human Beings Summit on 18 October 2012, comprising statutory and non-statutory bodies and organisations. This summit agreed twelve action points, including two regarding legislative change²⁶:

- Scottish Government will find an early legislative opportunity to introduce a specific statutory human trafficking aggravation.
- Agencies will review together the wider legislative framework for tackling human trafficking and any potential gaps.

An Anti-Trafficking Progress Group was established consisting of the organisations present at the summit. The Group first met on 7 December 2012 and again on 18 July 2013. Sub-Group 6 of the Group is to review Scottish legislation with regard to trafficking²⁷.

The Equality and Human Rights Commission carried out an inquiry into human trafficking in Scotland, reporting in 2011. Recommendation 3 states²⁸:

The Scottish Government should consider introducing a comprehensive Human Trafficking Bill based upon a review of all its legislation relating to human trafficking. This review should involve close liaison with the UK Government and, in particular, should ensure new human trafficking legislation supports any new strategy, while complying with the EU Trafficking Directive and positive human rights duties on human trafficking.

A follow-on report published in February 2013 examined what progress had been made towards addressing the recommendations. With regard to further progress required on legislation, the report stated²⁹:

- The work of the ATPG³⁰ should be focused on ensuring that a statutory aggravation is the first step in overhauling the law on human trafficking in Scotland.
- The work of the ATPG, in reviewing the wider legislative framework, will be a valuable exercise and should be the next step towards a Human Trafficking Bill.

²⁶ Scottish Government, *Actions Agreed at Trafficking in Human Beings Summit on 18 October 2012*: <http://www.scotland.gov.uk/Resource/0042/00429442.pdf>.

²⁷ Scottish Government website, 'Human Trafficking', accessed 4 September 2013: <http://www.scotland.gov.uk/Topics/Justice/crimes/humantraffick>.

²⁸ Equality and Human Rights Commission Scotland (2011), *Inquiry into Human Trafficking in Scotland: Report of the Equality and Human Rights Commission*, Glasgow: Equality and Human Rights Commission, p.26: http://www.equalityhumanrights.com/uploaded_files/Scotland/Human_Trafficking_in_Scotland/_inquiry_into_human_trafficking_in_scotland-full-report_pdf_.pdf.

²⁹ Equality and Human Rights Commission Scotland (2011), *Inquiry into Human Trafficking in Scotland: Follow On Report*, Glasgow: Equality and Human Rights Commission, p.31: http://www.equalityhumanrights.com/uploaded_files/Scotland/Human_Trafficking_in_Scotland/_ht_follow_on_final_web.pdf.

³⁰ ATPG refers to the Anti-Trafficking Progress Group.

- The work of the ATPG should be an opportunity to ensure that wider stakeholders are involved in an assessment of compliance with the new EU Directive and consideration of how the new EU Strategy can be implemented in Scotland.

The Criminal Justice (Scotland) Bill³¹ was introduced in the Scottish Parliament on 24 June 2013. Sections 83-5 provide for aggravation in relation to people trafficking.

A formal proposal for a Private Member's Bill was lodged by Rhoda Grant MSP on 29 May 2013 to provide for the criminalization of the purchase of sex. The proposal did not proceed due to a lack of cross-party support³².

Jenny Marra MSP has proposed a Human Trafficking (Scotland) Bill³³. The purpose of the proposed Bill is to³⁴:

1. Require the creation of a Scottish anti-human trafficking strategy
2. Provide for the special treatment of human trafficking-related crime within the criminal justice system
3. Provide for the support of survivors of human trafficking

The consultation period ends on 6 December 2013.

Republic of Ireland³⁵

The key pieces of legislation for dealing with human trafficking in the Republic of Ireland are:

- Child Trafficking and Pornography Act 1998³⁶, 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 2008³⁷, which provides for the offence of trafficking, including of children, for exploitation in general
- The Criminal Law (Human Trafficking) (Amendment) Act 2013³⁸, which provides for offences of trafficking for the purposes of forced begging and criminal activity, as well as certain aggravating factors

³¹ Criminal Justice (Scotland) Bill 2013: <http://www.scottish.parliament.uk/help/65155.aspx>.

³² Proposed Criminalisation of the Purchase of Sex (Scotland) Bill (2): <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/54314.aspx>.

³³ Proposed Human Trafficking (Scotland) Bill: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/67134.aspx>.

³⁴ *Human Trafficking (Scotland) Bill*, Consultation by Jenny Marra MSP, Member for North East Scotland, September 2013: http://www.scottish.parliament.uk/S4_MembersBills/20130909_Human_Trafficking_Consultation_final_version.pdf.

³⁵ For a summary of issues relating to human trafficking in the Republic of Ireland and Northern Ireland, see Research Paper 106/11 *North South Parliamentary Forum Joint Working Group Meeting Papers*, pp.29-48, 2 September 2011: <http://www.niassembly.gov.uk/Documents/RaISe/Publications/2011/General/10611.pdf>.

³⁶ Child Trafficking and Pornography Act 1998: <http://www.irishstatutebook.ie/1998/en/act/pub/0022/index.html>.

³⁷ Criminal Law (Human Trafficking) Act 2008: <http://www.irishstatutebook.ie/2008/en/act/pub/0008/index.html>.

In terms of compliance with EU standards on human trafficking, the Minister for Justice, Equality and Defence, Alan Shatter, has stated that the 2013 Act brings the Republic of Ireland into full compliance with Directive 2011/36/EU³⁹.

The Immigration, Residence and Protection Bill 2010⁴⁰ was introduced in the Dáil on 29 June 2010 and reached Committee Stage when it lapsed with the dissolution of the 30th Dáil, but was restored on 23 March 2011. This includes provisions for a period of reflection for victims of human trafficking (Clause 139 of the Bill as introduced).

Thomas Pringle TD introduced a Private Member's Bill, the Criminal Law (Sexual Offences) (Amendment) Bill⁴¹, to the Dáil on 13 March 2013. The Bill provided for the criminalisation of the purchase of sex. The Bill fell at the Second Stage⁴².

In June 2013, the Committee on Justice, Defence and Equality concluded a review into the legislation relating to prostitution. The Committee recommended the following legal reforms⁴³:

- a summary offence penalising the purchase of sexual services of another person by means of prostitution, or any request, agreement or attempt to do so; it should at the same time be clarified that no offence is committed by the person whose sexual services are so sold;
- increased penalties for trafficking for the purposes of sexual exploitation;
- increased penalties for organising or living off the earnings of prostitution;
- an offence of recklessly permitting a premises to be used for the purposes of prostitution;
- the regulation and inspection of premises advertised as massage parlours so as to eliminate those used for prostitution;
- witnesses in cases dealing with sexual exploitation through prostitution and/or trafficking to give evidence anonymously;
- an offence of grooming a child or vulnerable person for the purpose of sexual abuse or exploitation;

³⁸ Criminal Law (Human Trafficking) (Amendment) Act 2013: <http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0024.pdf>.

³⁹ Department of Justice, Defence and Equality press release 5 July 2013: <http://www.justice.ie/en/JELR/Pages/PR13000276>.

⁴⁰ Immigration, Residence and Protection Bill 2010:

[http://www.oireachtas.ie/viewdoc.asp?DocID=15565&&CatID=59&StartDate=01 January 2010&OrderAscending=0](http://www.oireachtas.ie/viewdoc.asp?DocID=15565&&CatID=59&StartDate=01%20January%202010&OrderAscending=0).

⁴¹ Criminal Law (Sexual Offences) (Amendment) Bill 2013: <http://www.oireachtas.ie/viewdoc.asp?DocID=23101&&CatID=59>.

⁴² Criminal Law (Sexual Offences) (Amendment) Bill 2013: Second Stage debate 3 May 2013:

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013050300003?opendocument#A00150>. Criminal Law (Sexual Offences) (Amendment) Bill 2013: Second Stage (Resumed) - Division 7 May 2013: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013050700028?opendocument#AA01250>.

⁴³ Houses of the Oireachtas Joint Committee on Justice, Defence and Equality (2013), Report on hearings and submissions on the Review of Legislation on Prostitution, Volume 1, 31/JDAE/010, pp.79-80: <http://www.oireachtas.ie/parliament/mediazone/pressreleases/name-17366-en.html>.

- power for the An Garda Síochána to have disabled or vested in them any telephone number in use in the State that is suspected on reasonable grounds of being used for the purposes of prostitution;
- that the accessing of web sites – whether located in the State or abroad – that advertise prostitution in the State should be treated in the same way as accessing sites that advertise or distribute child pornography.

Legislation has not yet been brought forward in respect of the recommendations.

4 The Clauses of the Bill

This section considers the provisions of the Bill in detail. The Explanatory and Financial Memorandum to the Bill correlates the articles of the EU Human Trafficking Directive with the clauses of the Bill, so that will not be repeated here.

Clause 1: Definition of human trafficking and slavery offences⁴⁴

For the purposes of definition⁴⁵:

A human trafficking offence is an offence which involves the intentional arrangement or facilitation of movement of people for exploitation.

The clause defines a 'human trafficking offence' as one as so defined under Sections 57 to 59 of the Sexual Offences Act 2003 or Section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The former covers sexual exploitation and the latter exploitation for labour or the extraction of body parts.

A 'slavery offence' is as defined in the Coroners and Justice Act 2009⁴⁶, which is described as follows:

A person (D) commits an offence if— .

(a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held,

The Crown Prosecution Service gives guidance on the application of Section 71 of the Coroners and Justice Act 2009 as follows⁴⁷:

Slavery is described as the status or condition of a person over whom any or all of the powers attaching the right of ownership are exercised. In essence, characteristics of ownership need to be present for a state of slavery to exist.

The conventions, defined forced or compulsory labour as being 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. To that end, the section 71 offence will require an element of coercion or deception between the defendant and the victim.

The EU Directive states that the following acts should be punishable⁴⁸:

⁴⁴ See also Research Paper 130/12 Issues raised in relation to the Department of Justice legislative proposals on Human Trafficking, 3 September 2012, pp.24-26.

⁴⁵ Explanatory and Financial Memorandum, p.3.

⁴⁶ Section 71 of the Coroners and Justice Act 2009.

⁴⁷ Crown Prosecution Service Prosecution Policy and Guidance, 'Slavery, Servitude and Forced or Compulsory Labour', accessed 16 September 2013:

http://www.cps.gov.uk/legal/s_to_u/slavery_servitude_and_forced_or_compulsory_labour/#a04.

⁴⁸ EU Directive 2011/36/EU 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.

An offence of 'slavery' is not included in this, but appears as a form of exploitation in Article 2.3 of the Directive.

The proposed Human Trafficking (Scotland) Bill recommends a 'single, comprehensive and clear criminal offence' of human trafficking and 'a new, associated offence of aiding, abetting or attempting to commit human trafficking'⁴⁹. Article 3 of the EU Directive states:

Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable.

This clause mirrors Clause 1 of Lord McColl's Private Member's Bill in the House of Lords, except for the inclusion in Lord Morrow's bill of slavery offences.

The clause appears to consolidate, rather than amend, existing legislation in relation to human trafficking.

Clause 2: Consent irrelevant for victim of human trafficking or slavery offences

This clause⁵⁰:

sets out the conditions when the consent of a victim to either a human trafficking offence or slavery offences shall be seen as irrelevant, i.e. situations of duress, or the victim is a child.

These conditions mirror those set out in the EU Directive under Articles 2.1 (see above) and 2.5 (where the victim is a child).

The Minister for Justice has stated that consent is already irrelevant under current law⁵¹.

⁴⁹ Human Trafficking (Scotland) Bill, Consultation by Jenny Marra MSP, Member for North East Scotland, September 2013, p.19.

⁵⁰ Explanatory and Financial Memorandum, p.3.

⁵¹ Northern Ireland Assembly Second Stage debate 24 September 2013.

Clause 3: Aggravating factors

In line with aspects of Article 4 of the EU Directive, this clause⁵²:

sets out the aggravating factors that apply to both human trafficking and slavery offences.

These aggravating factors are:

- the offence was committed by a public official
- the offence was committed by a family member
- the offence was committed by a person in a position of trust
- the victim was a child
- the victim was a vulnerable adult
- there were threats against the victim's family
- the offence endangered the life of the victim
- serious violence or harm was committed against the victim
- the offence was committed by someone with a previous trafficking or slavery conviction

Family members, position of trust, the use of threats and previous convictions are aggravating factors additional to those factors raised in Article 4 of the Directive. Offences committed in the framework of a criminal organisation (Article 4.2(b) of the Directive) have not been included as an aggravating factor in the Bill.

The Criminal Justice (Scotland) Bill 2013 provides that aggravation as to people trafficking applies where the offence is in relation to a trafficking activity (Clause 83) and or in the case of abuse of a public position (Clause 84).

Clause 2 of Lord McColl's bill more closely follows the EU Directive.

The Department of Justice has raised concerns around this clause in that it would have an adverse impact on judicial discretion⁵³:

Judicial discretion, like prosecutorial discretion, is particularly important when a difficult or unprecedented case comes along that you have perhaps not thought of when you have been phrasing the terms of the Bill.

⁵² Explanatory and Financial Memorandum, p.4.

⁵³ Committee for Justice Official Report 12 September 2013 *Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill: DOJ Briefing*, p.3: [http://www.niassembly.gov.uk/Documents/Official-Reports/Justice/2013-2014/130912_HumanTraffickingetcBill\(Departmentalbriefing\).pdf](http://www.niassembly.gov.uk/Documents/Official-Reports/Justice/2013-2014/130912_HumanTraffickingetcBill(Departmentalbriefing).pdf).

Clause 4: Minimum sentence for human trafficking and slavery offences⁵⁴

In the case of convictions for trafficking offences, this clause⁵⁵:

requires there to be a minimum custodial sentence of two years unless there are exceptional circumstances which justify not having this minimum sentence.

Section 8 of the Criminal Justice (Northern Ireland) Act 2013 provides that trafficking offences are triable only on indictment at the Crown Court, for which there is a maximum sentence of 14 years. No minimum sentence is stated.

The Public Prosecution Service consulted on a policy for the prosecution of trafficking offences in 2012⁵⁶ and publication of a final policy is included in the Northern Ireland Human Trafficking Action Plan 2013-14⁵⁷. In the meantime, guidance issued by the Sentencing Council in England and Wales⁵⁸ was used in the first trafficking conviction in Northern Ireland, that of Matyas Pis in 2012⁵⁹.

The Department of Justice raised two concerns with regard to this clause: That the compulsory minimum sentence would apply equally to children and that judicial discretion would be compromised⁶⁰.

Clause 5: Amendments to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

This clause amends the 2004 Act to extend definitions to mirror those aspects of Article 2 of the EU Directive, as follows⁶¹:

- to extend the definition of force, threats, deception to cover coercion, abduction and fraud
- to extend the definition of abuse of power to include a position of trust relationship

⁵⁴ See also Research Paper 130/12 Issues raised in relation to the Department of Justice legislative proposals on Human Trafficking, 3 September 2012, pp.14-20.

⁵⁵ Explanatory and Financial Memorandum, p.4.

⁵⁶ Public Prosecution Service for Northern Ireland (2012), *Consultation on PPs Policy on Prosecuting Cases of Human Trafficking*, June 2012, Belfast: PPS:
<http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Publications/PPS%20Annual%20Report%20and%20Resource%20Accounts%202012-13.pdf>.

⁵⁷ Department of Justice (2013), *Northern Ireland Human Trafficking Action Plan 2013-14*, Belfast: DoJ, p.10:
<http://www.octf.gov.uk/getattachment/e91312f6-2f54-4499-bc6e-6a7e2ad9eb70/Annual-Human-Trafficking-Action-Plan-2013-14.aspx>.

⁵⁸ Sentencing Council website: <http://sentencingcouncil.judiciary.gov.uk/>.

⁵⁹ Courts Service of Northern Ireland, 'Court Sets out Prosecution Guidance for Human Trafficking', Summary of Judgement 23 April 2012: http://www.courtsni.gov.uk/en-gb/judicial%20decisions/summaryjudgments/documents/summary%20of%20judgment%20-%20r%20v%20matyas%20pis/j_sj_r-v-matyas-pis_230412.html.

⁶⁰ Committee for Justice Official Report 12 September 2013 *Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill: DOJ Briefing*, p.3.

⁶¹ Explanatory and Financial Memorandum, pp.4-5.

- to cover situations where trafficking occurs because of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person
- to ensure forced begging and exploitation of criminal acts are covered and state that a position of trust has the same meaning as in the Sexual Offences Order (Northern Ireland) 2008

The Sexual Offences Order (Northern Ireland) 2008 defines 'position of trust' in the following terms⁶²:

(2) Subject to paragraph (3), a person looks after persons under 18 if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person (A) looks after another person (B) on an individual basis if—

(a) A is regularly involved in caring for, training or supervising B, and .

(b) in the course of his involvement, A regularly has unsupervised contact with B (whether face to face or by any other means).

Forced begging is included in the definition of labour exploitation provided for by Section 1(b) of the Criminal Law (Human Trafficking) Amendment Act 2013 in the Republic of Ireland.

This clause mirrors Clause 3 of Lord McColl's bill.

During the Second Stage debate, Lord Morrow stated⁶³:

On clause 5, some have argued that forced begging is already an offence. I know that, technically, the current law has been interpreted as covering forced begging, but nowhere is that expressly stated in statute. My objective is to make that fact absolutely transparent in legislation.

Clause 6: Paying for sexual services of a person

The purpose of this clause is stated as follows⁶⁴:

Rather than making it an offence for paying for sexual services if the prostitute is subjected to force it makes it an offence for paying for sexual services.

Private Member's Bills have been introduced in the Scottish Parliament and the Oireachtas to criminalise the purchase of sex, but both have fallen. However, the

⁶² Section 29 of the Sexual Offences Order (Northern Ireland) 2008.

⁶³ Northern Ireland Assembly Second Stage debate 24 September 2013.

⁶⁴ Explanatory and Financial Memorandum p.5.

Committee on Justice, Defence and Equality in the Republic of Ireland has recommended the creation of a summary offence of the purchase of sexual services⁶⁵.

In its submission to the consultation on the Bill, the Northern Ireland Human Rights Commission concluded that⁶⁶:

The criminalization of payment for the sexual services of an adult is neither required nor prohibited by the international human rights treaties.

The Department of Justice has expressed concerns around this clause in the following terms⁶⁷:

The Minister has made clear his concerns about that clause and is minded to stand against its inclusion in the Bill. As we have argued, the intent behind clause 6 is focused entirely on reducing the incidence of trafficking into the sex industry, with no consideration of the wider issues surrounding prostitution or the implications for women involved in it. We are also unaware of any direct engagement with women working as prostitutes about how this provision would impact on them. Police are concerned about the potential impact on reporting, and we have heard concerns that clause 6 could drive prostitution underground, making trafficking more difficult to detect and, indeed, bringing the possibility of negative consequences for the safety and well-being of vulnerable women.

This issue is discussed in greater detail in Section 5 of this paper⁶⁸.

Clause 7: Requirements and resources for investigation or prosecution

This clause sets out three requirements for investigation or prosecution⁶⁹:

- there must be sufficient training and resources for investigating and prosecuting human trafficking and slavery offences
- a prosecution is not dependent on reporting or accusation by a victim
- a prosecution can take place even if victim has withdrawn their statement

The latter two points are drawn directly from the EU Directive⁷⁰:

⁶⁵ Houses of the Oireachtas Joint Committee on Justice, Defence and Equality (2013), Report on hearings and submissions on the Review of Legislation on Prostitution, Volume 1, 31/JDAE/010, p.79.

⁶⁶ Northern Ireland Human Rights Commission (2012), *Response by the Northern Ireland Human Rights Commission to Lord Morrow's consultation on the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill*, Belfast: NIHRC, p.5: <http://www.nihrc.org/documents/advice-to-government/2012/NIHRC%20Advice%20to%20Lord%20Morrow%20human%20trafficking.pdf>.

⁶⁷ Committee for Justice Official Report 12 September 2013 *Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill: DOJ Briefing*, p.2.

⁶⁸ See also Research Paper 130/12 *Issues raised in relation to the Department of Justice legislative proposals on Human Trafficking*, 3 September 2012, pp.29-30; and Briefing Paper 149/12 *Supplementary Briefing on Human Trafficking*, 1 October 2012.

⁶⁹ Explanatory and Financial Memorandum p.5.

Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.

A legal duty for the provision of resources for the investigation and prosecution of trafficking offences is included in the proposed Human Trafficking (Scotland) Bill⁷¹.

The need for training for relevant professionals, including in NGOs contracted to work with victims of trafficking, was raised by the Group of Experts on Action against Trafficking in Human Beings (GRETA) in 2012 in relation to the UK as a whole⁷².

The contents of Clauses 7 and 8 of Lord Morrow's bill resemble the contents of Clauses 4 and 5 of Lord McColl's bill.

Currently, these functions rest with law enforcement agencies and are not set in legislation.

Clause 8: Non prosecution of victims of trafficking in human beings⁷³

Two requirements are set out by this clause in terms of the non-prosecution of victims⁷⁴:

if a victim commits a crime under duress associated with trafficking (clause 8(a)) or if victim was a child at the time (clause 8(b))

This reflects the content of Article 8 of the EU Directive:

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

The issue was also raised in the GRETA report in relation to the UK as a whole⁷⁵.

The Department of Justice has raised concerns regarding this clause⁷⁶:

⁷⁰ EU Directive 2011/36/EU Article 9.1.

⁷¹ Human Trafficking (Scotland) Bill, Consultation by Jenny Marra MSP, Member for North East Scotland, September 2013, pp.22-23.

⁷² Group of Experts on Action Against Trafficking in Human Beings (2012), Report concerning the implementation of the Council for Europe Convention on Action against Trafficking in Human Beings in the UK, GRETA (2012)6, Strasbourg 12 September 2012, p.84: http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf.

⁷³ See also Research Paper 130/12 Issues raised in relation to the Department of Justice legislative proposals on Human Trafficking, 3 September 2012, pp.18-20.

⁷⁴ Explanatory and Financial Memorandum p.6.

⁷⁵ Group of Experts on Action Against Trafficking in Human Beings (2012), Report concerning the implementation of the Council for Europe Convention on Action against Trafficking in Human Beings in the UK, GRETA (2012)6, Strasbourg 12 September 2012, p.88.

We do not believe that the blanket immunity from prosecutions for victims that this clause would provide is appropriate. It runs counter to the obligations of the Director of Public Prosecutions and goes beyond the requirements of the EU directive. We are satisfied that under the current arrangements, whereby prosecutors have the discretion not to prosecute when it is considered to be in the public interest, those arrangements comply fully with our obligations under the directive. We believe that to go beyond that in the way that clause 8 proposes would be disproportionate and could also disadvantage other victims of crime. In one potential scenario, for instance, a trafficked victim may have risen to a position of trust and power in an organised crime group and, in turn, become involved in the act of trafficking other victims. Clearly, such cases would need to be very carefully considered in light of their specific circumstances. Prosecutors can do that at present. Under existing arrangements, they are obliged to apply the test for prosecution, including whether the prosecution would be in the public interest. In doing so, they are able to consider the specific circumstances in each case, including whether mitigating factors exist.

Clause 9: Victim of trafficking in human beings

This clause defines a victim of human trafficking as someone identified as such by a 'competent authority' and defines 'human trafficking' in accordance with the European Human Trafficking Convention⁷⁷.

Article 4a of the Council of Europe Convention on Action against Trafficking in Human Beings defines 'human trafficking' in the following terms:

"Trafficking in human beings" 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.

This clause mirrors Clause 6 of Lord McColl's bill.

The National Referral Mechanism (NRM) currently identifies victims of human trafficking. The definition of human trafficking in the Council of Europe Convention is that currently used by the UK Government⁷⁸.

⁷⁶ Committee for Justice Official Report 12 September 2013 *Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill: DOJ Briefing*, pp.2-3.

⁷⁷ Explanatory and Financial Memorandum p.6.

⁷⁸ House of Commons Library Standard Note SN/HA/4324 *Human Trafficking: UK Responses* 8 March 2013, p.3.

Clause 10: Requirements for assistance and support⁷⁹

Obligations for the support of victims are set out in this clause as follows⁸⁰:

- meet the needs of victims up until 3 months after criminal proceedings are completed
- provide assistance to a family of a child victim if they are resident in Northern Ireland as long as they are not suspected of having committed a human trafficking offence
- provide assistance and support regardless of an individual's willingness to act as a witness
- provide assistance and support that takes due account of the victim's safety and protection needs
- the assistance and support shall be provided to assist victims in their physical, psychological and social recovery

This clause mirrors the provisions of Lord McColl's Clause 7, except Lord McColl's clause includes provisions for children, as follows:

(b) for a child identified as a victim there shall be a plan to safeguard and promote the long-term welfare of that child based on an individual assessment of that child's best interests;

(c) if the family of a child identified as a victim are resident in the United Kingdom or are British citizens they shall be entitled to assistance and support under this section;

Assistance to victims of trafficking was also raised in the GRETA report⁸¹:

GRETA considers that the authorities of the UK and the constituent countries should make further efforts to ensure that all potential and actual victims of trafficking are provided with adequate support and assistance from their identification through to their recovery.

The Minister has stated he is in agreement with the clause in principle, but that his preferred vehicle would be secondary legislation to allow for greater flexibility⁸².

⁷⁹ See also Research Paper 130/12 Issues raised in relation to the Department of Justice legislative proposals on Human Trafficking, 3 September 2012, pp.20-24.

⁸⁰ Explanatory and Financial Memorandum p.7.

⁸¹ Group of Experts on Action Against Trafficking in Human Beings (2012), Report concerning the implementation of the Council for Europe Convention on Action against Trafficking in Human Beings in the UK, GRETA (2012)6, Strasbourg 12 September 2012, p.86.

⁸² Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill Second Reading plenary debate 24 September 2013: <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-September-2013/#11>.

Clause 11: Compensation for victims of trafficking

Obligations on the Department of Justice are set out in this clause in respect of access to compensation for victims⁸³:

- how the compensation routes shall operate for victims of trafficking
- what assistance will be provided a person (both adults and children) applying for compensation and seeking leave to remain in order to claim compensation

This clause reflects Article 17 of the EU Directive:

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

The GRETA report reiterates this requirement, with some particular recommendations⁸⁴:

- ensure that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed;
- ensure that all victims of trafficking are eligible for compensation under the existing compensation scheme;
- enable victims of trafficking to exercise their right to compensation by ensuring their effective access to legal aid;
- encourage prosecutors to request compensation orders to the largest possible extent;
- enable victims of trafficking who have left the UK to benefit from the possibilities to claim compensation.

This clause matches the content of Clause 8 of Lord McColl's bill.

In response to this clause, the Minister for Justice has stated⁸⁵:

On the issue of compensation that is covered in clause 11, guidance has been issued to staff in the Compensation Services on handling claims from trafficking victims, and the contract for support services includes steering victims to advice on securing compensation. My officials are working through the responses to the consultation on funding money damages claims, taking account of the European directive.

⁸³ Explanatory and Financial Memorandum p.8.

⁸⁴ Group of Experts on Action Against Trafficking in Human Beings (2012), Report concerning the implementation of the Council for Europe Convention on Action against Trafficking in Human Beings in the UK, GRETA (2012)6, Strasbourg 12 September 2012, p.87.

⁸⁵ Northern Ireland Assembly Second Stage debate 24 September 2013.

It is contended by Lord Morrow that the current compensation arrangements are not working.

Clause 12: Child trafficking guardian⁸⁶

This clause⁸⁷:

requires a guardian to be appointed when a child is identified as a possible trafficking victim and they have no person with parental responsibility available

This is not a guardian as in the UK legal sense, but a child trafficking guardian whose role it is to safeguard the child's best interests. The responsibilities of the guardian are listed in the clause (9(2)).

The provisions of the clause mirror those of the 'legal advocate for child' in Lord McColl's Clause 9. In a response to Lord McColl in 2012, Lord Henley has indicated that the provision of a 'supporter (representative)' is already included in best practice, but not in legislation⁸⁸.

Clause 13: Protection of victims in criminal investigations

The provisions contained within this clause require⁸⁹:

the police chief to ensure that there is no secondary victimisation of a victim and that special care is taken in the case of child victims.

The specifics of the clause mirror the provisions of Regulation 3 (Protection of claimants in criminal investigations) and Regulation 4 (Protection of child complainants in criminal investigations) of the Trafficking People for Exploitation Regulations 2013 in England and Wales.

Clause 14: Amendments to the Criminal Evidence (Northern Ireland) Order 1999

This clause places victims of human trafficking within the provisions of the Criminal Evidence (Northern Ireland) Order 1999⁹⁰, which provides special measures for the protection of vulnerable witnesses.

The equivalent legislation in England and Wales is Regulation 5 and the Schedule to the Trafficking People for Exploitation Regulations 2013, which places victims of

⁸⁶ See also Research Paper 130/12 Issues raised in relation to the Department of Justice legislative proposals on Human Trafficking, 3 September 2012, pp.26-27.

⁸⁷ Explanatory and Financial Memorandum p.8.

⁸⁸ Quoted in House of Commons Library Standard Note SN/HA/4324 *Human Trafficking: UK Responses* 8 March 2013, p.25.

⁸⁹ Explanatory and Financial Memorandum p.9

⁹⁰ Criminal Evidence (Northern Ireland) Order 1999: <http://www.legislation.gov.uk/nisi/1999/2789/contents>.

trafficking within the special protection measures provided for in the Youth and Criminal Evidence Act 1999⁹¹.

The Department of Justice has indicated an intention to legislate in the areas covered by Clauses 10, 13 and 14, but is awaiting the outcome of the bill before proceeding.

Clause 15: Prevention

This clause places an obligation on the Department of Justice⁹²:

to publish a strategy every year on raising awareness and reducing trafficking and slavery offences in co-operation with non-governmental organisations and other relevant organisations.

Northern Ireland has an Organised Crime Strategy 2012-2014⁹³, which includes human trafficking, and the first annual Northern Ireland Human Trafficking Action Plan 2013-2014⁹⁴ has recently been published.

The UK has a Human Trafficking Strategy⁹⁵ and Clause 11(1) of Lord McColl's Bill provides for an obligation for such a strategy to be published annually.

The proposed Human Trafficking (Scotland) Bill is also to contain a duty for Scottish Ministers to have a Strategy for Scotland against Human Trafficking. This is to include engagement with the private sector and civil society⁹⁶.

A successor to the National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009 – 2012 is being developed by the Department of Justice and Equality⁹⁷.

⁹¹ Youth and Criminal Evidence Act 1999: <http://www.legislation.gov.uk/ukpga/1999/23/contents>.

⁹² Explanatory and Financial Memorandum p.10.

⁹³ Organised Crime Task Force (2012), *The Northern Ireland Organised Crime Strategy 2012-2014*, Belfast: Department of Justice: <http://www.dojni.gov.uk/index/media-centre/northern-ireland-organised-crime-strategy-.pdf>.

⁹⁴ Department of Justice (2013), Northern Ireland Human Trafficking Action Plan 2013-14, Belfast: DoJ.

⁹⁵ HM Government (2011), *Human Trafficking: The Government's Strategy*, London: Home Office: <https://www.gov.uk/government/publications/human-trafficking-strategy>.

⁹⁶ Human Trafficking (Scotland) Bill, Consultation by Jenny Marra MSP, Member for North East Scotland, September 2013, p.28.

⁹⁷ Department of Justice and Equality, Anti-Human Trafficking Measures, accessed 17 September 2013: <http://www.justice.ie/en/JELR/Pages/WP09000005>.

Clause 16: Northern Ireland Rapporteur⁹⁸

Through this clause, an obligation is placed upon the Department of Justice to⁹⁹:

establish an independent body to report to the Assembly on the performance of this Act and on other related matters to human trafficking and slavery.

This mirrors Clause 11(2) of Lord McColl's bill in respect of the UK Parliament. The Secretary of State, Theresa May, has announced her intention to legislate for the establishment of a Modern Slavery Commissioner¹⁰⁰. The establishment of such a Commissioner for the UK was also a recommendation of a report into human trafficking by the Centre for Social Justice¹⁰¹.

The report of the Anti-Trafficking Monitoring Group published in 2012 contains a section on Northern Ireland with specific recommendations for the Northern Ireland Assembly. This includes the following¹⁰²:

Appoint an independent regional Anti-Trafficking Commissioner (or a Rapporteur) on trafficking to maintain oversight of the Northern Irish response to trafficking, ensure all obligations are being met and ensure anti-trafficking efforts are comprehensive and integrated with other policy areas.

The Department of Justice has raised concerns regarding this clause in the following terms¹⁰³:

Although we recognise fully the need for accountability, we do not believe that the measure would enhance the existing structures. We are also concerned that the Northern Ireland rapporteur under that clause is not aligned to the national rapporteur structure. Members will be aware that the Home Secretary recently announced her intention to bring forward a modern slavery Bill, which would, among other things, establish a UK-wide anti-slavery commissioner. That may have advantages. We believe that the arguments for a commissioner or rapporteur should be considered when the Home Secretary's plan is clearer. A national rapporteur would be able to look across the entire range of relevant agencies and not just the devolved ones.

⁹⁸ See also Research Paper 130/12 Issues raised in relation to the Department of Justice legislative proposals on Human Trafficking, 3 September 2012, pp.27-30.

⁹⁹ Explanatory and Financial Memorandum p.11.

¹⁰⁰ Theresa May (2013), 'Modern Slave Drivers, I'll End your Evil Trade' in The Sunday Times 25 August 2013.

¹⁰¹ Modern Slavery Working Group (2013), *It happens Here: Equipping the UK to Fight Modern Slavery*, London: Centre for Social Justice, p.18: <http://www.centreforsocialjustice.org.uk/publications/it-happens-here-equipping-the-united-kingdom-to-fight-modern-slavery>.

¹⁰² Sarah Edwards (2012), *All Change: Preventing Trafficking in the UK*, London: Anti-Trafficking Monitoring Group, p.74: http://www.antislavery.org/includes/documents/cm_docs/2012/a/atmg_all_change_prevention.pdf.

¹⁰³ Committee for Justice Official Report 12 September 2013 *Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill: DOJ Briefing*, p.3.

Clause 17: General interpretation

A child is defined in this clause as in the Children (Northern Ireland) Order 1995¹⁰⁴. Section 2(2) of the Order defines a child as a person under the age of 18. The clause, which mirrors Clause 12 of Lord McColl's bill, also provides that¹⁰⁵:

if the age of the person is uncertain and there is reason to believe they are a child, they shall be treated as a child.

¹⁰⁴ Children (Northern Ireland) Order 1995: <http://www.legislation.gov.uk/nisi/1995/755/contents/made>.

¹⁰⁵ Explanatory and Financial Memorandum p.11.

5 Themes and Issues

Single Trafficking Act

While the UK review of trafficking legislation in 2012 concluded that a single piece of legislation is not necessary, the Home Secretary Theresa May has announced an intention to introduce a Modern Slavery Act (see Section 3 above).

The GRETA report also supports a single piece of legislation in this area¹⁰⁶:

GRETA considers that a dedicated legislation on human trafficking would provide legal status to victims of trafficking, including the right to a recovery and reflection period, as well as other provisions of the Convention which reflect the human rights-based approach to action against trafficking.

A recent report by the Anti-Trafficking Monitoring Group has also included as a specific recommendation for Northern Ireland to ‘introduce a single Trafficking and Modern Day Slavery Act ensuring support services and the non-criminalisation of trafficked persons’¹⁰⁷.

Currently, in the UK, including the devolved regions, legislation relevant to human trafficking is spread across different pieces of legislation, as is the case in the Republic of Ireland. A single piece of legislation would make the law more easily understood in relation to dealing with victims of trafficking. However, the situation in Northern Ireland is more complex, where trafficking issues are spread across devolved matters (such as sexual offences legislation and more general criminal justice law) and excepted matters (such as immigration and asylum legislation).

It is not clear whether the proposed UK Modern Slavery Act is to consolidate existing legislation into a single act with additional provisions, or whether existing legislation is to be amended.

Legislative control of prostitution and its impact on human trafficking

The EU Trafficking Directive does not deal with the issue of paying for sexual services, and within the EU a variety of legal regimes exist. The following sections of this paper examine the relationship between differing legal regimes controlling prostitution and the impact of these regimes on prostitution itself and on human trafficking. The example of Sweden is of particular relevance, as it has been referred to by Lord Morrow to demonstrate, in relation to Clause 6 of the Bill, the effectiveness of the criminalisation of the purchase of sex in reducing human trafficking for sexual exploitation¹⁰⁸. The

¹⁰⁶ Group of Experts on Action Against Trafficking in Human Beings (2012), Report concerning the implementation of the Council for Europe Convention on Action against Trafficking in Human Beings in the UK, GRETA (2012)6, Strasbourg 12 September 2012, p.83: http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf.

¹⁰⁷ Lois Hamilton (2013), ‘Devolved Approaches to Prosecuting Trafficking: Northern Ireland’, in: *In the Dock: Examining the UK’s Criminal Justice Response to Trafficking*, London: Anti-Trafficking Monitoring Group, p.129: http://www.ecpat.org.uk/sites/default/files/in_the_dock_atmg_2013.pdf.

¹⁰⁸ See evidence from Gunilla Ekberg at the Northern Ireland Assembly Justice Committee meeting 12 September 2013: <http://www.niassembly.gov.uk/Assembly-Business/Committees/Justice/Minutes-of-Evidence/>.

approach adopted in Sweden was also cited by the Oireachtas Committee for Justice, Defence and Equality as ‘compelling evidence’ for its own recommendation to create an offence penalising the purchase of sexual services of another person by means of prostitution¹⁰⁹.

A review of legislation on prostitution by the Canadian Library of Parliament concluded that¹¹⁰:

There is little consensus as to how the state should monitor and/or control prostitution. Most countries appear to be grappling with one underlying question: What role should legislation (in particular, criminal law) play in regulating prostitution? Legislative directions have ranged from strengthening the criminal provisions relating to prostitution to repealing those same types of laws. There is little evidence that any particular approach has met all of its objectives.

Similarly, parliamentary research from New Zealand on the Prostitution Reform Act (PRA) 2003, which decriminalised sex work in the country, concluded that¹¹¹:

It is difficult to accurately determine the impact of the PRA given the nature of the sex industry, though key evidence indicates that the decriminalisation of prostitution has impacted favourably on various aspects of sex work for many. The number of sex workers, and those workers under-age, does not appear to have significantly changed. Despite decriminalisation the industry remains controversial, with some issues remaining. These include the working conditions and the location of sex work.

One recent and comprehensive quantitative analysis of the relationship between legalisation and prostitution and its effect on human trafficking, however, has concluded that¹¹²:

Our empirical analysis for a cross-section of up to 150 countries shows that the scale effect dominates the substitution effect. On average, countries where prostitution is legal experience larger reported human trafficking inflows.

Yet, other recent research on migrant workers in the sex industry has concluded¹¹³:

The research evidence strongly suggests that current attempts to curb trafficking and exploitation by criminalising clients and closing down commercial sex establishments will not be effective because as a result the sex industry will be pushed further

¹⁰⁹ Houses of the Oireachtas Joint Committee on Justice, Defence and Equality (2013), Report on hearings and submissions on the Review of Legislation on Prostitution, Volume 1, 31/JDAE/010:

<http://www.oireachtas.ie/parliament/mediazone/pressreleases/name-17366-en.html>

¹¹⁰ Laura Barnett, Lyne Casavant and Julia Nicol (2011), *Prostitution: A Review of Legislation in Selected Countries*, 2011-115-E, Ottawa: Library of Parliament, p.21: <http://www.parl.gc.ca/content/lop/researchpublications/2011-115-e.pdf>.

¹¹¹ Paul Bellamy (2012), *Prostitution Law Reform in New Zealand*, Wellington: Parliamentary Library:

¹¹² Seo-Young Cho, Axel Dreher and Eric Neumayer (2013), ‘Does Legalised Prostitution Increase Human Trafficking?’ in *World Development* 41(1) 67-82.

¹¹³ Nick Mai (2011), *Migrant Workers in the UK Sex Industry*, London: Institute for the Study of European Transformations, p.6: <https://metranet.londonmet.ac.uk/research-units/iset/projects/esrc-migrant-workers.cfm>.

underground and people working in it will be further marginalised and vulnerable to exploitation.

There appears, therefore, to be a lack of consensus around the impact of legislative approaches to the control of prostitution, both in relation to ‘buyers’ and ‘sellers’ of sexual services and on the prevalence of human trafficking. This is no doubt due to the inherent difficulties in carrying out research in the sex industry and the significantly opposing moral and theoretical views on prostitution of those engaging in debate.

Sweden

As the Swedish legal code is often cited as being the first to criminalise the purchase but not the sale of sexual services, the impact the law has had on levels of prostitution and human trafficking has been of significant interest to policy makers in other jurisdictions. Criminalisation was brought about by a combination of a strong women’s lobby, linkages made between prostitution and drugs, combined with a political context that made the advocacy of a liberal argument difficult¹¹⁴. Background to the law and its development is provided in the box below.

According to the legislative history of the Swedish law, the objective of the law penalizing the customer only was twofold: on one hand to be norm-setting, and on the other to clarify that prostitution is not socially acceptable.⁹²¹

The purpose was not to punish the (female) prostitute. For potential clients the law should have a deterrent effect, but would also serve as a means to deter women from engaging in prostitution. The reason to criminalize solely purchase was explained as follows:

[E]ven though prostitution as such is not a desirable societal phenomenon it is not reasonable to also criminalize [the woman] who, at least in most cases, is the weaker party who is exploited by others wanting to satisfy their sexual drive. It is also important to motivate prostitutes to seek help to get away from prostitution, so that they do not feel that they risk any kind of punishment for having been active as prostitutes.⁹²²

The wording of the law is gender-neutral (penalizing both women and men clients, buying sex from male and female prostitutes) but is placed within a legal and philosophical framework of male violence against women and rests on assumptions of male dominance and female subordination.⁹²³ ‘Sexual relation’ in the meaning of the law refers primarily to sexual intercourse, but other forms of sexual interaction are also included in the scope of the law. ‘Payment’ includes both economic reward and other kinds of rewards, such as narcotics or alcohol.⁹²⁴ Normal criminal law principles on aiding and abetting do not apply to the prostitute; thus, she cannot be found an accomplice to the criminal offense committed by the client.⁹²⁵

Source: International Council on Human Rights Policy (2012) *Sexual Health and Human Rights in the European Region* (pages 199-200) For references in text see footnote¹¹⁵ below.
http://www.ichrp.org/files/reports/71/140_sexual_health_european_region.pdf (accessed 30/09/2013)

¹¹⁴ Arthur Gould (2001), ‘The Criminalisation of Buying Sex: The Politics of Prostitution in Sweden’ in *Journal of Social Policy* 30(3) 437-456.

¹¹⁵ Footnotes in source document [921 Legislative history to the 1999 law, Proposition 1997/98:55, p. 100, only available in Swedish. 922 Ibid, p. 104. Author’s translation. 923 See for example Gunilla Ekberg, former special advisor on issues of prostitution and trafficking in human beings to the Division for Gender Equality of the Swedish Government, writing “[t]he persons who are in prostitution, the victims of male violence,” and that the root cause of prostitution is “men who assume the right to purchase female human beings and sexually exploit them.” From “The Swedish Law that Prohibits the Purchase of Sexual Services”, *Violence Against Women*, Vol. 10 No. 10, October 2004, 1187–1218, available at <http://action.web.ca/home/catw/attach/Ekberg.pdf>. Last visited on 6 May 2010. 924 Information about the law on Swedish Government website, available in Swedish at <http://www.regeringen.se/sb/d/2593/a/116601>. Last visited on 6 May 2010. 925 Ibid]

In July 2010, the Chancellor of Justice, Anna Skarhed, submitted the report 'Prohibition of the purchase of sexual services: An evaluation 1999-2008 (SOU 2010:49)' to the Swedish Government. The evaluation sought to examine the application of the prohibition on the purchase of sexual services and the effects the prohibition had had since entering into force in 1999. The evaluation concluded that:¹¹⁶

- Prostitution had not increased, unlike in other countries
- Street prostitution had halved since 1999
- There was nothing to indicate that street prostitution had moved to the internet
- There was no evidence to indicate that prostitutes formerly exploited on the streets were now involved in indoor prostitution
- According to the police, the prohibition of the purchase of sexual services has acted as a barrier to human traffickers and procurers
- There has been a marked change in attitude to the purchase of sexual services

Each of these conclusions has been contested in a critique¹¹⁷ of the evaluation and the report itself recognised the difficulties faced when attempting to establish an evidence base from which to answer the questions which are of most interest to policy makers¹¹⁸:

What effect has the ban had on the purchase of sexual services? Have the existence and types of prostitution in Sweden today changed compared with the situation prior to the ban? If a change has occurred, is it due to the ban or can it be explained by other reasons? What significance has the ban had on the types and occurrence of human trafficking for sexual purposes in Sweden? How has criminalization affected sex buyers? Has criminalization changed the situation for the people involved in prostitution?

.....

We should say right here that the task is very difficult. Prostitution and human trafficking for sexual purposes are complex, multifaceted social phenomena that take place to some degree behind closed doors. Factors such as increased internationalization and a growing number of people advertising on the Internet make it difficult for the police and social services to fully grasp the extent of these activities. The knowledge we have about prostitution and sex trafficking can rarely be described with precise figures. When we started our task there was an ambition to conduct our own surveys in order to —map out prostitution. However, after having read the extensive number of existing reports and studies from authorities and researchers on the subject, we realized that it would not be possible in the framework of this inquiry to produce the precise knowledge about prostitution that politicians and debaters request, but which no authorities or researchers have been able to generate in the

¹¹⁶ Ministry of Justice (2010), *Prohibition of the purchase of sexual services. An evaluation 1999-2008*. Stockholm: Government Offices of Sweden: <http://www.government.se/sb/d/13420/a/151488>.

¹¹⁷ The Swedish Sex Purchase Act: Claimed Success and Documented Effects (Susanne Dodillet and Petra Östergren) Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011

¹¹⁸ Selected extracts of the Swedish government report SOU 2010:49 (page 14).

nearly eleven years that the ban against the purchase of sexual services has been in place.

Where the report expressed most confidence in the evidence base was in relation to levels of street prostitution. Regarding this activity, the evaluation concluded that the available information on the scope and extent of street prostitution accurately described the situation that existed and that this indicated that the total number of women engaged in street prostitution had been halved. Figure 1 below, taken from the English Language version of the relevant chapter of the report, presents the table of data upon which this statement is based.

Figure 1 – Table 4.1 Selected Extracts of the Swedish Government Report SOU 2010:49¹¹⁹

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Stockholm	280	170	N/A ¹	N/A ¹	N/A ¹	200	N/A ¹	150	200	N/A ¹	180
Gothenburg	286	90	N/A ¹	N/A ¹	N/A ¹	100	30	30	N/A ¹	N/A ¹	64 ²
Malmö	160	80	111	123	135	106	98	92	67	74	52

Source: National Board of Health and Welfare, data from the prostitution groups in Stockholm, Gothenburg and Malmö and Population Statistics from Statistics Sweden.

¹In some periods, no annual tallies were done in Gothenburg and Stockholm, only estimates based on information such as how many prostitutes were out per evening.

² Refers only to the second half of 2008 because the prostitution group did not pursue any outreach that spring.

A widely cited conference paper, published in 2011, raised a number of points in relation to this data and its interpretation, noting that¹²⁰:

...such marked changes in activities (50 percent decline) are rarely seen in the criminological literature. This raises a question of whether the reported changes are “too good”, and this observation would need to be discussed if the figures are used to exemplify the success of the ban. Secondly, the effects of the ban vary largely between the three cities, which also needs to be discussed. And thirdly, a longer time series before the introduction of the ban would have been needed since the 1998 figures might have been an exception, an “outlier”.

The conference paper went to state that¹²¹:

Others have pointed out that the estimated numbers of street workers have been declining since the late 1970’s, suggesting that any observed decline since the Act – if there is one – is part of a much longer trend. Furthermore, this trend is not a specifically Swedish phenomenon... but an international one.

Drawing on a range of sources, the conference paper reported that the ban had had unintended, negative effects for ‘sex workers’. These the paper states include:

- increased stigmatization and less trust amongst sex workers in social authorities, the police and the legal system;
- worsened prospects for health promotion and HIV preventive work;

¹¹⁹ As above (page 20).

¹²⁰ The Swedish Sex Purchase Act: Claimed Success and Documented Effects (Susanne Dodillet and Petra Östergren) Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011 (page 9).

¹²¹ As above.

- higher levels of vulnerability and greater exposure to violence and unsafe sexual practices.

The report also notes that:

When it comes to clients, it seems they are less willing to assist as witnesses in cases in which profiteers who exploit the sexual labor of others are prosecuted, since they now find themselves guilty of a crime. Clients are exposed to blackmail and robbery, and the stigma associated with buying sex means people often have to leave their jobs and positions, even on a mere suspicion.

Data on Crime and Trafficking

A recently published report of an inspection, carried out on behalf of the National Police, examined the Swedish police authorities' ability to combat crime relating to trafficking of human beings for sexual purposes and the purchase of sexual services. Figure 2 below contains data drawn from the report.

Figure 2: Reported Crimes and Sentences for selected offences in Sweden (1999-2012)¹²²

Year	Human Trafficking for Sexual Purposes		Procuring ^c		Purchase of Sexual Services	
	Reported Crimes	Sentences ^b	Reported Crimes	Sentences	Reported Crimes	Sentences
1999	Data not included in report		32	3	94	11
2000			46	12	92	29
2001			43	5	86	38
2002			46	6	110	37
2003	22	1	69	9	300 ^d	72
2004	29	-	98	24	156	48
2005	44	7	94	29	450 ^d	94
2006	27	11	58	8	163	108
2007	15	2	65	23	189	85
2008	15	-	51	11	187	69
2009	31	-	94	13	352	107
2010	32	6	120	20	1277	336
2011	35	2	86	24	765	450
2012 ^a	21	3	95		549	

^a Provisional

^b Domar, strafförelägganden och åtalsunderlåtelse – judgements, penalty orders and waivers of prosecution¹²³.

^c Financially exploiting a person's engagement in casual sexual relations in return for payment.

^d These figures are subject to qualification/comment in the original Inspection Report.

¹²² Rikspolisstyrelsen (Tillsynsrapport 2013:7) Inspektion av polismyndigheternas förmåga att utreda ärenden om människohandel för sexuella ändamål och köp av sexuell tjänst (pages 13-14)

¹²³ (Waiver of prosecution - The prosecutor may decide to waive prosecution, which means there will no prosecution, trial or punishment. On the other hand, the crime is recorded in the Criminal Records Registry, which could have consequences if the suspect were to commit a new crime. In order to be able to grant a waiver of prosecution, it must be evident that a crime has been committed, and often because the suspect has made a confession. A waiver of prosecution can, for example, be granted if a person has recently received sentence for another offence and the crime in question would not result in the punishment being increased. <http://www.aklagare.se/In-English/The-role-of-the-prosecutor/Decision-to-prosecute/Waiver-of-prosecution/>

The data in Figure 2 show a low and relatively stable level of reporting of crimes relating to trafficking for sexual purposes and a relatively higher, and somewhat less stable, reporting of crimes for 'procuring' (financially exploiting a person's engagement in casual sexual relations in return for payment). The report, however, recognises that prosecutors may opt to prosecute cases which could involve trafficking for sexual purposes under the procuring provisions. The number of reported crimes of 'purchase of sexual services' are greater than those for procuring or trafficking and show wider variation, as Figure 3 below illustrates.

Figure 3: Purchase of Sexual Services in Sweden

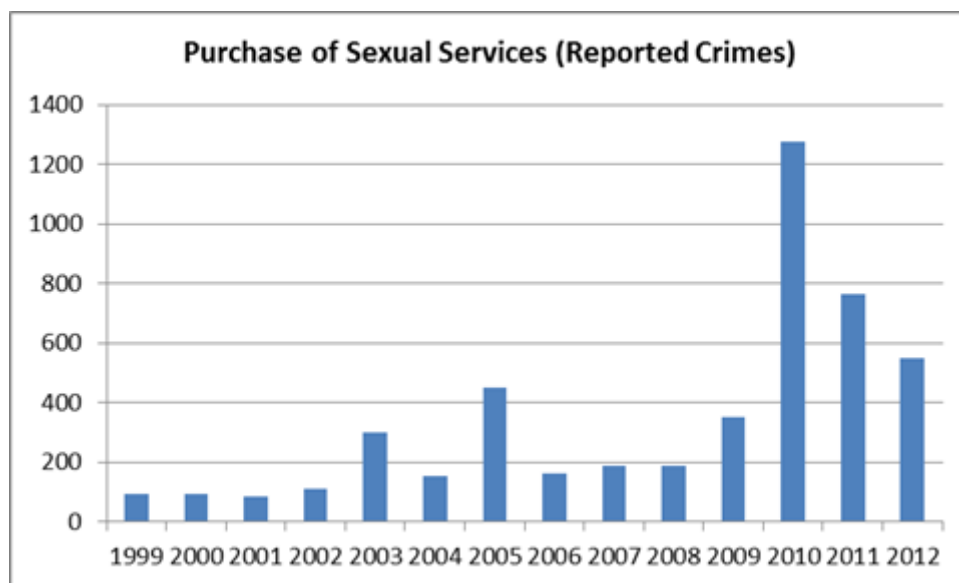


Figure 3 shows that the last three years' data contains the highest levels of reporting of purchase of sexual services, with a particularly high level of reporting occurring in 2010.

The need to develop comparable and reliable statistics on crime and criminal justice has long been recognised by the EU and, in 2012, the European Commission published the first report at the EU level of statistics on trafficking in human beings.¹²⁴ The report indicates that within the European Union, 23,632 people were identified or presumed victims of trafficking over the 2008-2010 period. The most recent data recording a rate of two identified or presumed victims for every one hundred thousand population. Recognising the well-known research and methodological difficulties involved in establishing reliable data relating to human trafficking, the report states that¹²⁵:

It is hereby acknowledged that the current state of the results does not entirely comply with the stringent requirements of the European Statistics Code of Practice and further development is planned to improve data

¹²⁴ Eurostat (2013), *Trafficking in Human Beings*, Luxembourg: Publications Office of the European Union, http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415_thb_stats_report_en.pdf.

¹²⁵ As above p. 9

quality in future collections. Nevertheless the political demand for this information is such that it seems opportune to make it available at this stage in the form of a Eurostat Working Paper. This means that figures should be interpreted with caution, taking into consideration the methodological notes and caveats provided in this report.

In addition to statistical data from all 27 EU Member States and Croatia (at the time of the report an acceding country) the report contained data for the following EU Candidate and EFTA/EEA countries: Iceland, Montenegro, Norway, Serbia, Switzerland and Turkey. Figure 4 below provides data drawn from the report on the five Nordic countries.

Figure 4: Number of Identified and Presumed Victims¹²⁶ of Human Trafficking in EU (total) and Nordic Countries¹²⁷

	2008			2009			2010		
	Total (Id + Pr)	Population	Victims per 100 000 inhabitants	Total (Id + Pr)	Population	Victims per 100 000 inhabitants	Total (Id + Pr)	Population	Victims per 100 000 inhabitants
Denmark	28	5 475 791	0.5	47	5 511 451	0.9	53	5 534 738	1.0
Finland	29	5 300 484	0.5	64	5 326 314	1.2	79	5 351 427	1.5
Sweden	21	9 182 927	0.2	44	9 256 347	0.5	74	9 340 682	0.8
Iceland	:			:			:		
Norway*	35	*	*	30	*	*	36	*	*

(¹) The EU Total reflects the total for a given year based on the countries which provided data for that year. Not all EU Member States provided data for all of the three reference years and direct comparisons of EU totals between years may therefore be misleading.

: No data available

*Norway, which has a population of just over 5 million persons¹²⁸, is not part of the EU and information on population and victim rates is not included in the report)

The data in Figure 4 show that Sweden has the lowest rate of identified and presumed victims amongst the three Nordic countries for which the relevant data is contained in the Commission's report. The report also indicates, however, that, whilst rates doubled in Denmark and trebled in Finland between 2008 and 2010, for the same period they quadrupled in Sweden. Caution is needed, however, when trying to draw any conclusions from this data, particularly given that important legislative changes have taken place during the period to which it relates. In January 2009, a ban similar to that

¹²⁶ The Council of Europe Convention on Action against trafficking in human beings includes under Article 4 a definition of a victim as: (e) "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article. The identification of victims of human trafficking depends on national systems in Member States: An 'identified victim' is defined as a person who has been formally identified as a victim of trafficking in human beings according to the relevant formal authority in Member States. A 'presumed victim' of human trafficking is defined as a person who has met the criteria of EU regulations and international Conventions but has not been formally identified by the relevant authorities (police) as a trafficking victim or who has declined to be formally or legally identified as trafficked.

¹²⁷ Eurostat (2013), *Trafficking in Human Beings*, Luxembourg: Publications Office of the European Union, p.31

http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415_thb_stats_report_en.pdf

¹²⁸ Statistics Norway, 'Population and quarterly changes, Q2 2013', accessed 30 September 2013:

<http://www.ssb.no/en/befolkning/statistikker/folkendrkv/kvartal>

existing in Sweden came into force in Norway. In the same year, Iceland passed a law which criminalised the purchase of sexual services.

As with the debate around the impact of legislative regimes on prostitution and trafficking in general, there appears to be a clear lack of consensus around the impact of the Swedish ban on the purchase of sex and the its impact on 'buyers' and 'sellers' of sexual services and on the prevalence of human trafficking. Again, one might surmise that this is due to the inherent difficulties in carrying out research in the sex industry and significantly opposing moral and theoretical views on prostitution of those engaged in the debate.

Republic of Ireland

In June 2012, the Department of Justice and Equality opened a review of the law relating to prostitution and initiated the review by publishing a report which identified four broad approaches to prostitution legislation. The four approaches set out in the document were:

- total criminalisation;
- partial criminalisation;
- full decriminalisation; and
- legalisation and regulation

The Government's discussion document outlined how each approach had been implemented in various countries and presented the arguments commonly made for and against each approach.

The Oireachtas Joint Committee on Justice, Defence and Equality was requested by the Minister for Justice and Equality to examine the issue and it reported its conclusions in June 2013.¹²⁹ The committee, influenced strongly by its consideration of the Swedish model, recommended that there should be:

...a summary offence penalising the purchase of sexual services of another person by means of prostitution, or any request, agreement or attempt to do so; it should at the same time be clarified that no offence is committed by the person whose sexual services are so sold.¹³⁰

The committee also recommended a range of other measures and legal reforms .

¹²⁹ Houses of the Oireachtas Joint Committee on Justice, Defence and Equality Report on hearings and submissions on the Review of Legislation on Prostitution (June 2013)
Tithe an Oireachtais An Comhchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas
Tuarascáil ar éisteachtaí agus aighneachtaí maidir leis an Athbheithniú ar Reachtaíocht i ndáil le Striapachas (Meitheamh 2013)
<http://www.oireachtas.ie/parliament/media/committees/justice/1.Part-1-final.pdf> (accessed Oct 2013)

¹³⁰ Above p 188

Other Forms of Exploitation

The main focus of the debate around the bill has been around the purchase of sexual services. However, the GRETA report indicated the need to focus on trafficking for all forms of exploitation¹³¹:

In addition to continuing efforts to discourage demand for sexual services, GRETA considers that the British authorities should step up their efforts to discourage demand for the services of trafficked persons for the purpose of domestic servitude and for labour exploitation, including in the agriculture, fisheries, construction, hospitality and cleaning sectors, inter alia, through strengthening the role of labour inspections.

This issue has also been raised by the Anti-Trafficking Monitoring Group¹³².

A recent study published by the Joseph Rowntree Foundation has concluded that the scale and extent of forced labour in the UK is hidden and that there is a lack of a clear strategy, lack of case law, low conviction rates and the frameworks for identifying and addressing forced labour are inadequate¹³³. There is relatively little research on this aspect of trafficking in Northern Ireland¹³⁴.

Clause 6 of the bill aims to legislate to address demand for one aspect of human trafficking, that for sexual exploitation, but not for other forms of exploitation.

An Independent Referral Mechanism

Currently, Northern Ireland links to the UK National Referral Mechanism (NRM) for the identification and support of suspected victims of trafficking¹³⁵. First responders in Northern Ireland are involved in the initial stages of identifying and supporting victims, but these then pass into the national system.

¹³¹ Group of Experts on Action Against Trafficking in Human Beings (2012), Report concerning the implementation of the Council for Europe Convention on Action against Trafficking in Human Beings in the UK, GRETA (2012)6, Strasbourg 12 September 2012, p.85.

¹³² Lois Hamilton (2013), 'Devolved Approaches to Prosecuting Trafficking: Northern Ireland', in: *In the Dock: Examining the UK's Criminal Justice Response to Trafficking*, London: Anti-Trafficking Monitoring Group, p.129.

¹³³ Alistair Geddes, Gary Craig and Sam Scott (2013), *Forced Labour in the UK*, York: Joseph Rowntree Foundation, pp.96-7: <http://www.jrf.org.uk/sites/files/jrf/Forced%20Labour%20in%20the%20UK%20FINAL%20prog%20paper.pdf>.

¹³⁴ For a recent study, see Les Allamby, John Bell, Jennifer Hamilton, Ulf Hansson, Neil Jarman, Michael Potter and Sorina Toma (2011), *Forced labour in Northern Ireland: Exploiting Vulnerability*, York: Joseph Rowntree Foundation: <http://www.jrf.org.uk/sites/files/jrf/forced-labour-Northern-Ireland-full.pdf>. See also Northern Ireland Assembly Knowledge Exchange Seminar, Jean Allain and Jennifer Hamilton, 'Human Trafficking: Does Slavery Exist Today & Forced Labour and the Mushroom Industry in Northern Ireland', 7 March 2013: <http://www.niassembly.gov.uk/Assembly-Business/Research-and-Information-Service-RaISe/Knowledge-Exchange/Knowledge-Exchange-Seminars-Series-2/Prof-Jean-Allain-QUB-and-Dr-Jennifer-Hamilton-UJ/>.

¹³⁵ See the Home Office website (accessed 24 September 2013: <https://www.gov.uk/government/policies/reducing-and-preventing-crime--2/supporting-pages/human-trafficking>; for more information on the NRM, see Research Paper 100/12 *Human Trafficking in Northern Ireland*, 12 June 2012, p.21: <http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/ofmdfm/10012.pdf>.

In the foreword to the most recent Anti-Trafficking Monitoring Group report, Paul Whitehouse indicates¹³⁶:

People who are trafficked sometimes commit offences. They may well be trafficked and forced to carry out illegal activities, such as cannabis cultivation, street begging or pick-pocketing. Many may also be committing immigration offences as part of their trafficking ordeal. However, it is crucial to remember that they do not commit these offences of their own free will. They commit them because they are in the thrall of their traffickers. Unfortunately the UK's prosecution system all too often fails to recognise who are real victims and who are offenders. This is a sad reflection of the lack of understanding throughout the criminal justice system of what trafficking is, and how it affects those who are trafficked.

The linking of the processing of trafficking victims with agencies oriented towards immigration control has the potential to lead to conflicting priorities. A recommendation of the Centre for Criminal Justice proposes transferring responsibility for trafficking victims from the Minister for Immigration to the Minister for Policing and Criminal Justice to address this conflict¹³⁷. Indeed, one recommendation of the GRETA report calls on the UK to:¹³⁸

entrust the identification of victims of trafficking who are illegally present in the UK to persons who are not involved in the asylum seeking procedure of the applicant, to avoid conflicts in the decision making.

While immigration is not devolved within the UK, significant portions of the system dealing with trafficking victims are in Northern Ireland. Jenny Marra MSP's proposed Private Member's Bill sets out ideas for an independent system for dealing with trafficking victims in Scotland¹³⁹:

I propose an Identification, Referral and Assistance, and Monitoring Service for Survivors of Human Trafficking (the Survivors' Service), which shall be an independent body accountable to and required to report annually on its activities and performance to the Scottish Parliament.

The Survivors Service shall be responsible for fulfilling four duties:

(a) Identification of survivors of human trafficking;

¹³⁶ Rachel Anniston (2013), : *In the Dock: Examining the UK's Criminal Justice Response to Trafficking*, London: Anti-Trafficking Monitoring Group, p.2: http://www.ecpat.org.uk/sites/default/files/in_the_dock_atmg_2013.pdf.

¹³⁷ Modern Slavery Working Group (2013), *It happens Here: Equipping the UK to Fight Modern Slavery*, London: Centre for Social Justice, p.18: <http://www.centreforsocialjustice.org.uk/publications/it-happens-here-equipping-the-united-kingdom-to-fight-modern-slavery>.

¹³⁸ Group of Experts on Action Against Trafficking in Human Beings (2012), Report concerning the implementation of the Council for Europe Convention on Action against Trafficking in Human Beings in the UK, GRETA (2012)6, Strasbourg 12 September 2012, p.85.

¹³⁹ *Human Trafficking (Scotland) Bill*, Consultation by Jenny Marra MSP, Member for North East Scotland, September 2013, p.31: http://www.scottish.parliament.uk/S4_MembersBills/20130909_Human_Trafficking_Consultation_final_version.pdf.

(b) Take decisions on identification of and referral for victims in an independent, rigorous and evidence based, and consistent and transparent manner;

(c) Refer survivors into coordinated assistance packages; and

(d) Monitor the progress of and outcomes for Survivors so referred.

What is being proposed, therefore, is a co-ordinated and independent system for working with trafficking victims within the legislative competence of a devolved administration.

Appendix 1: Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

Article 2

Offences concerning trafficking in human beings

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

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.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

Article 3

Incitement, aiding and abetting, and attempt

Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable.

Article 4

Penalties

1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment.
2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:
 - (a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;
 - (b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against Organised crime¹⁴⁰;
 - (c) deliberately or by gross negligence endangered the life of the victim; or
 - (d) was committed by use of serious violence or has caused particularly serious harm to the victim.
3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.
4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.

Article 5

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit

¹⁴⁰ Council Framework Decision 2008/841/JHA on the fight against organised crime: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:300:0042:0045:EN:PDF>.

by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3.

4. For the purpose of this Directive, 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Article 6

Sanctions on Legal Persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 7

Seizure and confiscation

Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3.

*Article 8***Non-prosecution or non-application of penalties to the victim**

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

*Article 9***Investigation and prosecution**

1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.
2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.
3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.
4. Member States shall take the necessary measures to ensure that 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 or prosecuting the offences referred to in Articles 2 and 3.

*Article 10***Jurisdiction**

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where:
 - (a) the offence is committed in whole or in part within their territory; or
 - (b) the offender is one of their nationals.
2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2 and 3 committed outside its territory, inter alia, where:
 - (a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;

(b) the offence is committed for the benefit of a legal person established in its territory;
or

(c) the offender is an habitual resident in its territory.

3. For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions:

(a) the acts are a criminal offence at the place where they were performed; or

(b) the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

Article 11

Assistance and support for victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA¹⁴¹, and in this Directive.

2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC¹⁴² or similar national rules.

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

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary

¹⁴¹ Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:en:PDF>.

¹⁴² Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>.

medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC¹⁴³ of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Council Directive 2005/85/EC¹⁴⁴ of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status or pursuant to other international instruments or other similar national rules.

7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

Article 12

Protection of victims of trafficking in human beings in criminal investigation and proceedings

1. The protection measures referred to in this Article shall apply in addition to the rights set out in Framework Decision 2001/220/JHA.

2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.

4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible

¹⁴³ Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF>.

¹⁴⁴ Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee Status: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>.

and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

- (a) unnecessary repetition of interviews during investigation, prosecution or trial;
- (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
- (c) the giving of evidence in open court; and
- (d) unnecessary questioning concerning the victim's private life.

Article 13

General provisions on assistance, support and protection measures for child victims of trafficking in human beings

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.
2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

Article 14

Assistance and Support to Child Victims

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.
2. Member States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.
3. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings

when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family.

4. This Article shall apply without prejudice to Article 11.

Article 15

Protection of child victims of trafficking in human beings in criminal investigations and proceedings

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.

2. Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:

(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;

(b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;

(c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;

(d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;

(e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;

(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a

child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

(a) the hearing take place without the presence of the public;

and

(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

6. This Article shall apply without prejudice to Article 12.

Article 16

Assistance, support and protection for unaccompanied child victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.

2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.

3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.

4. Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family.

5. This Article shall apply without prejudice to Articles 14 and 15.

Article 17

Compensation to victims

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

Article 18

Prevention

1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.
2. Member States shall take appropriate action, including through the Internet, such as information and awareness raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.
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.
4. In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.

Article 19

National rapporteurs or equivalent mechanisms

Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

Article 20

Coordination of the Union strategy against trafficking in human beings

In order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of an anti-trafficking coordinator (ATC). In particular, Member States shall transmit to the ATC the information referred to in Article 19, on the basis of which the ATC shall contribute to reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings.

*Article 21***Replacement of Framework Decision 2002/629/JHA**

Framework Decision 2002/629/JHA on combating trafficking in human beings is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limit for transposition of the Framework Decision into national law.

In relation to Member States participating in the adoption of this Directive, references to the Framework Decision 2002/629/JHA shall be construed as references to this Directive.

*Article 22***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 April 2013.
2. Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.
3. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

*Article 23***Reporting**

1. The Commission shall, by 6 April 2015, submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Article 18(4), accompanied, if necessary, by legislative proposals.
2. The Commission shall, by 6 April 2016, submit a report to the European Parliament and the Council, assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, accompanied, if necessary, by adequate proposals.

*Article 24***Entry into force**

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

*Article 25***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 5 April 2011.

Appendix 2: Number of Identified and Presumed Victims of Human Trafficking in the European Union¹⁴⁵

	2008			2009			2010		
	Total (Id + Pr)	Population	Victims per 100 000 inhabitants	Total (Id + Pr)	Population	Victims per 100 000 inhabitants	Total (Id + Pr)	Population	Victims per 100 000 inhabitants
EU Total (1)	6309	495 813 805	1.3	7 795	497 802 058	1.6	9 528	488 376 768	2.0
Belgium	196	10 666 866	1.8	158	10 753 080	1.5	130	10 839 905	1.2
Bulgaria	250	7 640 238	3.3	346	7 606 551	4.5	432	7 563 710	5.7
Czech Republic	143	10 381 130	1.4	55	10 467 542	0.5	83	10 506 813	0.8
Denmark	28	5 475 791	0.5	47	5 511 451	0.9	53	5 534 738	1.0
Germany	692	82 217 837	0.8	733	82 002 356	0.9	651	81 802 257	0.8
Estonia	55	1 340 935	4.1	78	1 340 415	5.8	57	1 340 127	4.3
Ireland	:	4 401 335	:	66	4 450 030	1.5	78	4 467 854	1.7
Greece	76	11 213 785	0.7	121	11 260 402	1.1	92	11 305 118	0.8
Spain	:	45 283 259	:	443	45 828 172	1.0	1 605	45 989 016	3.5
France	822	62 134 866	1.3	779	62 465 709	1.2	726	62 791 013	1.2
Italy	1 624	59 619 290	2.7	2 421	60 045 068	4.0	2 381	60 340 328	3.9
Cyprus	58	789 269	7.3	113	796 875	14.2	52	819 140	6.3
Latvia	22	2 270 894	1.0	16	2 261 294	0.7	19	2 248 374	0.8
Lithuania	25	3 366 357	0.7	14	3 349 872	0.4	3	3 329 039	0.1
Luxembourg	7	483 799	1.4	3	493 500	0.6	8	502 066	1.6
Hungary	10	10 045 401	0.1	9	10 030 975	0.1	10	10 014 324	0.1
Malta	1	410 290	0.2	0	413 609	0.0	4	414 372	1.0
Netherlands	826	16 405 399	5.0	909	16 485 787	5.5	993	16 574 989	6.0
Austria	36	8 318 592	0.4	109	8 355 260	1.3	62	8 375 290	0.7
Poland	66	38 115 641	0.2	66	38 135 876	0.2	278	38 167 329	0.7
Portugal	25	10 617 575	0.2	24	10 627 250	0.2	8	10 637 713	0.1
Romania	1 240	21 528 627	5.8	780	21 498 616	3.6	1 154	21 462 186	5.4
Slovenia	29	2 010 269	1.4	30	2 032 362	1.5	31	2 046 976	1.5
Slovakia	28	5 400 998	0.5	36	5 412 254	0.7	38	5 424 925	0.7
Finland	29	5 300 484	0.5	64	5 326 314	1.2	79	5 351 427	1.5
Sweden	21	9 182 927	0.2	44	9 256 347	0.5	74	9 340 682	0.8
United Kingdom	:	61 191 951	:	331	61 595 091	0.5	427	62 026 962	0.7

¹⁴⁵ Eurostat (2013), *Trafficking in Human Beings*, Luxembourg: Publications Office of the European Union, p.31: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130415_thb_stats_report_en.pdf.