

# North South Inter-Parliamentary Association

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**Briefing Paper for the sixth meeting of the  
North-South Inter-Parliamentary Association**

## **Human Trafficking**

**5<sup>th</sup> June 2015**

**Background briefing prepared by the Research and Information Service (RaISe) of the  
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## Contents

Key Points.....	3
Introduction .....	5
The Position in Ireland .....	7
Policy and legislative context.....	8
Identification & treatment of victims .....	11
Sexual exploitation.....	15
Labour Exploitation.....	17
Investigation & prosecutions .....	20
The Position in Northern Ireland .....	22
Treatment of Victims of Human Trafficking.....	25
Sexual Exploitation.....	26
Labour Exploitation.....	28
Investigation, Prosecutions and Sentencing .....	29
Cross-Border Co-operation .....	31

## Key Points

Human trafficking is defined by the Council of Europe *Convention on Action against Trafficking in Human Beings* 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".*

Human trafficking is defined in terms of:

- The **act** (the movement of persons)
- The **means** (by coercion or deception)
- The **purpose** (for exploitation)

For children, the means is irrelevant.

The identification of victims of human trafficking presents a significant challenge due to the clandestine nature of human trafficking and its intersection with underground criminal activities. For this reason, the scale of the problem is likely to be under-reported.

Human trafficking in Ireland and Northern Ireland are addressed in policy terms through:

- In Ireland: The National Action Plan 2009-2012 (a successor Action Plan has not been published at the time of writing).
- In Northern Ireland: The Human Trafficking and Exploitation Action Plan 2014-15.

The identification and support of suspected victims of human trafficking takes place through:

- In Ireland: the Anti-Human Trafficking Unit and the National Referral Mechanism.
- In Northern Ireland: the UK National Referral Mechanism.

Referrals to the relevant national referral mechanisms for 2014 were as follows:

- In Ireland: 46 persons identified as suspected victims (32 for sexual exploitation, 7 for labour exploitation, 3 for forced criminality, 3 forced begging and 1 unknown).
- From Northern Ireland (to the UK mechanism): 45 referrals to the national referral mechanism (4 for sexual exploitation, 32 for labour exploitation, 1 for domestic servitude, 8 unknown).

The broad legislative framework includes the following:

- In Ireland:
  - The *Criminal Law (Human Trafficking) Act 2008* forms the basis for human trafficking offences;
  - The *International Protection Bill* – the General Scheme proposes a single procedure for determining protection;
  - The *Criminal Law (Sexual Offences) Bill* - the General Scheme proposes to introduce new offences of purchasing sexual services.
- In Northern Ireland:
  - The *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015* provides the basis for human trafficking offences and the care and protection of victims, where these powers' competencies are devolved, and introduces a new offence of purchasing sexual services.

Responsibility for co-ordinating the investigation of human trafficking rests with the following:

- In Ireland: The Human Trafficking and Co-ordination Unit of the Garda National Immigration Bureau.
- In Northern Ireland: The Organised Crime Task Force, which brings together the PSNI and other agencies.

Sexual exploitation

- There is no clear consensus on whether the criminalisation of prostitution reduces trafficking. However, on 1 June 2015, a law criminalising the purchase of sex came into force in Northern Ireland and similar legislation is proposed for Ireland.

Labour exploitation

- This is becoming a growing concern in Ireland and Northern Ireland. Difficulties are seen in identifying boundaries between exploitative work practices and forced labour.

Cross-border co-operation has included the following initiatives:

- Inter-agency intelligence sharing and co-operation between law enforcement and immigration agencies;
- Intergovernmental Agreement on Criminal Justice Matters (2005 and 2010);
- Joint An Garda Síochána and PSNI Cross-Border Policing Strategy (2010);
- Cross-border events on organised crime, human trafficking and forced labour;
- Cross-border projects e.g. the REACH project focusses primarily on the issue of human trafficking of women and girls.

## Introduction

This paper is written in the context of the North-South Inter-Parliamentary Association. It is intended as a summary of certain aspects of human trafficking in Ireland and Northern Ireland as a basis for comparing principal issues on an all-island basis.

The Council of Europe *Convention on Action against Trafficking in Human Beings* defines human trafficking as follows:<sup>1</sup>

- a. "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;
- b. The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d. "Child" shall mean any person under eighteen years of age;
- e. "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

The United Nations more simply defines 'human trafficking' in the following terms:<sup>2</sup>

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

In contrast, "people smuggling" is defined as follows:

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

The relevant distinction is that being trafficked is involuntary, whereas people smuggling involves the consent of the individual being smuggled. Defining who is trafficked and who has been willingly smuggled into the country can be problematic, particularly where someone has been smuggled, but the circumstances in which individuals find themselves in the destination country are different from expectations. Regardless of the initial intention on

<sup>1</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Article 4:  
<http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>.

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

the part of the person entering the country, if there is any form of coercion, force, threat or deception involved which leads to the person undertaking work or providing services unwillingly, then this becomes trafficking.

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

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

The ILO describes “forced labour” according to the following indicators:<sup>3</sup>

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

### **Structure of this joint paper**

The paper reports on the **prevalence** of human trafficking and describes governing **legislation** in Ireland and Northern Ireland. We address the **identification** and treatment of suspected trafficking victims, with detailed reference to a recent case in Ireland. We discuss initiatives to criminalise the **purchase of sexual services** and address the increasing prevalence of **labour exploitation** amongst trafficked persons. We also address the **investigation and prosecution** of the perpetrators of trafficking crimes, providing statistics, where available for each jurisdiction. Finally, we consider **cross-border co-operation** on this issue.

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<sup>3</sup> International Labour Office (2005), *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement*, Geneva: ILO, p.20.

## The Position in Ireland

Ireland's [First National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009–2012](#) (here after the [National Action Plan 2009-2012](#)) describes human trafficking as: “an action carried out through abusive means for the purposes of the exploitation of human life”<sup>4</sup> and is evidenced by the three components (*action, means & purpose*) described above. The [National Action Plan 2009-2012](#) recognises that a person may enter the State legally and independently, may even work lawfully and later may be exploited as a trafficking victim, where each of the three elements above can be identified.<sup>5</sup>

### Prevalence of human trafficking in Ireland

The identification of victims of trafficking presents a significant challenge due to the clandestine nature of human trafficking and its intersection with underground criminal activities. The Report by [GRETA<sup>6</sup> on Irish Action against Human Trafficking](#) (2013)(hereafter the [GRETA Report 2013](#)) suggests that the scale of the problem may be under-reported. The data below for 2013 and 2014 was provided by the Anti-Human Trafficking Unit of the Department of Justice & Equality (AHTU). The limited figures for 2014 are preliminary. Statistics on previous years are found in the [AHTU Annual Reports](#) for: [2009](#), [2010](#), [2011](#) and [2012](#).

**Table 1: Trafficking Statistics in Ireland for 2013 and 2014**

2013	<i>Alleged victims</i>	<i>Sexual exploitation</i>	<i>Labour exploitation</i>	<i>Uncategorised exploitation*</i>	<i>Other**</i>	<i>Labour &amp; Sexual</i>
	44	29	8	3	3	1
Female	33	21	6	3	3	1
Male	11	8	2	0	0	0
Adult	28	16	7	2	2	1
Minor	16	13	1	1	1	0

2014	<i>Alleged victims</i>	<i>Sexual exploitation</i>	<i>Labour exploitation</i>	<i>Forced criminality</i>	<i>Forced begging</i>	<i>Unknown</i>
	46	32	7	3	3	1

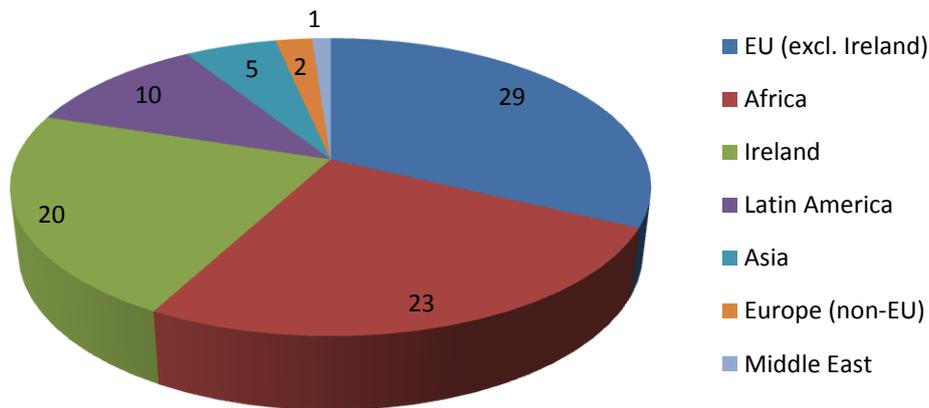
\* Uncategorised exploitation signifies that while at the outset of the investigation there were general suspicions that these persons could be victims of human trafficking there were no firm indications as to the precise nature of trafficking involved (AHTU, 2015).

\*\* Other can include exploitation for forced criminal activity, begging, marriage (AHTU, 2015).

<sup>4</sup> [National Action Plan 2009-2012](#) p.8.

<sup>5</sup> [National Action Plan 2009-2012](#) p.27.

<sup>6</sup> GRETA was established by the Council of Europe and comprises a Group of Experts on Action against Trafficking in Human Beings.

**Figure 1: Origin of 90 suspected victims 2013 - 2014**

While the majority of suspected victims in 2013 and 2014 came from the EU (excluding Ireland) and Africa, a significant number were Irish. This illustrates that although human trafficking often involves a cross-border element, this is not always the case.

## Policy and legislative context

### Policy background

Addressing human trafficking in Ireland is a relatively recent initiative. Prior to 2008 there was little by way of a concerted, multi-departmental effort to tackle the issue, but since then, initiatives have gained momentum and developments have been manifold. Such action came in the context of EU law<sup>7</sup> and international law<sup>8</sup> obligations.

The Anti-Human Trafficking Unit (hereafter the AHTU) was established in February 2008 under the auspices of the Department of Justice & Equality. The AHTU co-ordinates with dedicated units in other state agencies (including An Garda Síochána, the Health Service Executive, Legal Aid Board, the Department of Social Protection and the Office of the Director of Public Prosecutions) seeking to address human trafficking in an holistic, comprehensive manner.

A High Level Interdepartmental Group on Combating Trafficking in Human Beings was established to implement the [National Action Plan 2009-2012](#). This is further facilitated by a Roundtable Forum of State agencies, NGOs and international organisations which meet about three times a year, along with additional working groups. The [National Action Plan](#)

<sup>7</sup> European Union [Council Framework Decision 2002/629/JHA](#).

<sup>8</sup> The Council of Europe [Convention on Action against Trafficking in Human Beings](#) came into force for Ireland in 2010.

[2009-2012](#) contained 144 key actions, seeking to provide a comprehensive framework to address human trafficking under four principal headings:

- (i) Prevention and awareness raising,
- (ii) Protection of victims,
- (iii) Prosecution of traffickers, and
- (iv) Response to child trafficking.

Irish policy on human trafficking is further guided by the [EU Trafficking Action Plan 2012-2016](#). EU funding was secured by the AHTU in conjunction with Ruhama<sup>9</sup> to promote an all-island zero tolerance of human trafficking. The [Blue Blindfold campaign](#) is the dedicated anti-trafficking website which has a referral facility for the public, through which instances of human trafficking may be reported.<sup>10</sup>

The *National Referral Mechanism* encompasses comprehensive consultation structures, the identification process, support services (including medical, psychological, legal, educational, repatriation, compensation, translation and interpretation services) and the means through which victims can apply to access each of those services.<sup>11</sup>

A new National Action Plan to follow the [National Action Plan 2009-2012](#) has not been published (at the time of writing). The Department of Justice & Equality published a review of the [National Action Plan 2009-2012](#) in 2013.<sup>12</sup> The Minister for Justice & Equality stated in March 2015 that the 2<sup>nd</sup> *National Action Plan* is due for publication in draft form, for consultation with stakeholders, and will address enhancing the knowledge base and data in relation to human trafficking.<sup>13</sup> It will also address the recommendations set out in the [GRETA Report](#) which reported on Ireland's compliance with the *Convention on Action against Trafficking in Human Beings* in September 2013. The 2<sup>nd</sup> *National Action Plan* will consider how elements of independent oversight can be brought to this policy area and the Plan will incorporate a new Training and Awareness Raising Strategy.<sup>14</sup>

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<sup>9</sup> [Ruhama](#) is a voluntary organisation, based in Dublin but working at a national level, with women affected by prostitution and other forms of commercial sexual exploitation.

<sup>10</sup> The main message of the *Blue Blindfold* campaign is: "Don't Close Your Eyes to Human Trafficking".

<sup>11</sup> See the website of the Department of Justice & Equality [here](#).

<sup>12</sup> The Review is available [here](#). The Annual Report of the AHTU for 2013 also awaits publication (at the time of writing).

<sup>13</sup> Written Answers No. 334, Proposed Legislation, 10 March 2015.

<sup>14</sup> See the Irish Government's response to the [GRETA Report 2013](#) which is appended to the Report.

## Legislative context

The trafficking of children is illegal under the [Child Trafficking and Pornography Act 1998](#). The [Illegal Immigrants \(Trafficking\) Act 2000](#) created the offence of trafficking of illegal immigrants.<sup>15</sup>

The [Criminal Law \(Human Trafficking\) Act 2008](#) (hereafter the 2008 Act) made it an offence to sell or offer for sale any person for *any* purpose (including sexual exploitation, forced labour and organ removal). It is an offence for someone to solicit for prostitution a person he or she knows or has reasonable grounds for believing to be, a trafficked person. Offences attract penalties of up to life imprisonment, together with a potential fine. While it is an offence to buy sexual services from a person who is known to be a trafficked person, there have, at the time of writing, been no convictions for this offence.<sup>16</sup>

The [Criminal Law \(Human Trafficking\)\(Amendment\) Act 2013](#) (the 2013 Act) addresses trafficking for labour exploitation as required under [EU Directive 2011/36/EU](#).<sup>17</sup> Labour exploitation under the 2008 Act already covered:

- subjecting the person to forced labour,
- forcing him or her to render services to another, or
- enslavement of the person or subjecting him or her to servitude or a similar condition or state.

This definition was amended under the 2013 Act to include **forcing a person to beg**.<sup>18</sup>

The 2013 Act, for clarity, inserted a **definition of “forced labour”** which draws on the definition provided by the International Labour Organisation as:

*“all work or service which is exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily.”<sup>19</sup>*

The **definition of “exploitation”** was also expanded under the 2013 Act to incorporate forcing a person to engage in criminal activity.<sup>20</sup>

<sup>15</sup> This legislation made it an offence to organise or knowingly facilitate the entry into Ireland of a person known to be, or can reasonably be believed to be, an illegal immigrant. Offences under this legislation are used to prosecute acts which occurred prior to the 2008 Act coming into force.

<sup>16</sup> This was confirmed by the AHTU on 28 April 2015.

<sup>17</sup> [Directive 2011/36/EU of the European Parliament and of the Council on Preventing and Combating Trafficking in Human Beings and Protecting its Victims](#).

<sup>18</sup> The term “to beg” is understood in accordance with the [Criminal Justice \(Public Order\) Act 2011](#).

<sup>19</sup> See Section 1 of the 2013 Act. While “forced labour” was included in the 2008 Act as a type of labour exploitation, the 2013 amendment provided an explicit definition of “forced labour” for clarity. Exemptions include work carried out as part of compulsory military service, work imposed as a result of a criminal conviction and work carried out in emergency situations.

Concerns were raised by the Latvian authorities regarding reports of Latvian women who were trafficked into Ireland to marry non-EU nationals seeking to gain the rights of an EU national through marriage.<sup>21</sup> The [Civil Registration \(Amendment\) Act 2014](#) was enacted as an attempt to impede alleged marriages of convenience.

### Forthcoming legislation

Pending **reform of immigration laws** in Ireland,<sup>22</sup> the Irish Government is prioritising the *International Protection Bill* which will propose a single procedure for determining protection.<sup>23</sup> The “[Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking](#)” currently provide for a 60-day period of recovery and reflection where persons have no legal basis to remain (described on p.14 below).<sup>24</sup>

The [General Scheme of the Criminal Law \(Sexual Offences\) Bill](#) was published in November 2014 and seeks to introduce new offences of purchasing sexual services to address demand for prostitution and to tackling the exploitation associated with prostitution, including that of trafficked persons. This is discussed in relation to sexual exploitation below.

The [Victims of Crime Directive](#), to be incorporated into Irish law this year, establishes minimum standards on the rights, support and protection of victims of crime. Trafficking victims comprise a category requiring specialist support under this scheme.<sup>25</sup>

## Identification & treatment of victims

### Identification of victims

Recent cases emphasise the difficulties which arise in identifying trafficking victims. The [National Action Plan 2009-2012](#) recognised that the identification of suspected victims was an obstacle facing any counter-trafficking strategy. The **National Referral Mechanism** was developed under the [National Action Plan 2009-2012](#) to facilitate victim identification through various bodies. Recognition as a victim of human trafficking is administered by a Garda officer at the rank of Superintendent of the Garda National Bureau of Immigration (GNIB) or

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<sup>20</sup> [EU Directive 2011/36/EU](#) states that “exploitation of criminal activities” should be understood as exploiting someone to commit, amongst other things, “pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain”.

<sup>21</sup> See Lynch (2013) [State criticised over sham marriages](#), Irish Times, 1 February 2013.

<sup>22</sup> Proposals for reform were contained in the lapsed *Immigration, Residence and Protection Bill 2008*. The *Immigration, Residence and Protection Bill 2010* was published in July 2010 and is likely to be re-published due to the large number of amendments which are required.

<sup>23</sup> The General Scheme of the Bill was published in March 2015 and is available [here](#).

<sup>24</sup> These [Administrative Immigration Arrangements for the Protection of Victims of Trafficking](#) came into operation on 7 June 2008 and were amended in March 2011 to provide an extended reflection period for children and to introduce longer term residency permit following three years of temporary residency permits. Immigration status is discussed further below in relation to the identification and treatment of the victims.

<sup>25</sup> See the EU Commission's [Guidance Document](#) on implementation of the Directive, DG Justice (2013).

above. Training of An Garda Síochána in recognising the indicators to identify victims of trafficking is provided by the Human Trafficking and Co-ordination Unit (HTICU) of the GNIB. The Garda Síochána **does not require “absolute certainty”** for allowing a claimant to stay in Ireland, but if there are **“reasonable grounds”** for suspecting a person to be a trafficking victim, it is recommended that the person be given permission to remain in the State for 60 days for a period of “Recovery and Reflection”.<sup>26</sup>

The [GRETA Report 2013](#) stressed the need to set up a specific identification mechanism, in particular regarding minor victims reporting that gaps in the identification process, together with the low rate of prosecutions, may lead to an underestimation of the severity of the trafficking problem. The [GRETA Report 2013](#) further observed that there is no definition of “victim of trafficking in human beings” in Irish law.<sup>27</sup> The MRCI pinpoints low identification rates as a real challenge, highlighting:

- Confusion caused due to identification interacting with a criminal investigation;
- Evidential burden of the reasonable grounds test v’s balance of probabilities;
- Lack of clear decision making procedures, timeframe and accountability to victims;
- Inability to identify victims within crime scenes.<sup>28</sup>

In April 2015, the Irish High Court decided that [EU Directive 2011/36/EU](#) was not properly transposed in Ireland due its **failing to adequately identify victims**.<sup>29</sup> This was in the context of a Vietnamese woman who was charged with supply of cannabis for sale and who argued she had been trafficked. The case is further detailed in Box 1 below.

**Box 1: [P v Chief Superintendent of the Garda National Immigration Bureau and Ors](#)<sup>30</sup>**

This case involved a judicial review hearing before the High Court by a Vietnamese woman (Ms P) charged with possession and cultivation of cannabis plants in November 2012. She was confined in a “growhouse” (wherein cannabis with an estimated value of €940,800.00 was seized) and from arrest, was held on remand in the Dóchas centre, Dublin’s prison for women.

She applied for recognition as a trafficking victim, recounting how she had spent a month locked in the growhouse, tasked with regulating light and heat, that she was completely dependent on her exploiters and did not have the option of leaving the premises. A psychological assessment found Ms P’s experience to be “congruent with documented experiences of people who have been trafficked” while evidence for the GNIB focussed on inconsistencies in her account which made it difficult to substantiate “reasonable grounds” that Ms P was a trafficking victim.

<sup>26</sup> See page 135 of the [National Action Plan 2009-2012](#).

<sup>27</sup> Para 61 of the [GRETA Report 2013](#).

<sup>28</sup> Migrant Rights Centre of Ireland (2015) [Setting the Context- North/South conference on Forced Labour](#).

<sup>29</sup> O’Faolain, A. *Law fails to comply with EU human trafficking directive*, The Irish Times, 15 April 2014.

<sup>30</sup> Judgment of Justice O’Malley on 15 April 2015.

Ms P’s application to be recognised as a victim of trafficking was denied in September 2013, thus precluding her from accessing various support services from the HSE Anti-Human Trafficking Team and from availing of repatriation to Vietnam. In the absence of reasons for the refusal to recognise trafficking,<sup>31</sup> and the consequent breach of fair procedures, the applicant argued that:

- the GNIB had breached the Directive 2011/36/EU; and
- the Directive 2011/36/EU has not been properly transposed.

The Migrant Rights Centre of Ireland gave evidence to show an increase in the number of Vietnamese and Chinese trafficked to Ireland for cannabis cultivation. The Irish Human Rights and Equality Commission argued that this case had become problematic due to the lack of clarity as to procedures and the test to be applied, forwarding that “the absence of implementing legislation *prima facie* points to a failure to transpose”. In this way, the administrative arrangements of the GNIB were criticised for the failure to set out the nature and detail of the identification process.

### ***Findings of the High Court***

The Court said that the case demonstrated “a number of fundamental difficulties with the mechanism in place in this State”, which relate to:

1. The onus of proof in relation to an application for recognition,
2. The state of mind of the GNIB official, required to identify a victim,
3. The appropriate procedure where there is a parallel criminal investigation.

Noting inconsistencies in the applicant’s account, the Court interpreted Directive 2011/36/EU as not permitting the State to impose a burden of proof on an applicant seeking recognition as a victim of trafficking. The “reasonable grounds” test is an objective test, such that even an unconvincing account might satisfy the test where there is otherwise objective evidence of trafficking. The Court commented that the applicant, being locked in the grow-house, thus having her movement impeded, might objectively suggest her lack of control. The Court went on to say that as it is in the public interest to tackle the blight of human trafficking; a “suspected victim” should be identified if there are “reasonable-grounds indicators” to that effect.

The Directive requires States to ensure that authorities are entitled not to prosecute or impose penalties on trafficking victims for their involvement in criminal activities which they committed as a direct consequence of trafficking.<sup>32</sup> This is transposed in Ireland through the DPP’s discretion *not* to prosecute in certain cases. The Court found that while the Directive does *not* “confer an enforceable right on a victim of trafficking not to be prosecuted”, there is a need for procedural rules, “if not legislation” on the steps to be taken where a victim is also a suspect of criminal activity.

The Court commented that the parallel investigations into victim identification and prosecution for offences were so intertwined as to give rise to a potential conflict. The Court concluded that the mechanism adopted was not “appropriate” in failing to deal with the interaction between the application for recognition and the criminal investigation.

The Directive was deemed by the Court to have been inadequately transposed. The Court

<sup>31</sup> In this regard, the Court drew attention to the [National Action Plan 2009-2012](#) which states that there is no obligation to explain an adverse finding.

<sup>32</sup> See Article 8 of Directive 2011/36/EU. Also relevant is Article 26 of the Council of Europe [Convention on Action against Trafficking in Human Beings](#).

recognised that policy decisions were required to implement an “appropriate” mechanism, within the area of discretion left by the Directive.

A further case from 2014<sup>33</sup> on the identification of trafficking victims involving drug offences was of particular interest in relation to individuals who enter the State of their own volition, but are later coerced, exploited and forced to remain in a particular place in circumstances which negate free will. While that case decided that the individual had not been trafficked, there has been some criticism of the Court’s reasoning.<sup>34</sup>

### Accommodation and care for trafficking victims

Suspected victims of trafficking are primarily accommodated in Baleskin reception centre in North Dublin which is principally a reception centre for asylum seekers. The Health Service Executive develops individual care plans for suspected victims of trafficking to cover various supports, including: “medical health, GP referral, counselling, psychological care, sexual health, material assistance, accommodation, training needs, education, etc.”<sup>35</sup>

Accommodating trafficking victims at this centre, has been criticised in the [GRETA Report 2013](#) given the absence of “dedicated shelters operated by the Irish State for the accommodation of suspected human trafficking cases”. While commending the range of services and classes available (including English, safety awareness, art, positive parenting, etc.), GRETA raised the concern that, as the Baleskin reception centre is not a specialised facility for victims of trafficking, is not an appropriate environment for such victims.

Box 2 below describes the treatment of suspected victims of trafficking in terms of immigration law.

#### Box 2: Immigration status of trafficking victims in Ireland

As noted above, once a foreign national (interpreted as a person from outside the EEA<sup>36</sup>) is identified by the GNIB as a “person suspected of being a victim of human trafficking”, the [Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking](#) (hereafter the Administrative Arrangements ) apply to:

- grant persons a **60-day Recovery and Reflection period** and,
- (in certain circumstances) one or more periods of **temporary residence** in the State.

<sup>33</sup> *Win Lin v Governor of Cloverhill Prison & Ors* [2014] IECH 214, Judgment delivered by Justice Hogan on 23 April 2014.

<sup>34</sup> For a critical analysis of this decision, see [here](#) where Wendy Lyon observes: “It will be very worrying if this judgment is seen as establishing a principle that complainants must prove they were trafficked at and from the moment they entered the State [...] it is a burden that alleged victims of trafficking should not have to meet.”

<sup>35</sup> Minister for Justice & Equality was responding to a Parliamentary Question, Dáil Debates, Written Answer No. 101, Human Trafficking, 4 March 2014.

<sup>36</sup> The Administrative Arrangements note that EEA citizens have free movement rights and do not require permission to stay, but will not be treated less favourably than a person from outside the EEA.

### **Recovery & Reflection**

Recovery and reflection is intended to allow time to recover, to create distance between the victim and the alleged perpetrators and for the victim to decide whether they will participate in any investigation or prosecution. This period can be terminated in certain circumstances (e.g. renewed contact with traffickers, public order purposes, false claims). Victims do not have access to the labour market during the 60-day Recovery and Reflection period. Minors may be granted periods of recovery and reflection greater than 60 days. The [GRETA Report 2013](#) notes that the majority of trafficking victims entering Ireland are either asylum seekers,<sup>37</sup> or nationals of the European Economic Area (EEA). For this reason, the recovery and reflection period is “applied very rarely”.<sup>38</sup>

### **Temporary Residence**

Following recovery and reflection, the Administrative Arrangements provide that one or more six-month temporary residence permits *may* be granted if the Minister is satisfied that:

- a) the person has severed all contact with the alleged perpetrators of the trafficking, and
- b) it is necessary for the purpose of allowing the suspected victim to continue to assist the Garda Síochána or other relevant authorities in relation to an investigation or prosecution arising in relation to the trafficking.

The holder of a temporary residence permit is permitted to work but has no right to long-term residence or to family re-unification. The temporary residence permission may be revoked<sup>39</sup> and permission may be renewed for a further period where the two conditions above pertain.

### **Repatriation**

At the end of a temporary residence period, the Minister for Justice & Equality will make arrangements to facilitate a victim’s return to their country of origin, or before the residence period expires where the person so wishes. A victim may apply to remain in the State under another scheme of permission. The conditions of that scheme along with discretionary considerations of the Minister for Justice & Equality will apply in this regard.<sup>40</sup> The Administrative Arrangements provide that a person who has been identified as a suspected victim of trafficking and who is refused status as an asylum seeker may have their status as a trafficking victim taken into account in a deportation decision against them.<sup>41</sup>

The [GRETA Report 2013](#) stresses the importance of putting new immigration legislation in place. It also strongly advocates giving legislative expression to the right of victims of trafficking to support and protection.<sup>42</sup>

## **Sexual exploitation**

The Minister for Justice & Equality recently stated that “over 80% of women trafficked are the victims of sexual exploitation.”<sup>43</sup> According to its [Annual Report 2013](#), Ruhama delivered

<sup>37</sup> Asylum seekers are afforded a right to remain in the State, *inter alia*, pending a decision on the applicant’s claim under s.11 of the *Refugee Act 1996* (as amended).

<sup>38</sup> See p.8 and p.12 of the [GRETA Report 2013](#).

<sup>39</sup> On the basis of renewed contact with traffickers, non-cooperation with the Garda Síochána, the allegation is fraudulent or unfounded, the investigation has been finalised or public order purposes.

<sup>40</sup> These include: family and domestic circumstances, employment, character & conduct and other matters.

<sup>41</sup> This refers to a proposal to make a deportation order under [section 3\(3\) of the Immigration Act 1999](#).

<sup>42</sup> See p.12 of the [GRETA Report 2013](#). In response to GRETA’s recommendations, the Irish Government maintained that the current recovery and reflection period is compliant with the *Convention on Action against Trafficking in Human Beings* as the protection therein was envisaged to benefit illegal immigrants or those with a short-term resident permit.

care and case management to 219 women affected by prostitution and sexual exploitation. Of this number, 83 were victims of sex trafficking (representing almost 38% of its casework). Of its 96 new referrals in 2013, 17 individuals were suspected victims of trafficking (almost 18%). The Council of Europe (2014) stated that given the significant overlap between prostitution and human trafficking, “legislation and policies on prostitution are indispensable anti-trafficking tools” and strongly encourages research into and data collection on both phenomena.<sup>44</sup>

The 2008 Act created an offence to “solicit” or “importune” a trafficking victim for the purposes of sexual exploitation, where the perpetrator knows that the person is a trafficking victim,<sup>45</sup> but there have been no convictions for this offence to date.

At present, neither the sale nor the purchase of sex is criminalised, though activities associated with prostitution are illegal.<sup>46</sup> The Government has now proposed to create the specific offence of **purchasing sexual services** under the *Criminal Law (Sexual Offences) Bill*.<sup>47</sup> It is further proposed to create the more serious offence of **purchasing sexual services from a trafficked person**. The legislation does not propose to criminalise the sale of sexual services.

The Minister for Justice recently stated that making an act unlawful *does* in itself influence behaviour.<sup>48</sup> Speaking on the publication of the General Scheme, she said that: “Unlike the existing offences relating to prostitution such as soliciting, loitering or brothel keeping, this offence will specifically target the demand for prostitution” seeking to convey the message that: “purchasing sexual services contributes to exploitation.”<sup>49</sup>

The Immigrant Council of Ireland (ICI) has emphasised that changes to laws in Northern Ireland in relation to criminalising the purchase of sex will leave Ireland vulnerable to sex-traffickers who will choose the jurisdiction with less robust prohibitions on sexual offences. Minister Frances Fitzgerald said on 24<sup>th</sup> March 2015 that the new proposed offences are comparable to those introduced in section 15 of the [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015](#) which came into force on 1 June 2015.<sup>50</sup>

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<sup>43</sup> Written Answers No. 334, Proposed Legislation, 10 March 2015.

<sup>44</sup> Council of Europe (2014) [Prostitution, trafficking and modern slavery in Europe](#) Doc. 13446, p.3.

<sup>45</sup> See section 5 of the 2008 Act.

<sup>46</sup> Such criminal activities include pimping, soliciting, brothel keeping, organising prostitution, coercing or compelling a person to be a prostitute, knowingly living off of the earnings of prostitution.

<sup>47</sup> This comes in the context of reform in the approach to the purchase of sexual offences as proposed in the [General Scheme of the Criminal Law \(Sexual Offences\) Bill 2014](#).

<sup>48</sup> Written Answers No. 334, Proposed Legislation, 10 March 2015.

<sup>49</sup> See [here](#).

<sup>50</sup> Minister Frances Fitzgerald, Dáil Debates, Written Answers 487-489, Human Trafficking, 24<sup>th</sup> March 2015.

Various reviews and consultations preceded the Minister's announcement that the purchasing of sex would be criminalised under the *Criminal Law (Sexual Offences) Bill*. International approaches were examined to inform best practice.

### Box 3: Comparative examples of regulating prostitution

The **Swedish model**, in place since 1999 and regularly cited as the optimal approach, partially criminalises prostitution whereby the purchase of sexual services is a crime, but the sale of sexual services is not.<sup>51</sup> The **Dutch and German approaches** are to remove the criminality by legalising prostitution. In **New Zealand**, prostitution is also legal with the aim of promoting the human rights, welfare, and occupational health and safety of sex workers. The **United States** criminalises prostitution in terms of sale and purchase in an effort to eliminate the industry completely. Generally, information gaps make it difficult for any jurisdiction to assert that their approach can reduce human trafficking for sexual exploitation.

A Council of Europe Report (2014) entitled [Prostitution, trafficking and modern slavery in Europe](#) reported that trafficking for sexual exploitation was by far the most widespread form of exploiting trafficked individuals, estimating that as high as 84% of victims are trafficked for the purpose of sexual exploitation. That Report reviewed international approaches towards criminalising the purchase of sexual services. While acknowledging that each system presents advantages and disadvantages, it recommended that member states consider "criminalising the purchase of sexual services, based on the **Swedish model**, as the most effective tool for preventing and combating trafficking in human beings",<sup>52</sup> amongst a range of other recommendations.<sup>53</sup> It emphasises resources as being "indispensable to achieving tangible results".<sup>54</sup> The European Parliament's Committee on Women's Rights and Gender Equality, in February 2014, stressed the link between trafficking and sexual exploitation, and also favoured the Swedish model. The Oireachtas Committee on Justice, Defence and Equality recommended reform along the lines of the Swedish model in June 2013.<sup>55</sup>

## Labour Exploitation

Reporting in January 2015, the Migrant Rights Centre of Ireland (MRCI) said that in the preceding six and a half years, it had identified approximately 210 cases of forced labour and referred 27 cases to the Garda National Immigration Bureau (GNIB) in domestic and care work, restaurants, car washes, agriculture, circuses and construction work. At that time, the MRCI was dealing with 23 cases of trafficking for forced labour in cannabis production and expressed concern at the lack of prosecutions in forced labour cases.<sup>56</sup>

The MRCI describes trafficking for forced labour as "an extreme form of exploitation and involves deception, coercion, threats or actual physical harm, and debt bondage."<sup>57</sup> While

<sup>51</sup> This approach assumes that prostitution is always involuntary and has been followed in Norway and Iceland. It has also influenced proposed legislation in Ireland.

<sup>52</sup> Council of Europe (2014) p.4.

<sup>53</sup> See, in particular, the recommendations relating to trafficking, summarised at pages 4-5 of the Report.

<sup>54</sup> Council of Europe (2014) p.4

<sup>55</sup> The Oireachtas Report is available as follows: [Part I](#), [Part II](#) and [Addendum](#). See also the L&RS [Spotlight](#) on this issue.

<sup>56</sup> Migrant Rights Centre of Ireland (2015) [Setting the Context-North/South conference on Forced Labour](#).

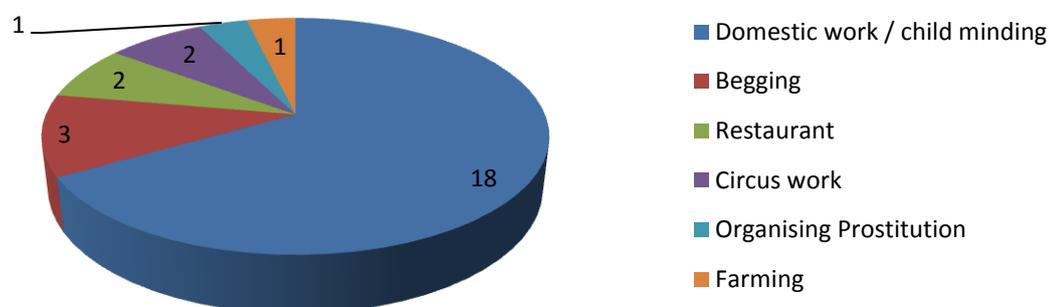
<sup>57</sup> See [here](#).

sexual exploitation has been the focus of human trafficking discourse, forced labour concerns are coming increasingly to the fore. Drawing on the 2013 statistics, 18% of identified trafficking victims were found to have been exploited through forced labour.

Recent initiatives in employment regulation are aimed at identifying and supporting suspected trafficked victims for the purposes of forced labour. In 2013 there were a number of high profile cases of forced labour in diplomatic households<sup>58</sup> and authorities initiated two investigations of alleged domestic servitude in that context. In 2014, the Department of Foreign Affairs and Trade issued [Guidelines](#) to diplomatic and consular missions operating in Ireland in relation to the employment of private domestic workers.<sup>59</sup> The Department of Social Protection has a New Communities and Asylum Seekers Unit which facilitates trafficking victims in accessing social services.

In 2012, the [Adequacy of Current Irish Legislation in relation to the Criminalisation of Forced Labour](#) was examined by the Department of Justice. This preceded the changes under the 2013 Act in relation to defining forced labour, for clarity, and adding forced begging to the definition of exploitation, described above. This Report refers to the ILO publication [the cost of coercion](#), which highlighted that: “*Forced labour cannot be equated simply with low wages or poor working conditions.*”<sup>60</sup> Questionnaires completed by the Human Trafficking and Investigation and Coordination Unit (HTICU) of An Garda Síochána provided an overview of issues arising in forced labour cases in the period before and after the 2008 Act. It was found that, in most cases, the labour was not offered voluntarily and coercion or deception were used (e.g. false information and false promises). Means of control included: physical assault, restriction of movement, isolation and control, withholding of identity documents, verbal abuse, fear of deportation, debt bondage and abuse of religious practices. The sectors of exploitation of alleged victims were reported as follows:

**Figure 2: Sectors of labour exploitation (as reported in 2012 )**



<sup>58</sup> See a MRCI press release [here](#) .

<sup>59</sup> The OSCE has also published a Handbook on [How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers](#).

<sup>60</sup> International Labour Office (2009) the cost of coercion.

The questionnaire responses showed that in the vast majority of cases, criminal gangs were not involved. An Garda Síochána identified practical issues in relation to the complainants, including: traumatised victims unable to report complaints, inherent mistrust of the police force, requests for immunity from prosecution for immigration offences and diplomatic immunity for embassy employers. An Garda Síochána also noted the practical difficulty of distinguishing between employees working for long hours with low pay versus human trafficking for forced labour. The ILO has recognised that many victims enter into employment voluntarily and later realise that they cannot withdraw their consent, due to legal, physical or psychological coercion. The Department of Justice tentatively concluded from this study, that awareness raising, strategic partnerships, codes of practice and preventative measures could be appropriate and effective approaches to tackling these practical obstacles. As noted above, for clarity, “forced labour” was defined in law in the 2013 Act.

### Third party recommendations in forced labour cases

The [US TIP Report](#) for 2013 recommended Ireland:

- to enhance training for labour inspectors and officials to assist with the identification of victims and ensure the referral of alleged offenders for criminal investigation;
- to be mindful of more subtle forms of coercion in forced labour cases; and
- to permit asylum seekers who are also identified as trafficking victims to work.

The MRCI argues that the Irish work permit system ties an employee to an employer, whereby a migrant is forced to work for the employer named on their Permit, thus empowering the employer.<sup>61</sup> It further stated that undocumented workers should be given access to redress before the employment redress bodies as all workers, regardless of their legal status.<sup>62</sup> The [Employment Permits \(Amendment\) Act 2014](#) sought to address this point, not by conferring jurisdiction on foreign nationals working without a permit before the employment tribunals, but by providing an opportunity for such workers to institute civil proceedings to seek compensation for work done or services rendered. Such a worker must first have made every effort to secure the appropriate permit.<sup>63</sup>

The [GRETA Report 2013](#) urged greater awareness of trafficking for labour exploitation purposes. In the context of discouraging demand, GRETA recommended that Irish

<sup>61</sup> MRCI (2013) [Decent Work Standards – Global to Local Action on Forced Labour: A Trade Union Response](#).

<sup>62</sup> On 31 August 2012, the High Court found in the case of *Hussein v The Labour Court and Anor [2012] IEHC 364* that a consequence of working illegally was that such workers were excluded from accessing redress schemes. Mr Justice Hogan was concerned at the impact of such exclusion on vulnerable migrants.

<sup>63</sup> See MRCI Report on forced labour [here](#).

authorities should “consider establishing as a criminal offence the use of services which are the object of labour exploitation, with the knowledge that the person is a victim of trafficking in human beings” to mirror parallel offences proposed in relation to sexual exploitation.<sup>64</sup>

The OSCE Report (2013) commended initiatives by NERA in carrying out private home inspections which targeted potential abuse of domestic workers. It also recommended strengthening the criminal justice response to labour exploitation, largely through the full implementation of existing measures, and through the regulation of employment agencies to prevent abuse.<sup>65</sup>

## Investigation & prosecutions

The Human Trafficking and Co-ordination Unit (HTICU) of the Garda National Immigration Bureau co-ordinates trafficking investigations. Earlier this year the Garda Commissioner announced the establishment of a [new Child Protection, Domestic Violence and Human Exploitation Unit](#), under the auspices of the National Support Services, within An Garda Síochána. This Unit will be directed by a Detective Chief Superintendent. Trafficking is highlighted as a priority in [Annual Policing Priority 2015](#) of An Garda Síochána. As noted above in the discussion on the 2008 Act, severe penalties are provided for under the 2008 with human trafficking offences attracting up to life imprisonment.

### Prosecutions and Convictions

The National Action Plan Review recognised the need to improve the rate of prosecutions and convictions for human trafficking. In doing so, it drew attention to the difficulties encountered in: detecting a clandestine activity, encouraging reluctant victims to come forward and proving extremely complex cases in court.

Public prosecutors and members of An Gardaí who were interviewed by GRETA linked the limited number of convictions for trafficking to the nature of the criminal justice system in Ireland. They referred to obstacles such as witness credibility, admissibility of evidence, delays in court proceedings, proving the age of the trafficked person and the relatively short time which has passed since the 2008 Act came into effect. In the Irish Government’s response to the [GRETA Report 2013](#), it stated that:

*“The impediments to prosecuting allegations of THB do not, in the opinion of the Office of the DPP, arise as a result of a lack of prosecutorial specialisation and training but*

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<sup>64</sup> See para. 124 of the [GRETA Report 2013](#).

<sup>65</sup> OSCE Report, available [here](#).

*rather as a result of recurring evidential difficulties in relation to the sufficiency of evidence which must be admissible, substantial and reliable.”<sup>66</sup>*

On 4 March 2015, the Minister for Justice & Equality stated that:

*“Human trafficking related investigations are complex, often involving an international dimension, which can result in prosecutions being initiated some considerable time after an offence is reported or discovered.”<sup>67</sup>*

Prosecutions of and convictions for offences relating to trafficking for sexual exploitation for the years 2008 - 2014 were as follows:

**Table 2: Prosecutions<sup>68</sup> and Convictions for sex-trafficking<sup>69</sup>**

Year	Prosecutions (re: a minor)	Prosecutions (re: an adult)	Year	Convictions
2008	-	-	2008	0
2009	3	-	2009	0
2010	4	1	2010	5
2011	6	1	2011	4
2012	13	-	2012	6
2013*	16	-	2013	8
2014*	14	-	2014	10

*\*Preliminary figures for 2013 and 2014, pending publication of the Anti-Human Trafficking Unit Report for 2013*

The ICI has interpreted the doubling of convictions for trafficking offences relating to sexual exploitation in the period 2010 to 2014 as showing a need for urgent steps to be taken against pimps and traffickers, saying that Ireland is increasingly targeted for this type of criminal activity. The [US TIP Report](#) criticised the Irish Government for prosecuting non-trafficking cases (such as instances of child molestation), as trafficking cases and describes law enforcement statistics for trafficking as “unreliable”. A previous [United States TIP Report 2012](#)<sup>70</sup> criticised the Irish Government for misreporting the number of convictions in 2011. The 2012 Report stated that only one of those convictions involved a human trafficking offence in which a woman was convicted of exploiting a 16-year-old for prostitution and was sentenced to four years in prison, with two years suspended. However, the [AHTU Annual Report 2012](#) contends that: “Offences relating to child pornography, for example, may often contain the elements of human trafficking – such as recruitment and sexual exploitation – that will bring such actions within the legal definition of human trafficking.”

<sup>66</sup> See the response of the Irish Government, attached to the [GRETA Report 2013](#).

<sup>67</sup> See [here](#).

<sup>68</sup> The Minister for Justice and Equality provided these statistics on human trafficking for the purposes of sexual exploitation in Ireland, Dáil Debates, Written Answer No. 124, Human Trafficking 15 January 2015.

<sup>69</sup> The convictions relate to offences created under the *Criminal Law (Human Trafficking) Act 2008*, the *Child Trafficking and Pornography Act 1998* and the *Criminal Law (Sexual Offences) Act 1993*.

<sup>70</sup> See pp 192 -194.

## The Position in Northern Ireland

Human trafficking has been categorised according to the kind of exploitation intended for the victim. In the UK, the categories in order of numbers of potential victims recovered in 2014 are as follows:<sup>71</sup>

- Sexual exploitation
- Labour exploitation
- Domestic servitude
- Organ harvesting

In 2014, 45 individuals were referred to the National Referral Mechanism (NRM) from Northern Ireland as suspected victims of human trafficking. This represents 2% of the total UK referrals and a 10% increase on 2013, which is a more modest increase compared with the rest of the UK, which has seen a 34% increase.<sup>72</sup>

Table 3 summarises Northern Ireland referrals according to type of exploitation.<sup>73</sup>

**Table 3: Northern Ireland Referrals by Type of Exploitation**

Claimed exploitation type	Female	Male	Total	2013-2014 % Change
Adult – Domestic servitude	1	0	1	N/A
Adult – Labour exploitation	7	23	30	233%
Adult – Sexual exploitation	3	0	3	-73%
Adult – Unknown exploitation	2	1	3	200%
Minor - Labour exploitation	0	2	2	N/A
Minor - Sexual exploitation (non-UK national)	1	0	1	0%
Minor – Unknown exploitation	2	3	5	-44%
<b>Total</b>	<b>16</b>	<b>29</b>	<b>45</b>	

<sup>71</sup> UK Human Trafficking Agency (2015), [National Referral Mechanism Statistics – End of Year Summary 2014](#), London: National Crime Agency, p.2.

<sup>72</sup> UK Human Trafficking Agency (2015), [National Referral Mechanism Statistics – End of Year Summary 2014](#), London: National Crime Agency, pp.2-3.

<sup>73</sup> Ibid., p.25.

Trafficking for labour exploitation was the most common referral cause in 2014, showing a substantial increase on 2013, whereas referrals relating to sexual exploitation show a decrease. Eight potential victims were children. Table 4 shows the country of origin of referrals.

**Table 4: Northern Ireland Referrals by Country of Origin**

Rank	Country of Origin	Female	Male	Total	2013-2014 % Change
1	Romania	5	17	22	83%
2	China	4	6	10	100%
3	Albania	1	1	2	N/A
4	Vietnam	1	1	2	100%
5	Lithuania	0	2	2	N/A
6	Slovakia	1	0	1	N/A
7	United Kingdom	1	0	1	-91%
8	Portugal	1	0	1	N/A
9	Philippines	1	0	1	0%
10	South Africa	1	0	1	N/A
11	South Korea	0	1	1	N/A
12	Western Sahara	0	1	1	N/A
<b>Total</b>		<b>16</b>	<b>29</b>	<b>45</b>	

The most common country of origin for potential victims of trafficking in 2014 was Romania, followed by China.

## Legislation

Immigration is an excepted matter in Northern Ireland, but many areas related to trafficking are devolved. The *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*<sup>74</sup> consolidates and enhances previous legislation,<sup>75</sup> providing for:

- Part 1: Offences relating to slavery and human trafficking and sentencing requirements (Part 1),
- Part 2: Other exploitation offences (paying for sexual services and forced marriage),
- Part 3: Assistance and support to victims and those wanting to leave prostitution,
- Part 4: Protection of victims during criminal investigations and proceedings.

<sup>74</sup> *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015* see [here](#).

<sup>75</sup> See Research and Information Services Research Paper 100/12 [Human Trafficking in Northern Ireland](#) 12 June 2012 pp.16-19, which outlines UK and Northern Ireland legislation in relation to human trafficking in force before the commencement of the 2015 Act.

The *Modern Slavery Act 2015*<sup>76</sup> applies primarily to England and Wales, but contains elements which apply to Northern Ireland, including:

- Maritime enforcement (Sections 37-39),
- Establishment of an Anti-Slavery Commissioner for the UK (Part 4),
- Leave to remain in the UK for victims (Section 53),
- Transparency in supply chains for commercial enterprises (Part 6).

## Strategy

Northern Ireland does not have a human trafficking strategy itself, but is included under the national strategy, which emphasises the need for co-operation with the devolved regions of the UK through the Inter-Departmental Ministerial Group.<sup>77</sup> The four relevant ministers meet through this group to co-ordinate action against human trafficking and to report on progress.<sup>78</sup> However, the *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015* requires the Department of Justice to publish an annual strategy on tackling the offences in the Act<sup>79</sup>.

The first Northern Ireland Human Trafficking and Exploitation Action Plan was published in May 2013. The current Action Plan (2014-15)<sup>80</sup> sets out the three strategic aims of:

- Strengthening law enforcement
- Protecting and supporting victims
- Preventing human trafficking and exploitation

The Action Plan sets out tasks for the main agencies in Northern Ireland responsible for areas relevant to human trafficking, chiefly:

- Department of Justice,<sup>81</sup> as lead Department for human trafficking matters
- Police Service of Northern Ireland,<sup>82</sup> for law enforcement and investigation
- Gangmasters Licencing Authority,<sup>83</sup> the UK agency responsible for the regulation of businesses associated with agriculture, horticulture, shellfish gathering and associated packaging

<sup>76</sup> Modern Slavery Act 2015, see [here](#).

<sup>77</sup> HM Government (2011) [Human Trafficking: The Government's Strategy](#), London: Home Office, p.8.

<sup>78</sup> See [Joint Statement of the Inter-Departmental Ministerial Group \(IDMG\) on Modern Slavery](#), 18 October 2014.

<sup>79</sup> Department of Justice (2015), [Northern Ireland Human Trafficking and Exploitation Action Plan 2014 – 15: Final progress report - May 2015](#), Belfast: DoJ, p.13.

<sup>80</sup> Department of Justice (2014) [Northern Ireland Human Trafficking and Exploitation Action Plan 2014-15](#).

<sup>81</sup> See [website of the Department of Justice](#) website.

<sup>82</sup> See [website of the PSNI](#).

<sup>83</sup> See [website of the Gangmasters Licencing Authority](#).

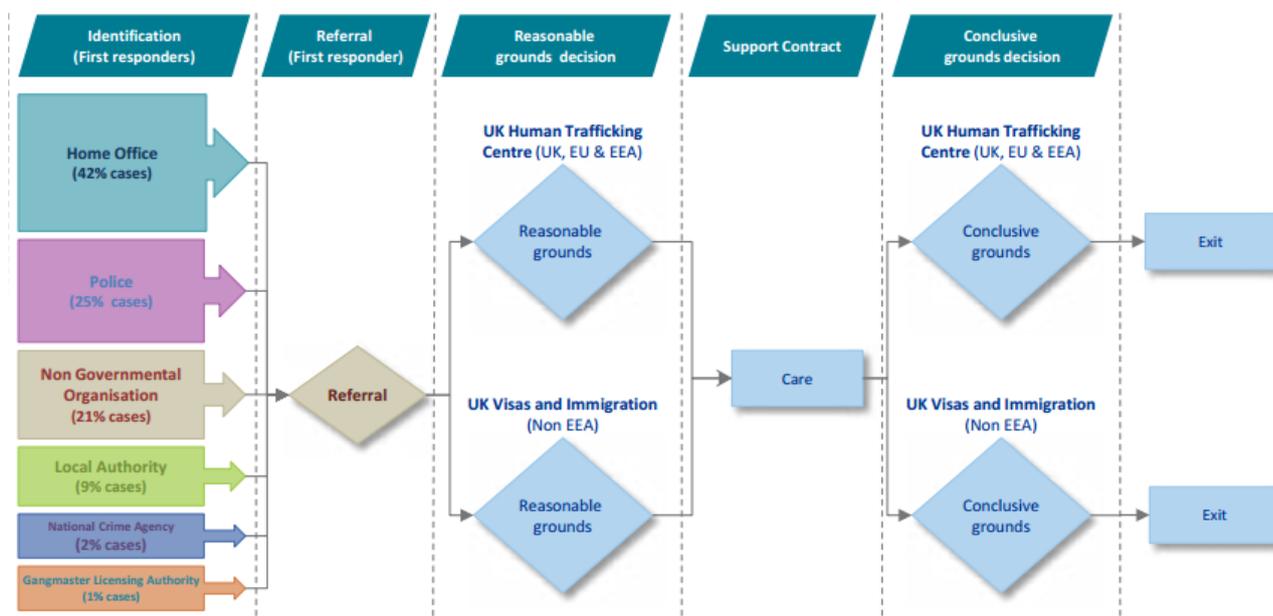
- Department for Employment and Learning,<sup>84</sup> which has investigatory powers in the area of employment
- Department of Health, Social Services and Public Safety,<sup>85</sup> which has responsibility for the support of child victims and the health needs of other victims

### Treatment of Victims of Human Trafficking

Potential victims of human trafficking in Northern Ireland are handled under the UK National Referral Mechanism (NRM). Potential victims are identified by a “first responder” agency or organisation and referred to the NRM. A “reasonable grounds” decision is initially made by a “competent authority” to ascertain whether an individual is likely to have been trafficked. If this is a European Economic Area (EEA) national, this initial decision is made by the UK Human Trafficking Centre, if a non-EEA national, the ‘competent authority’ is the Visas and Immigration Service.

Potential victims then receive care during a minimum 45-day reflection period. The same “competent authority” that made the “reasonable grounds” decision then makes a “conclusive grounds” decision, on the balance of probabilities, whether the individual is a victim of human trafficking.

Figure 3 illustrates the NRM process for the UK.<sup>86</sup>



“First responders” in Northern Ireland include:

<sup>84</sup> See [website of the Department of Employment and Learning](#).

<sup>85</sup> See [website of the Department of Health, Social Services and Public Safety](#).

<sup>86</sup> Home Office (2014), *Review of the National Referral Mechanism for victims of human trafficking*, London: Home Office, p.13.

- Police Service of Northern Ireland (PSNI),
- Home Office,
- UK Border Force,
- Local authority,
- Health and Social Care Trust,
- Gangmasters Licencing Authority.

The NGO Migrant Help is the lead contractor in Northern Ireland for the care of potential victims of trafficking. Male victims are cared for directly by Migrant Help and Belfast and Lisburn Women's Aid has been sub-contracted to care for female victims. Children are placed in the care of the local Health and Social Care Trust.

A review of the NRM made a number of recommendations for change, including:<sup>87</sup>

- A comprehensive awareness strategy to improve levels of recognition of victims,
- Empowering “first responders” to make “reasonable grounds” decisions to simplify the system,
- Provision of support based on the individual needs of the victim,
- Decisions on trafficking victims to be taken out of the hands of those also making decisions on asylum, perhaps given to regional multi-disciplinary panels,
- Establishment of a single management process under the responsibility of the Home Office,
- Improvement in the collection of data to facilitate the progression of cases.

None of the recommendations are specific to the context of Northern Ireland.

## Sexual Exploitation

As indicated above, more potential victims of labour exploitation were referred to the NRM from Northern Ireland in 2014 than of sexual exploitation, although over time, potential victims of sexual exploitation outnumber those of labour exploitation.<sup>88</sup>

Research commissioned by the Department of Justice into prostitution in Northern Ireland states:<sup>89</sup>

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<sup>87</sup> Ibid., pp.8-9.

<sup>88</sup> 49% of those referred between 2009 and 2013, Organised Crime Task Force (2015), [Summary of findings: Strategic Profile – Potential victims of Human Trafficking, Belfast](#): OCTF, p.6.

*Due to the hidden nature of human trafficking, it is difficult to assess the number and profile of victims of trafficking for sexual exploitation in Northern Ireland. There certainly is a link between human trafficking and prostitution; however, the hidden nature of prostitution exacerbates the issues around estimation of numbers of any human trafficking links with prostitution – finding a hidden population within an already hidden population.*

In conclusion, the research found that that *the number of trafficked victims in the Northern Ireland sex industry is generally low.*

Legislation was passed in Northern Ireland in 2015 which included the prohibition of paying for sexual services as a means for tackling human trafficking for sexual exploitation.<sup>90</sup>

Discussion in the Committee Stage of this legislation indicated there was significant disagreement as to whether this approach would be an effective means for reducing the demand for trafficking for sexual exploitation or whether the measure would force prostitution underground. The Committee drew on evidence from Sweden and from the findings of the Oireachtas Committee on Justice, Defence and Equality on the matter, summarising conclusions as follows:<sup>91</sup>

*Clause 6 attracted the most evidence and discussion. Having considered the evidence some Members indicated that they supported the amendments Lord Morrow proposed to make which included narrowing the scope of the offence, providing further sentencing options and requiring an advertising campaign to ensure public awareness of the changes in the law. In their view the information obtained during the visit to Sweden regarding the impact its legislation had on reducing demand for sexual services and tackling human trafficking and the meeting with the Oireachtas Joint Committee on Justice, Defence and Equality added weight to the case for introducing the Clause and they noted the importance of both jurisdictions on the Island of Ireland moving forward together on this issue.*

*Other Committee Members indicated that they were not in a position at this stage to support Clause 6 as the appropriate way to deal with human trafficking and supporting vulnerable people in prostitution. They stated that they were concerned about the possible consequences on those involved in prostitution and required more evidence regarding the size and nature of prostitution in Northern Ireland and the possible unintended consequences of criminalising the purchase of sexual services here.*

There remains no clear consensus on whether the prohibition of sexual services significantly reduces the prevalence of trafficking for sexual exploitation.<sup>92</sup>

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<sup>89</sup> Susan Huschke, Peter Shirlow, Dirk Schubotz, Eilis Ward, Ursula Probst and Caoimhe Ní Dhónaill (2014) [Research into Prostitution in Northern Ireland](#), Belfast: Department of Justice, p.128.

<sup>90</sup> Section 15, [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015](#).

<sup>91</sup> Committee for Justice (2014) [Report on the Human Trafficking and Exploitation \(Further Provisions and Support for Victims\) Bill](#) (NIA 26/11-15).

<sup>92</sup> See Research and Information Services Bill Paper 122/13 [Human Trafficking and Exploitation \(Further Provisions and Support for Victims\) Bill](#), 4 October 2013, pp.130-138: and Briefing Paper 149/12 [Supplementary Briefing on Human Trafficking](#), 1 October 2012.

## Labour Exploitation

More potential victims of labour exploitation were referred to the NRM from labour exploitation in 2014 from Northern Ireland than for any other form of exploitation. Research carried out in 2011 looked at forced labour in the mushroom, fishing and catering industries in Northern Ireland, remarking that victims of labour exploitation encountered were not necessarily trafficked:<sup>93</sup>

*The exploitation through forced labour that was encountered was not particularly associated with human trafficking. Rather people's vulnerability to exploitation through forced labour was more likely to be associated with factors such as an individual's legal status, their English language skills, a lack of access to advice and information, and an absence of appropriate community-based support networks. Furthermore, being subjected to forced labour conditions may further increase an individual's marginalisation and vulnerability.*

This highlights a significant difficulty with regard to identifying victims of human trafficking: individuals may have been brought to a country, legally or illegally, for the purposes of work, but then exploited. Also, it is difficult to identify the boundaries between acceptable work standards and exploitative practices, and between exploitation and forced labour. This has been described as a "continuum", where individuals can find themselves at different points along a scale towards exploitation, but they can move along the continuum as their circumstances deteriorate.<sup>94</sup>

An update on the 2011 research found that there had been improvements in the mushroom and meat processing industries, but there was evidence of exploitation in the fruit-picking, fishing, shellfish picking and recycling industries, as well as evidence of domestic servitude.<sup>95</sup> The report also identified a number of other circumstances of exploitation which complicate the identification of victims:<sup>96</sup>

- Cannabis cultivation: the illegal nature of this industry, victims are reluctant to come forward, or are treated as criminals by the authorities from the outset.
- Roma community: distance from formal labour markets creates vulnerability in certain communities.
- Asylum seekers: no legal right to work but no access to benefits makes people with certain immigration status more vulnerable.

<sup>93</sup> 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, p.52.

<sup>94</sup> Klara Skřivánková (2010) [Between Decent Work and Forced Labour: Examining the Continuum of Exploitation](#), York: Joseph Rowntree Foundation.

<sup>95</sup> Neil Jarman (2014), [Forced Labour in Northern Ireland: An Update](#), York: Joseph Rowntree Foundation.

<sup>96</sup> *Ibid.*, pp.9-10.

- Sex work and other work: there was evidence of movement between sexual exploitation and forced labour in other areas of work.
- Cross-border dimensions: there was evidence of the movement of workers from one jurisdiction to the other and vice versa.

## Investigation, Prosecutions and Sentencing

The Organised Crime Task Force (OCTF) is a forum that brings together government, law enforcement and other agencies to set priorities for tackling organised crime.<sup>97</sup> This includes an Immigration and Human Trafficking Expert Group. The most recent OCTF annual report states that organised immigration crime including human trafficking was a key priority for 2013/14.<sup>98</sup>

Investigation of human trafficking cases is the responsibility of the Police Service for Northern Ireland (PSNI) and decisions to prosecute lie in the domain of the Public Prosecution Service for Northern Ireland (PPSNI), which published guidance on the prosecution of cases of human trafficking in 2013.<sup>99</sup>

The first conviction in Northern Ireland for trafficking offences was that of Matyas Pis in 2012. He was sentenced to three years (18 months imprisonment and 18 months on licence) for human trafficking, controlling prostitution and keeping a brothel.<sup>100</sup> In relation to sentencing, the judge stated:

*The main factor of those enumerated in the sentencing guideline which is relevant in your case is that there was no coercion or active control of the victims.*

As the case set a precedent in Northern Ireland, the judge also stated the following:

*As this is the first occasion on which a sentencer in this jurisdiction has considered these sentences, I have given careful consideration to the opinion of the Sentencing Guidelines Council, and I can see no reason why these offences, which take place in an international context, should attract different sentences in Northern Ireland to those in place in other parts of the United Kingdom. For that reason, I propose to base my sentencing on the Sentencing Council<sup>101</sup> guideline.*

In July the same year, a second conviction was secured against Rong Chen, who was convicted of human trafficking and controlling prostitution.<sup>102</sup> The PPSNI does not routinely publish figures for human trafficking convictions, but it is reported that there were three

<sup>97</sup> See [website of the OCTF](#).

<sup>98</sup> Organised Crime Task Force (2015) [Annual Report and Threat Assessment 2014](#), Belfast: OCTF, p.8.

<sup>99</sup> Public Prosecution Service for Northern Ireland (2013), [Policy for Prosecuting Cases of Human Trafficking](#), Belfast: PPSNI.

<sup>100</sup> [Queen v Matyas Pis](#) [2012] NICC 14, judgement delivered 24 April 2012.

<sup>101</sup> See website of the [Sentencing Council](#).

<sup>102</sup> [Queen v Rong Chen and Others](#) [2012] NICC 26, 6 July 2012.

convictions in Northern Ireland for human trafficking in 2012 and 2013.<sup>103</sup> There was a further conviction in 2014 of Bronislav Rybensky of human trafficking, who was sentenced to two years' imprisonment.<sup>104</sup> In early 2015, there were three active cases in county courts in Northern Ireland in which human trafficking formed an element.<sup>105</sup>

Due to the nature of human trafficking, law enforcement agencies in Northern Ireland have worked with other agencies across jurisdictions, for example, the Matyas Pis case included a cross-border element. In some cases, while there may have been activities associated with human trafficking in Northern Ireland, it may have been more appropriate for prosecutions to take place elsewhere. For example, two individuals were sentenced to four years' imprisonment in Sweden in December 2013 for trafficking offences, one of whom was arrested in Belfast and extradited to Sweden.<sup>106</sup>

There was one conviction in Northern Ireland in 2014 under the gangmasters legislation (*Gangmasters (Licensing) Act 2004*<sup>107</sup>), where Gheorge Ionas was fined £500 for operating as a gangmaster without a licence. The Gangmasters Licensing Authority stated an intention to appeal the leniency of the sentence, as there were three Romanian men working and living in exploitative conditions at Ionas' premises.<sup>108</sup>

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<sup>103</sup> Northern Ireland Assembly Question AQW 29749/11-15 answered 13 January 2014.

<sup>104</sup> 'Two years in jail for pimp who flew Czech prostitutes in to work in Belfast city centre brothels', *Belfast Telegraph* 11 January 2014, see [here](#).

<sup>105</sup> Northern Ireland Assembly Question AQW 42637/11-15, answered 4 March 2015.

<sup>106</sup> 'Pair trafficking sex slaves out of Belfast are jailed in Sweden' *Belfast Telegraph* 4 December 2013, see [here](#).

<sup>107</sup> *Gangmasters (Licensing) Act 2004*, see [here](#).

<sup>108</sup> 'Gangmasters Licensing Authority to appeal 'shocking' sentence' *BBC News* 9 October 2014, see [here](#).

## Cross-Border Co-operation

The international nature of human trafficking has necessitated co-operation on a cross-border and all-island basis. For example, law enforcement agencies have been working closely together sharing intelligence and seeking to disrupt cross-border crime, including operational co-operation between the Police Service of Northern Ireland (PSNI), An Garda Síochána, National Crime Agency, HM Revenue and Customs, the Revenue Commissioners and the UK Border Force.<sup>109</sup>

Formally, cross-border co-operation in policing and criminal justice has its basis in the *Intergovernmental Agreement on Co-operation on Criminal Justice Matters* (July 2005 and April 2010). An Garda Síochána and the PSNI published a *Cross-Border Policing Strategy* in 2010 which identified key elements to improve co-operation. There is also regular, informal co-operation between the policing bodies, which is considered to be extremely important in human trafficking.<sup>110</sup>

Immigration authorities on both sides of the border co-operate in maintaining the integrity of the Common Travel Area, through information sharing, data sharing and day-to-day co-operation.<sup>111</sup> A Memorandum of Understanding was signed in 2006 by authorities in Britain, Ireland and Northern Ireland to improve information-sharing arrangements on sex-offenders travelling between these jurisdictions.<sup>112</sup>

Ministers have also attended cross-border events aimed at enhancing co-operation, such as a Cross-Border Organised Crime seminar and a Cross-Border Forum on Human Trafficking, both in October 2013<sup>113</sup> and a Cross-Border Conference on Organised Crime in October 2014.<sup>114</sup>

The cross-border [REACH project](#) is co-funded by the European Commission under the PROGRESS Action Grants on Violence Against Women. It primarily focuses on the issue of human trafficking against women and girls and provides support for women in prostitution.

The Cross-Border Conference on Forced Labour took place in January 2015, focussing on co-operation between the two ministries responsible for justice and the two police forces.

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<sup>109</sup> Assembly Question AQO 7781/11-15 answered 10 March 2015.

<sup>110</sup> See [Report from Committee A \(Sovereign Matters\) on Cross-border Police Cooperation and Illicit Trade, British-Irish Parliamentary Assembly](#). The Committee recommended that law enforcement agencies continue to improve public information campaigns to highlight the risks of supporting illegal activity which can support other serious crimes such as human trafficking.

<sup>111</sup> Dáil Debate, Written Answer No. 133, Wednesday, 9 April 2014.

<sup>112</sup> See Barron (2013) *Tackling the Issue of Cross-Border Sexual Offenders in the Republic of Ireland and the EU* Irish Criminal Law Journal p.124.

<sup>113</sup> Organised Crime Task Force (2015) Annual Report and Threat Assessment 2014, Belfast: OCTF, pp.42-43.

<sup>114</sup> Assembly Question AQO 7429/11-15 answered 28 September 2015.

The current Northern Ireland Human Trafficking and Exploitation Action Plan further shows that in addition to the above initiatives the possibility of establishing a cross-border, biennial analysis of victim referrals, as a learning tool, is being explored.<sup>115</sup>

A recent project funded by the Arts & Humanities Research Council researched and critically analysed the extent to which Northern Ireland and Ireland have been successful in effectively implementing action against transnational organised crime, focussing on three core offences, including human trafficking. Amongst the findings was that informal co-operation is regularly facilitated at a frontline level, something which requires mutual respect and trust:

*“Law enforcement officers and prosecutors have their own contacts and can simply pick up a phone to ask questions and exchange information. They also have regular face-to-face meetings. These have helped them build mutual trust and working relationships.”*

The Report nonetheless identifies room for improvement in certain areas, including:

*“facilitation of joint investigation teams and crossborder surveillance as well as more proactive use of European agencies such as Eurojust. Creation of a joint multi-agency task force on organised crime might also be considered in order to strengthen the current efforts.”<sup>116</sup>*

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<sup>115</sup> Department of Justice (2014) *Northern Ireland Human Trafficking and Exploitation Action Plan 2014-15*.

<sup>116</sup> Obokata, T, Payne, B and Jackson J (2014) [North-South Irish Responses to Transnational Organised Crime](#).