

CARE in NI Submission
To the Justice Committee on
The Human Trafficking and Exploitation
(Further Provisions and Support for Victims) Bill



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Introduction to CARE

1. CARE (Christian Action Research and Education) is a well-established mainstream Christian charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives. CARE demonstrates Christ's compassion to people of all faiths and none believing that individuals are of immense value, not because of the circumstances of their birth, their behaviour or achievements, but because of their intrinsic worth as people.

Summary

2. CARE in Northern Ireland strongly supports the Human Trafficking and Exploitation Bill. We believe that it will make a real difference for victims of human trafficking and exploitation in our province.
3. Our submission will set out:
 - Key facts about human trafficking in Northern Ireland.
 - Our international obligations and how the Bill helps us better meet them.
 - A clause by clause analysis of the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill showing that the Bill introduces the changes that are needed to enable Northern Ireland to address properly the challenge of human trafficking through the provision of a better legal framework for: securing the prosecution of traffickers, addressing the demand for trafficking and caring for the victims of trafficking.

Human trafficking in Northern Ireland

4. The Government has only in recent years started to collect statistics on victims of human trafficking. The table records the numbers of people who have been rescued and processed via the National Referral Mechanism (NRM).

Table 1: Potential Victims Referred to the National Referral Mechanism

Year	Potential Victims Recovered	Motive
2008/09 ¹	11	6 Sexual Exploitation 3 Forced Labour 2 Domestic Servitude
2009/10 ²	25	17 Sexual Exploitation 3 Forced Labour 2 Domestic Servitude 3 Unclear

¹ Organised Crime Task Force, *Annual Report and Threat Assessment 2009*, page 19

² Organised Crime Task Force, *Annual Report and Threat Assessment 2010*, page 14

Year	Potential Victims Recovered	Motive
2010/11 ³	23	18 Sexual Exploitation 5 Forced Labour
2011/12 ⁴	33	24 Sexual Exploitation 9 Forced Labour
2012/13 ⁵	16	9 Sexual Exploitation 2 Domestic Servitude 5 Unknown

Table 2: Number of Potential Victims, Adults/Children and Minors
(Note this data is not complete but records what has been published.
Suggests 18 children 2009/10-2012/13)

Year	Potential Victims Recovered	Adults, Children and Gender
2008/09 ⁶	11	All adult women
2009/10 ⁷	25	4 children
2010/11 ⁸	23	3 children ⁹
2011/12 ¹⁰	33	18 women, all but 1 for sexual exploitation 7 men for labour exploitation 8 children, 7 of whom were trafficked within the UK
2012/13 ¹¹	16	3 children (one of who has now turned eighteen) ¹²

5. The data in Table 1 demonstrates that the largest numbers of those trafficked into and within Northern Ireland are brought here to work in coerced prostitution. There is also evidence that a mixture of indigenous and foreign organised crime groups are involved in organised

³ Organised Crime Task Force, *Annual Report and Threat Assessment 2011*, page 12

⁴ Organised Crime Task Force, *Annual Report and Threat Assessment 2012*, page 15

⁵ Organised Crime Task Force, *Annual Report and Threat Assessment 2013*, page 15

⁶ *Annual Report and Threat Assessment 2009, Op Cit*

⁷ *Annual Report and Threat Assessment 2010, Op Cit*

⁸ *Annual Report and Threat Assessment 2011, Op Cit*, 2 children being supported by social services

⁹ This number supplied in Northern Ireland Assembly Question [AQW 16753/11-15](#)

¹⁰ *Annual Report and Threat Assessment 2012, Op Cit*

¹¹ Organised Crime Task Force, *Annual Report and Threat Assessment 2013*, page 15

¹² NGO Engagement Group Minutes <http://www.octf.gov.uk/Publications/Human-Trafficking/Minutes-from-the-third-meeting-of-the-Engagement-G.aspx> These figures were provisional at publication

prostitution, using websites to advertise trafficked victims for “off street” prostitution and using brothels and hotels.¹³

Our International Obligations: EU Anti-Trafficking Directive and the European Convention

6. In June 2010 the Home Secretary Theresa May announced that the UK would not be opting into the *European Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims 2011*. After much lobbying, in March 2011 the Government U-turned and announced that it would opt-in.
7. Since Justice has been devolved to Stormont, responsibility for achieving compliance with the Directive rests with the Northern Ireland Assembly. The Department of Justice made two limited changes through the Criminal Justice (NI) Act 2013 to ensure compliance with the Directive:
 - a) When offences are carried out abroad, British citizens and residents of Northern Ireland can be prosecuted in Northern Ireland (Sections 6 and 7); and
 - b) A loophole which allowed trafficking for labour exploitation within the UK is closed and becomes a crime (Section 7).
8. To only propose these two primary legislative changes in response to the Directive is disappointing given the number of changes mandated by the Directive and the opportunity for Northern Ireland to take a lead in this area. The disappointment with the Northern Ireland Executive’s response has been compounded by the fact that Northern Ireland has not even managed the small number of changes advanced by the England and Wales Government introducing so-called “special measures” to protect all victims of trafficking giving evidence in court and during police investigations.
9. The UK ratified the *European Convention on Action Against Trafficking in Human Beings* in December 2008. On 12 September 2012 the Council of Europe’s Group of Experts (GRETA) (the Treaty monitoring body) published its first analysis of UK compliance with the European Convention. The Report highlights many areas where steps need to be taken to improve our response to human trafficking in Northern Ireland.¹⁴

¹³ *First Annual Report of the Inter-Departmental Ministerial Group on Human Trafficking, 2012*, paragraph 3.18, page 25 and paragraph 7.35, page 76

¹⁴ GRETA (Group of Experts on Action Against Trafficking in Human Beings), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom*, GRETA(2012)6, 12 September 2012

Introducing the Human Trafficking & Exploitation (Further Provisions & Support for Victims) Bill

10. Given the sad reality of trafficking in Northern Ireland today, CARE believes that Lord Morrow's Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill is very important. It will introduce the changes that are needed to enable Northern Ireland to properly address the challenge of human trafficking through the provision of a better legal framework for: securing the prosecution of traffickers, addressing the demand for trafficking and for caring for the victims of trafficking. **It will also make good the limitations of the Department of Justice's implementation of the Anti-Trafficking Directive through the Criminal Justice Act, and provide a welcome means by which Northern Ireland can seek to implement the GRETA recommendations. The Bill would put Northern Ireland very much in the lead in tackling human trafficking within the UK.** We would be the first UK nation to have a focused Human Trafficking Act. We will now consider the Bill clause by clause.

Clause 1: Definition of Human Trafficking and Slavery Offences

11. Clause 1 sets out what the Bill means by a human trafficking offence and a slavery offence. The Bill does not create new trafficking offences, nor does it suggest that the current offences are not compliant with the EU Directive. Clause 1 is a mechanism to refer to the "people trafficking offences" listed in Written Answer [AQW 18870/11-15](#), that is:
 - Sections 57 to 59 of the Sexual Offences Act 2003 (SOA) that cover sexual exploitation (and would cover the new offence 58A introduced by the Criminal Justice Act;
 - Section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (A&IA) that covers labour exploitation and exploitation for organ/body parts.
12. The Bill also relates to slavery offences. We fully supported Lord Morrow's decision to extend the Bill's remit to include the offences set out in Section 71 of the Coroners and Criminal Justice Act 2009¹⁵ following the consultation process. These offences are applied in "those cases where it is difficult to prove trafficking to the criminal standard or where there is no direct evidence of trafficking."¹⁶
13. Forced labour is a dreadful crime. The 2011 Joseph Rowntree Foundation set out the evidence of forced labour in Northern Ireland and this Bill aims to ensure that it is not tolerated in our province.¹⁷ Victims of this crime, no matter whether or not they have been trafficked, should be supported effectively and perpetrators should be brought to justice.

¹⁵ <http://www.legislation.gov.uk/ukpga/2009/25/section/71>

¹⁶ IDMG Report, October 2012, *Op Cit*, para 4.7, page 32

¹⁷ Joseph Rowntree Foundation, *Forced Labour in Northern Ireland: Exploiting Vulnerability*, June 2011

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

14. Human traffickers or perpetrators of slavery offences may attempt to argue that the individual concerned gave their consent to the criminal activity being committed against them. The Bill outlines a list of factors, such as the victim being a child, which will make evidence of consent or agreement irrelevant.

International Obligations

15. This clause implements:
- Article 2(4) of the European Directive – “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”; where paragraph 1 refers to “*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*”.
 - Article 4(b) of the European Convention – “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;” where (a) refers to “*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.*”

Evidence of Need

16. CARE understands the Minister’s position is that this clause is unnecessary because consent is “not relevant under the current law” (Second Stage Debate, p52, Tuesday 24 September). However, this does not seem to be the case in practice. The 2013 Anti-Trafficking Monitoring Group (ATMG) Report addresses this particular point, saying, “*The UK has restricted its interpretation of the international trafficking definition by requiring only the establishment of the “act” and “purpose”, excluding the need for ascertaining the means element which operates to explicitly negate the supposed consent of the trafficked person to their exploitation¹⁸ ...However, it is common for both the prosecution and defence to draw on the trafficked person’s consent to their trafficking in such trials to substantiate their case. This was confirmed by [the GRETA report] ‘the British authorities have stated that all the means under the Convention are inherent in trafficking without being articulated in the legislation. By establishing how a trafficker exploits the vulnerability of a victim through force, threats or deception, this would also cover fraud, abuse of power, coercion or abduction, all of which are means acknowledged in case precedent’. Unfortunately, as the concepts of*

¹⁸ This is referring to para 74 of the Convention’s Explanatory Report which says that trafficking has to have three components: (i) the action of recruitment, transporting someone etc; (ii) the means of threat, coercion, fraud etc and (iii) for the purpose of exploitation.

deception or other forms of coercion do not appear in this offence's equation, this may result in the misunderstanding of trafficking as a crime by CJS actors and a lay jury.”¹⁹

17. The report goes on to say that: *“...examples were presented to the ATMG relating to a misunderstood definition in terms of a trafficked person's consent. The international binding definition is clear that any initial consent of a person is void if s/he is a victim of trafficking. The ATMG was presented with cases where the trafficked person agreed to travel to the UK, not knowing about the real purpose of their trip. Their initial consent was perceived as complicity in their exploitation, despite the established deception, use of threats and long working hours for little or no recompense once in the UK. An incorrect view seems to persist that a trafficked person needs to be abducted or forced to come to the UK against their will.”²⁰*
18. This clause is needed to ensure situations like that reported in the 2010 ATMG Report do not occur. This report noted cases *“where authorities concluded that victim agreed to come to the UK for work, they could not have been trafficked despite the fact that the deception and abuse should, render such consent irrelevant.”²¹*

How this Clause Will Help

19. This clause would bring clarity to the issue of consent and ensure that the situation surrounding this is crystal clear.

Clause 3: Aggravating factors

20. This clause will ensure that a judge sentencing an individual for the criminal offences of human trafficking or slavery offences will consider aggravating factors, such as whether the offence was committed against a child or vulnerable adult, or where serious violence was used. The additional aggravating factors added after the consultation process which take account of the role of families in trafficking are extremely welcome.

International Obligations

21. This clause fulfils the requirements of Article 4 of the Directive and Article 24 of the Convention. The Directive specifies that there must be a penalty of a maximum of ten years imprisonment for trafficking offences where factors listed in 4(2) are present. Since the maximum penalty in Northern Ireland is 14 years, no penalty is stipulated within this section; rather the aggravating factors will be taken into account for sentencing up to 14 years.

¹⁹ *In the Dock, Examining the UK's Criminal Justice Response to Trafficking*, The Anti-Trafficking Monitoring Group, June 2013, page 28

²⁰ *Ibid*, page 35

²¹ *Wrong Kind of Victim? One Year On: An Analysis of UK Measures to Protect Trafficked Persons*, The Anti-Trafficking Monitoring Group, June 2010, page 12

Table 3: Comparison of Clause 3 with International Obligations

Aggravating factors in Clause 3	In European Convention	In European Directive	Factors Mentioned in R v Pis
Committed by a public official in relation to duties	24(c)	4(3)	
Committed by a family member			
Victim was a child	24(b)	4(2)(a)	
Victim was a vulnerable adult		4(2)(a)	
Use of threats against victim's family			Para 25 (9)
Deliberately or by gross negligence endangered the life of the victim	24(a)	4(2)(c)	
Committed by use of serious violence or caused serious harm		4(2)(d)	
Person has previous trafficking or slavery conviction ²²			

Addressing Concerns about Clause 3

22. There are two arguments made against this clause. Firstly, that the clause is not needed because His Honour Judge Burgess covered the aggravating factors that should be taken in to account in trafficking cases in [R v Pis](#) (2012 NICC 14). CARE notes that the factors raised at paragraph 25 of the judgment are as follows:

- (1) Large-scale commercial operation.
- (2) High degree of planning or sophistication.
- (3) Large number of people trafficked.
- (4) Substantial financial (in the region of £5000 and upwards or other gain).
- (5) Fraud.
- (6) Financial extortion of the victim.
- (7) Deception.
- (8) Use of force, threats of force or other forms of coercion.
- (9) Threats against victim or members of victim's family.

²² Being a previous offender is recognised as an aggravating factor in the [Sentencing Guidelines on Overarching Principles: Seriousness](#) (para 1.22, page 6)

- (10) Abduction or detention.
 - (11) Restriction of victim’s liberty.
 - (12) Inhumane treatment.
 - (13) Confiscation of victim’s passport.
23. This list includes only one factor that is in the list included in Lord Morrow’s Bill. We also note that this list is drawn from the England and Wales Sentencing Guidelines for the Sexual Offences Act 2003. Hence, there is a question whether they would apply to trafficking for forced labour cases.
24. The second concern is that of limiting judicial discretion, which was raised by number of MLAs during the Second Stage debate. In response, we make three points:
- Firstly, this clause does not allow the Assembly to interfere in particular cases, but sets out a framework for judicial decisions, as does the sentencing guidelines.
 - Secondly, while there is a preference for guidelines rather than legislation setting out the framework, we note that there is a precedent for aggravating factors in legislation in Section 4A of the Misuse of Drugs Act 1971, as introduced by the Section 1, Drugs Act 2005, although we recognise this section applies only in England and Wales. From this, we conclude there is no reason such factors cannot be brought in through legislation.
 - Thirdly, on other occasions the Minister has argued that there is no need for a consolidating function because international obligations already exist, i.e. these factors already exist in international law **and therefore should be taken into consideration by judges**. CARE believes it is helpful to have these factors in statute rather than guidance which can change. For instance, we note that the England and Wales Sentencing Guidance on Sexual Offences has just been subject to consultation for a revised set of guidance. In this, the “non-exhaustive” list of “Other aggravating factors” are listed below; these factors are different again to those cited by Judge Burgess.²³
- Other aggravating factors*
- Failure to comply with current court orders
 - Offence committed whilst on licence
 - Deliberate isolation of victim(s)
 - Victim(s) children left in home country due to trafficking
 - Exploitation of victim(s) from particularly vulnerable backgrounds
 - Threats made to expose victim(s) to the authorities (immigration or police)
 - Threats of harm to the victim’s family/friends
 - Victim(s) previously trafficked/sold/passed around
 - Victim(s) passport(s)/identity documents removed

²³ Sentencing Council, Sexual Offences Guideline Consultation, December 2012, page 281
[http://sentencingcouncil.judiciary.gov.uk/docs/sexual_offences_consultation_guideline_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/sexual_offences_consultation_guideline_(web).pdf)

Victim(s) prevented from seeking medical treatment
Use of drugs/alcohol or other substance to secure victim's compliance
Food withheld
Earnings of victim(s) withheld/kept by trafficker or evidence of excessive wage reduction, debt bondage, inflated travel or living expenses, unreasonable interest rates
Any steps taken to prevent the victim(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
Attempts to dispose of or conceal evidence

How this Clause Will Help

25. Clause 3 makes clear that the factors set out in the European Convention and EU Directive would be taken into account for **all** trafficking cases and for slavery offences. CARE believes it is helpful to have these factors in statute rather than guidance which can change.

Clause 4: Minimum sentence for human trafficking and slavery offences

26. Clause 4 introduces a minimum sentence for offenders convicted of human trafficking or slavery offences.
27. We recognise that statutory minimum sentences are rare. Consequently, the inclusion of such a statutory minimum is an indication of the serious nature of these criminal offences. We believe that incorporating such a statutory minimum sentence would send a strong signal to perpetrators about the consequences of trafficking. Internationally, a number of countries have incorporated statutory minimum sentences with regard to human trafficking offences. According to the US Trafficking in Persons Report²⁴, these include the following:
- Canada - Section 279.011 of the Canadian Criminal Code sets out that a five year statutory minimum sentence should be made for the trafficking of an individual under 18 years of age.²⁵
 - Luxembourg - Article 382 of the 2009 Law on Trafficking in Human Beings sets down a minimum sentence of three years for those convicted of human trafficking offences.²⁶
 - India - In April 2013, the government adopted the Criminal Law Amendments Act of 2013, which introduced a number of changes to the Indian Penal Code. Section 8(2) of this Act set out that there should be a minimum sentence of seven years for those convicted of trafficking offences with regard to adults while section 8(4) of this Act sets out that there should be a minimum sentence of ten years if a child has been trafficked.²⁷

²⁴ <http://www.state.gov/j/tip/rls/tiprpt/2013/>

²⁵ <http://yourlaws.ca/criminal-code-canada/279011-trafficking-person-under-age-eighteen-years>

²⁶ For an English Translation of the Legislation see the following

<http://www.qub.ac.uk/slavery/?page=countries&country=100&category=8>

²⁷ For an English Translation of the Legislation see the following

- Bosnia and Herzegovina - Article 186(1) of the Criminal Code of Bosnia and Herzegovina sets out that there is a one year statutory minimum sentence for adults convicted of trafficking offences and Article 186(2) sets out that there should be a five year statutory minimum sentence for those convicted of trafficking a child.²⁸
- Liberia- Section 7 of “An Act to Ban Trafficking in Persons within the Republic Of Liberia July 5, 2005” sets down a statutory minimum sentence of one year for those convicted of trafficking victims with regard to adults. If the victim is a child, a statutory minimum sentence of six years should be set down.²⁹

28. We also note that the use of minimum sentences has been used in the UK on a number of occasions: for drug trafficking, domestic burglary and firearms in England and Wales. There is a minimum sentence in NI through the Firearms (Amendment) (Northern Ireland) Order 2004, [Article 70](#).

Addressing Concerns about Clause 4

29. A number of MLA’s during the second stage debate raised concerns with regard to this clause.
30. Basil McCrea MLA said, *“it destroys the fundamental aspect of our relationship with the judiciary, which is that there is separation between the legislator and the judiciary”* (p44). We disagree with this claim since there is precedent for minimum sentences (see paragraph 28). This clause would not seek to instruct the judiciary on particular cases but rather set out legislative principle, therefore it would not interfere with judicial discretion.
31. The Minister for Justice has said that there is no need for action because in R v Matyas Pis, His Honour Judge Burgess indicated that there would be a two-year starting point for involvement at any stage of the trafficking process into the UK (paragraph 33) based on the starting point used in the current England and Wales Sentencing Guidance for the Sexual Offences Act 2003.³⁰ We are concerned whether this “minimum starting point” will remain at this level for two reasons:
- In R v Chen, Judge Stephens rejected the use of *“the 2007 guidelines in relation to the use of a starting point”* (paragraph 33) and said there were *“ambiguities”* about how the 2007 Sentencing Guidelines apply in Northern Ireland (paragraph 32).³¹
 - In addition, proposals for revised England and Wales sentencing guidelines for sexual offences, could significantly alter the starting points if the offender was considered to be minimally culpable to between 26 weeks and 18 months custody.³²

http://egazette.nic.in/WriteReadData/2013/E_17_2013_212.pdf

²⁸ For an English Translation of the legislation, see the following

<http://www.qub.ac.uk/slavery/?page=countries&category=1&country=22>

²⁹ For an English Translation of the legislation, see the following:

<http://www.qub.ac.uk/slavery/?page=countries&country=96&category=4>

³⁰ <http://www.courtsni.gov.uk/en->

[GB/Judicial%20Decisions/PublishedByYear/Documents/2012/\[2012\]%20NICC%2014/j_j_2012NICC14Final.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2012/[2012]%20NICC%2014/j_j_2012NICC14Final.htm)

³¹ <http://www.courtsni.gov.uk/en->

[GB/Judicial%20Decisions/PublishedByYear/Documents/2012/\[2012\]%20NICC%2026/j_j_STE8525Final.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2012/[2012]%20NICC%2026/j_j_STE8525Final.htm)

Potential Amendments

32. We suggest that two amendments are considered to Clause 4:
- The inclusion of the word immediate in 4(2) to ensure that there is an immediate custodial sentence and not a suspended sentence.
 - An amendment to ensure there is different treatment for child offenders compared to adult offenders.

How this Clause will Help

33. We believe that this clause will send a powerful signal that human trafficking and slavery offences are serious crimes.

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

34. Clause 5 amends Section 4 of the A&IA 2004 so that additional definitions, including forced begging, are expressly included in the Act.

International Obligations

35. Clause 5 seeks to ensure that section 4 of the A&IA 2004 mirrors Article 2 of the European Directive in relation both to what is known as the “means” by which a person is trafficked (i.e. the methods used to exert control over that person) and the nature of their exploitation (the “purpose” for which they have been trafficked):
- Article 2 (1) of the Directive sets out the *means* by which control is exerted as “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.” Currently the Asylum and Immigration Act 2004 only refers to the use of force, threats or deception as means of exerting control. Clause 5 would insure the full definition of the EU Directive would be applied.
 - In relation to the type of *exploitation* Article 2(3) of the EU Directive defines exploitation as including “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.” At present the A&AI Act makes specific reference to forced labour, slavery or practices similar to slavery and servitude, provision of services and acquisition of benefits

³² Sexual Offences Guideline Consultation, *Op Cit*, page 280

of any kind, and organ removal. It does not make any reference to forced begging or to forced criminal activity.

Evidence of Need

36. GRETA has said that, “the offence of trafficking people for exploitation **does not cover all the means included in the Convention, such as other forms of coercion, abduction, fraud or abuse of power**...the inclusion of all means under Article 4 of the Convention as constituent elements of the trafficking offences in all relevant Acts would bring the definitions of THB for the purpose of sexual and non-sexual forms of exploitation closer to the Convention.”³³
37. We believe that this clause is necessary to **make sure that the definitions of exploitation in Article 2 are explicit in NI law – including forced begging and criminal activities**. Otherwise, there is an argument for not having any definitions in section 4 of the Asylum Act at all.

How this Clause Will Help

38. This clause would bring clarity to the law in this area.

Clause 6: Paying for sexual services

39. The clause substitutes a new Article 64A of the Sexual Offences (Northern Ireland) Order 2008 for the Article introduced by the Policing and Crime Act 2009. Rather than making it an offence to pay for sexual services if the person in prostitution is subjected to force (the current law), this new clause creates a simple offence of paying for sexual services.

Detail of the Clause

40. The new Article 64A:
- makes it an offence to obtain sexual services from a person over the age of 18 in exchange for payment, whether payment is made directly or through a third party (paragraph 1);
 - allows the offence to be *triable either way* and sets out the maximum penalty for the offence as a one year imprisonment (paragraph 2), which reflects the maximum penalty in Sweden;³⁴
 - Defines payment (paragraph 3);
 - Ensures that the person who is selling sex is not guilty of aiding and abetting this offence (paragraph 4);
 - Requires the Department of Justice to raise awareness of the offence in its first year of operation (paragraph 5);
 - Requires the Department of Justice to collect data to review the operation of the offence and report to the Assembly after three years (paragraph 5).

³³ GRETA Report, *Op Cit*, para 69, page 24

³⁴ In July 2011, the maximum penalty was raised from six months to one year imprisonment. <http://www.government.se/sb/d/4096/a/119861>

41. We believe this clause should apply to those involved in what would be regarded as prostitution and that the term “sexual services” should not extend to lap dancing nor phone sex lines. We understand that some confusion has arisen over the scope because of the word “person” in the new offence rather than “prostitute”. However, we note that in the Department of Justice’s (DOJ) 2011 research, the DOJ said *“it is important to recognise that women, or indeed men, who have been trafficked, are not “prostitutes” even though they are forced to work in the sex industry.”*³⁵ We believe wording in this clause reflects this understanding.
42. We note that Article 58(2) of the Sexual Offences (Northern Ireland) Order 2008 defines prostitute and prostitution as where *“a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person.”* This definition uses the same term “sexual services” clause 6 and appears in the same Part of the same legislation as would the new Section 64A inserted by this clause. Since the current definition is interpreted not to apply to lap dancing or telephone sex lines, the same should be the case with clause 6.
43. The inclusion of the provision to ensure that a person selling sex was not guilty of aiding and abetting this offence was made in response to concerns that this offence could both criminalise the purchaser and seller of sex, which was not the original intention, and would have taken the law beyond current provisions. New Article 64A(4) also reflects the position in Sweden where the *“legislation only targets buyers of persons in prostitution. The persons who are exploited in prostitution, the victims of male violence, are not subject to any kind of criminal or other legal or administrative repercussions.”*³⁶ It was suggested at the Second Stage debate that this might hamper successful prosecution and encourage soliciting.³⁷ A similar approach does not appear to have had any negative effect in Sweden either in bringing prosecutions or increasing prostitution – quite the reverse. Provisions already exist under Northern Ireland law to deal with soliciting (Article 59 of the Sexual Offences (NI) Order 2008).
44. During the second stage debate some suggested that without Clause 6 this Bill would be pointless. This is not the case. This Bill is a 19 clause Bill and it would remain of real utility without clause 6. However, we passionately believe that the Bill would prove to be more effective *with* clause 6.

³⁵ Department of Justice, *Research paper investigating the issues for women in Northern Ireland involved in prostitution and exploring best practice elsewhere*, January 2011, page 8
http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/final_research_paper_-_women_in_northern_ireland_involved_in_prostitution.pdf

³⁶ Ekberg G, The Swedish Law that prohibits the purchase of sexual services (2004) *Violence Against Women* 2004; 10:1187-1218

³⁷ Second Stage Debate, Official Report, 23 September 2013, page 88

International Obligations

45. It is important to state that this clause is not explicitly required by the European Directive or Convention. However, Clause 6 is within the spirit of:
- Article 18 of the Directive which requires member states to take “appropriate measures...to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings” and
 - Article 6 of the Convention which required that “to discourage demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures”.

Evidence of Need

The Need to Tackle Demand

46. Sexual exploitation is the primary form of modern day slavery in Northern Ireland. The largest numbers of those trafficked into and within Northern Ireland are brought here to meet local demand for the sale of sex - see Table 1 above, which shows that 74 out of 108 (69 per cent) potential victims recovered between 2008/9-2012/13 were trafficked for sexual exploitation. There is also evidence that a mixture of indigenous and foreign organised crime groups are involved in organised prostitution, using websites to advertise trafficked victims for “off street” prostitution and using brothels and hotels.³⁸ We cannot successfully tackle trafficking in Northern Ireland without addressing the main source of demand for trafficking. This is why clause 6 of Lord Morrow’s Bill is so important since it criminalises demand for paid sex.
47. GRETA’s report encourages “continuing efforts to reduce demand for sexual services” of those who have been trafficked (Recommendation 16) and their report refers to the explanatory notes accompanying the Convention which states, “This article places a positive obligation on Parties to adopt and reinforce measures for discouraging demand...By devoting a separate, free-standing article to this, the drafters sought to **underline the importance of tackling demand in order to prevent and combat the traffic itself.**”³⁹ (emphasis added)

The Current Article 64A

48. The current legislative mechanism for tackling demand – **the current Article 64A** – has not proved effective. There have been no prosecutions under this offence in Northern Ireland, and very few in England and Wales.⁴⁰ We acknowledge that the Minister for Justice has indicated that he plans to raise the time bar from six months to three years with regard to proving coercion for this offence. This is clearly a positive step. However, we are still of the

³⁸ IDMG Report, October 2012, *Op Cit*, paragraph 3.18, page 25 and paragraph 7.35, page 76

³⁹ Paragraph 108 of the Explanatory Notes to the European Convention

⁴⁰ Northern Ireland Assembly Question AQW 15565/11-15; Hansard House of Commons 19 November 2012 Column 292W

view that as a caveated offence it will not be nearly as effective as the law which currently applies in Sweden.

49. Finland introduced an offence in 2006 which made it an offence to purchase sexual services from an individual who had been trafficked.⁴¹ A report commissioned by the Ministry of Justice in Finland published in September 2013 has concluded that the current legislation is unworkable and does not do enough to protect victims of human trafficking and exploitation. The report recommends Finland adopts a full ban on the purchase of sexual services which the Minister of Justice has announced she will propose to her colleagues in the Finnish Government.⁴²
50. We should make clear that the lack of success on this offence does not mean CARE is arguing *all* trafficking offences are unsuccessful. That is not the case. We recognise that there have been successful prosecutions (albeit only two) under legislation designed to prosecute those who traffic people for sexual exploitation. However, there have been none for the existing offence which addresses the *demand* for this trafficking.

The need to address all forms of exploitation

51. Not all those selling sex have been trafficked but the majority have experienced exploitation and abuse of some kind. This makes it entirely appropriate that this Human Trafficking and Exploitation Bill, which addresses both trafficking and exploitation, should contain this timely measure. The Bill contains measures to improve our response to those subjected to slavery and forced labour where there is no evidence of trafficking. In a complementary way this clause acknowledges and seeks to address exploitation through prostitution:

- Evidence suggests that many individuals working in the sex industry enter **before they have reached the age of 18**. A 2013 study conducted by Eaves, which involved interviews with 114 women working in the sex industry in both on and off street prostitution, found that 32 per cent of those interviewed had entered the sex industry before the age of 18.⁴³ Other studies conducted around the world have found higher numbers than this. For example, in a study conducted in nine countries in 2003 it was found that 47 per cent of those in the sample had entered

⁴¹ <http://news.bbc.co.uk/1/hi/world/europe/5103132.stm> and <http://nppr.se/2009/10/12/finlands-prostitution-law-and-the-hope-of-nordic-unity/comment-page-1/#comment-1139>

⁴² http://yle.fi/uutiset/justice_minister_to_seek_full_ban_on_purchasing_sex/6814089

⁴³ Julie Bindel et al, *Breaking down the barriers: A study of how women exit prostitution*, Eaves/LSBU <http://i1.cmsfiles.com/eaves/2012/11/Breaking-down-the-barriers-a37d80.pdf> 2012 page 4

prostitution before they reached 18 years of age⁴⁴ and a 2004 UK study found a figure of 52 per cent.⁴⁵

- Home Office figures reveal that **homelessness, living in care, debt and substance abuse, are all common experiences prior to entering prostitution.**⁴⁶ Research also shows that many of those in prostitution have suffered abuse or violence in the home; as many as 85 per cent report physical abuse in the family home, with 45 per cent reporting familial sexual abuse.⁴⁷ One author notes that international studies have consistently found that “the majority of prostituted persons- somewhere between 55 per cent and 90 per cent [depending on the study] - were subject to sexual abuse as children.”⁴⁸
- **Drugs are used by many in prostitution** to numb the reality of what providing paid sex involves and others enter prostitution in order to service an existing drug habit. A staggering 80-95 per cent of women involved in street based prostitution are addicted to class A drugs.⁴⁹ Moreover, pimps often use drug dependency as a form of control. Professor Roger Matthews writes: “*Street prostitutes frequently report that they work to support not only their own habit but also that of their boyfriend, pimp or partner. In some cases male drug users/dealers will seek out female prostitutes as ‘partners’ since they make good customers and providers.*”⁵⁰
- **Prostitution is one of the most dangerous occupations in the world.** Those involved risk physical assault, sexual violence, and verbal abuse every day.⁵¹ In evidence given to the Dail Committee for Justice, Defence and Equality by the Irish Medical Organisation, a representative body for 5,000 medical practitioners in the Republic of Ireland, the physical consequences of working in the sex industry for women in particular were outlined. They pointed to an HSE women’s health project in 2007 which showed that the majority of women who came to the project involved in prostitution recorded symptoms related to sexually transmitted infections, reproductive tract infection or other health complications related to prostitution, including bacterial vaginosis, thrush, hepatitis A and B, chlamydia, vaginal-genital warts, urinary tract infections and cervical cell abnormality. They further pointed to the fact that one study in London has found that mortality rates are estimated to be

⁴⁴ Melissa Farley et al, Prostitution and Trafficking in Nine Countries: An update on violence and Posttraumatic Stress Disorder, published in Melissa Farley (Ed.) *Prostitution, Trafficking and Traumatic Stress*. Birmingham, New York: Haworth Maltreatment & Trauma Press, 2003, page 40

⁴⁵ Marianne Hester & Nicole Westmarland, *Tackling Street Prostitution: towards an holistic approach*; Home Office, 2004, page 61

⁴⁶ Paying the Price: A Consultation paper on prostitution, Home Office, July 2004

⁴⁷ Ibid, page 11

⁴⁸ Max Waltman, Sweden’s prohibition of purchase of sex: the law’s reasons, impact and potential, *Women’s Studies International Forum* 34, 2011, p451

⁴⁹ Paying the Price, *Op Cit*, page 11

⁵⁰ Roger Matthews, *Prostitution, politics and policy*, Routledge-Cavendish, 2008, page 48

⁵¹ Melissa Farley, Isin Baral, Merab Kiremire, Ufuk Sezgin, *Prostitution in Five Countries: Violence and Posttraumatic Stress Disorder*, 1998

12 times higher among women involved in prostitution than the national average.⁵² Working in prostitution often has seriously detrimental effects on the physical and mental health of those involved. We note that a recent survey in Ireland suggested low alcohol and drug use for those working as independent escorts (ie not involved with a pimp) but even then 57.4 per cent of those who responded detailed experiences of abuse whilst working as an escort.⁵³ In the 2011 NI research, the authors stated that “many women in prostitution in Northern Ireland are subjected to extreme violence.”⁵⁴

How this Clause Will Help

52. **Clause 6 tackles the main driver of human trafficking in Northern Ireland:** Any Bill on human trafficking which did not address the demand for sexual services would be a Bill with a significant hole in it. Table 1, above, shows that the major reason victims are trafficked into Northern Ireland is for sexual exploitation. We must address the markets into which people are trafficked if we are to have any hope of impacting trafficking itself. As Lauren Hersh, New York Director of Equality Now argues, “to combat trafficking effectively, we must shrink the market, holding buyers and traffickers accountable and support those driven into prostitution.”⁵⁵
53. This clause recognises the link between trafficking and prostitution, which was cited in the DOJ report of 2011 when they said, “The phenomenon of “human trafficking” is closely interlinked with prostitution.”⁵⁶
54. **Clause 6 is based on an approach used successfully in other countries.** Sweden introduced a similar law in 1999. Since then:
 - **Street prostitution has decreased**
 - An evaluation of the Swedish law concluded that the number of persons, mainly women, exploited in street prostitution in Sweden has been halved since 1999. In 2008, the number of those in street prostitution was estimated to be three times higher in the neighbouring countries of Denmark and Norway than in Sweden (see Figure 1 below).⁵⁷ Such has been its success that Norway has now changed its laws in

⁵² Evidence to the Dail Committee for Justice, Defence and Equality, 12th December 2012.

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring//WebAttachments.nsf/%28\\$VLookupByConstructedKey%29/committees~20121212~JUJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring//WebAttachments.nsf/%28$VLookupByConstructedKey%29/committees~20121212~JUJ/$File/Daily%20Book%20Unrevised.pdf?openelement) page 3

⁵³ *Crime and Abuse Experienced by Sex Workers in Ireland*, Victimisation Survey, Uglymugs.ie, September 2013, pages 2 and 47, <http://uglymugs.ie/wp-content/uploads/ugly-mugs-september-2013.pdf>

⁵⁴ Issues for women in Northern Ireland involved in prostitution, *Op Cit*, page 40

⁵⁵ Hersh, L. Letter to the New York Times 24 September 2012

<http://www.nytimes.com/2012/10/01/opinion/ending-the-demand-side-of-prostitution.html?emc=tnt&tntemail1=y&r=1&>

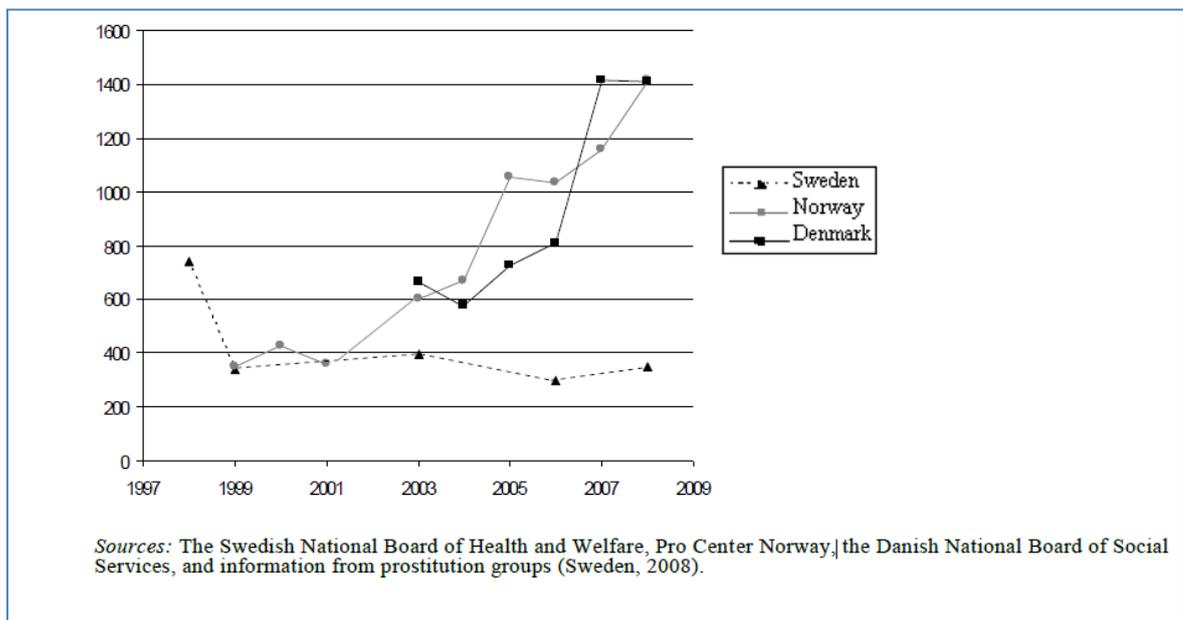
⁵⁶ Research paper investigating the issues for women in Northern Ireland involved in prostitution and exploring best practice elsewhere, *Op Cit*

⁵⁷ *Swedish Government Report SOU 2010:49 The Ban against the Purchase of Sexual Services. An evaluation 1999-2008, English Summary*. Available here:

line with the Swedish approach and when they did so there was an “immediate, dramatic reduction of street prostitution” in Bergen, one of Norway’s larger cities.⁵⁸

- One author notes that “according to both Swedish NGOs and government agencies in Stockholm, Gothenburg and Malmo, prostitution virtually disappeared from the street right after the sex purchase law came into force... Street prostitution eventually came back, but at a reduced level. As reported in 2007, in Stockholm social workers encounter only 15 to 20 prostituted persons per night, whereas prior to the law they encountered up to 60. In Malmo social workers encountered 200 women a year prior to the law, but one year after the law there were only 130, and in 2006 only 66.”⁵⁹

Figure 1: Number of individuals engaged in street prostitution in Sweden, Norway and Denmark, 1998-2008⁶⁰



- **Overall prostitution levels are significantly lower than they would otherwise be**
 - From 1996 to 2008 the number of Swedish men reporting the experience of purchasing sex in the national population samples fell from 13.6 per cent to 8 per cent.⁶¹ This demonstrates that the law has a significant deterrent effect on men in Sweden with regard to paying for sex.
 - The Government evaluation of the Swedish Law found that “while there has been an increase in prostitution in our neighbouring Nordic countries in the last decade, as far as we can see, prostitution has at least not increased in Sweden. There may be several explanations for this but, given the major similarities in all other respects between the Nordic countries, it is reasonable to assume that prostitution would also have

<http://www.government.se/content/1/c6/11/98/61/73d97eb9.pdf>

⁵⁸ *Ibid*

⁵⁹ Max Waltman, *Op Cit*

⁶⁰ Swedish government report SOU 2010:49, Chapters 4 and 5, <http://www.government.se/content/1/c6/11/98/61/2ac7d62b.pdf>

⁶¹ Holmström & Skilbrei eds. *Prostitution in the Nordic Countries Conference Report*, 2009, page 29

increased in Sweden if we had not had a ban on the purchase of sexual services. Criminalisation has therefore helped to combat prostitution.”⁶²

- The evaluation also concluded that although there has been an increase in prostitution advertising on the internet in Sweden since the law was introduced “However, the scale of this form of prostitution is more extensive in our neighbouring countries, and there is nothing to indicate that a greater increase in prostitution over the Internet has occurred in Sweden than in these comparable countries. This indicates that the ban has not led to a change in arenas, that is, from street prostitution to the Internet, in Sweden.”⁶³
 - Following Norway’s introduction of a law criminalising the purchase of sex there appears to have been a **reduction in both on street and off street prostitution**.⁶⁴ Advertisements for off street prostitution reduced by 28 per cent in the first year after the law was introduced.⁶⁵ It is noteworthy however, that this reduction was much smaller than that for on street prostitution (50 per cent) suggesting that the industry that remained could not simply go “underground” but continued to seek clients through advertisements.
- There has been a **deterrent effect on human trafficking** as a direct result of this law.
 - In 2009, the National Rapporteur said “It has been discovered through wiretapping and surveillance that traffickers consider Sweden a bad market. These criminals are businessmen and calculate profits. Victims of human trafficking confirm that the traffickers talk about Sweden as a poor market.”⁶⁶
 - The Swedish National Criminal Police confirm this, reporting that “It is clear that the prohibition against buying sexual services, known as the sex purchase law... is still functioning as a barrier that is preventing human traffickers and pimps from becoming established in Sweden.”⁶⁷
 - In 2007, the police in Skåne County, in the south of Sweden, collaborated with the police in Denmark on a case involving Thai women who were invited to Sweden by individuals living there. Instead of travelling to Sweden, the women ended up working in prostitution in Denmark. Academics and others have suggested that it is likely that the Swedish sex purchase law had a deterrent effect on the human traffickers who could not see much point in trafficking the women beyond Denmark to Sweden, where purchasers would be discouraged by the risk of prosecution and conviction.⁶⁸

⁶² Swedish government report SOU 2010:49 English Summary, *Op Cit*, page 36

⁶³ Swedish government report SOU 2010:49, Chapters 4 and 5, *Op Cit*

⁶⁴ Pro Sentret Oslo Kommune “New Conditions, New Opportunities?”, <http://prosentret.no/publikasjoner/pro-sentrets-reports-in-english/> 2009 Annual Report, page 22

⁶⁵ *Ibid*, page 22

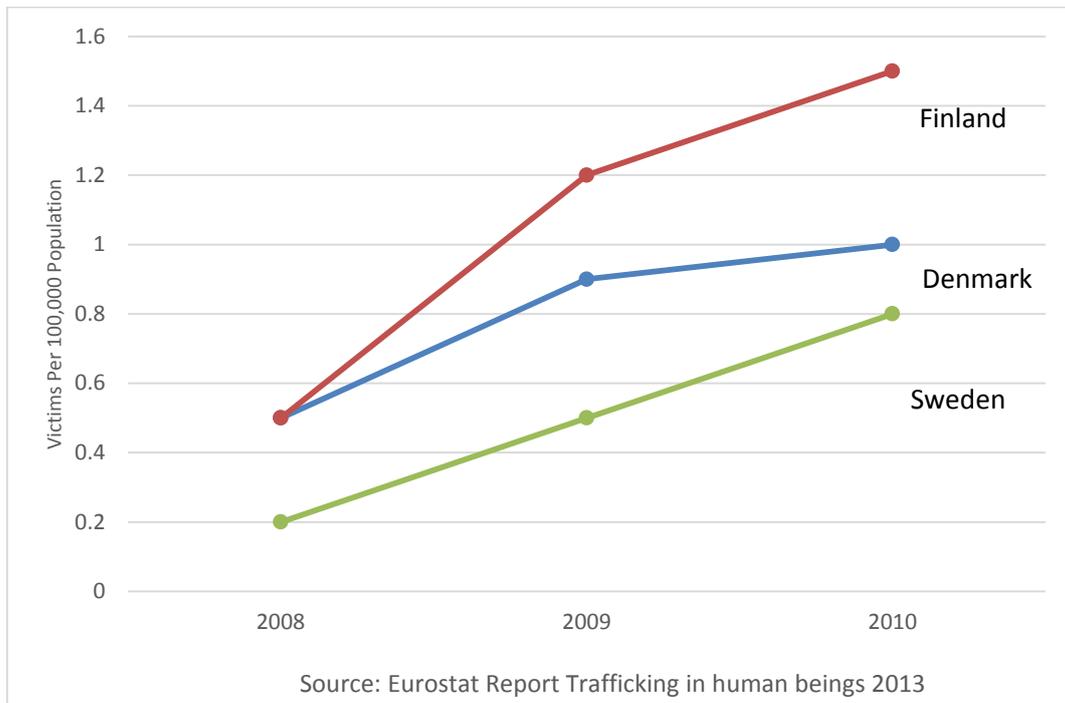
⁶⁶ *Report from the European Conference on Human Trafficking*, December 2009. Statement by Kajsa Wåhlberg, the Swedish national Rapporteur on Trafficking in Human Beings, Conference on the “Preventing and Combating Trafficking in Human Beings and Reducing Prostitution and Sexual Exploitation”, Czech Republic, 3 June 2009 page 20

⁶⁷ Swedish National Criminal Police, *Trafficking in human beings for sexual and other purposes, Situation Report 9*, 2009 covering data for 2006, page 9, section 3.1.2

⁶⁸ Kajsa Claude, *Targeting the Buyer: The Swedish Example*, The Swedish Institute 2010, page 17

- Authors reviewing the data on prostitution and trafficking concluded that “countries that implement harsher laws regarding prostitution seem to get a lower prevalence of trafficking.”⁶⁹ The graph below shows trafficking data for Finland, Denmark and Sweden published this year by the European Commission.⁷⁰ Data showing similar numbers of potential victims has been published by the US State Department⁷¹ and by the Council of the Baltic Sea States.⁷²

Figure 2: Number of identified and presumed victims of all forms of trafficking



- Changing the law in Sweden has had a **transformative effect on public attitudes with regard to paying for sex.**
 - In 1996, before the law to criminalize payment for sexual services was passed, a survey showed that only 45 per cent of women and 20 per cent of men were in favour of such a change.⁷³ In 1999, the year the law was passed, support increased dramatically with 81 per cent of women and 70 per cent of men being in favour.⁷⁴
 - This strong public support has been maintained, with a survey conducted in 2008 showing that 79 per cent of women and 60 per cent of men continue to favour the

⁶⁹ Niklas Jakobsson and Andreas Kotsadam, *The Law and Economics of International Sex Slavery: Prostitution laws and trafficking for sexual exploitation*, Working Papers in Economics No 458, University of Gothenburg, June 2010, Revised May 2013, page 15, page 17

⁷⁰ Eurostat Report *Trafficking in Human Beings* 2013

⁷¹ US Trafficking in Persons Report, 2013 <http://www.state.gov/j/tip/rls/tiprpt/2013/>

⁷² *Human Trafficking 2013 - Baltic Sea Region Roundup*
[http://www.cbss.org/wp-content/uploads/2012/11/TFTFB-raport PRINT all crop web.pdf](http://www.cbss.org/wp-content/uploads/2012/11/TFTFB-raport_PRINT_all_crop_web.pdf)

⁷³ Sven-Axel Månsson (2000). Commercial Sexuality. In Bo Lewin (Ed.), *Sex in Sweden: On the Swedish sexual life* 1996 (pp. 235–263) cited in Waltman (2011)

⁷⁴ *Ibid*

law.⁷⁵ What this shows is that passing a law to criminalise paying for sex has an impact on societal attitudes to paying for sex.

55. **Clause 6 introduces a stiffer penalty than the current Article 64A offence.** A 2009 London study of 103 men who buy sex, 77 per cent agreed that a “greater criminal penalty” would deter them from purchasing sex compared with only 47 per cent who would be deterred by a requirement to attend an educational programme.⁷⁶ This shows how effective clause 6 could be at reducing demand.
56. **Clause 6 is a socially just response to both human trafficking and prostitution:** Lord Morrow’s Bill seeks to address exploitation that is wider than just trafficking. It is about promoting human rights and justice. Reducing the market for sexual services will be a positive benefit not only for those who have been trafficked but all who are made vulnerable through involvement in prostitution, which we believe is to be welcomed.
57. CARE would welcome greater support for projects which assist people to exit prostitution, alongside the introduction of this Bill. In Sweden section 11 of the Social Services Act 2001⁷⁷ contains an obligation for local municipalities to provide support services to victims of crime and highlights in particular the need to provide support to women who are victims of violence including people in prostitution.⁷⁸
58. **Clause 6 is a much more effective approach than the legalisation and regulation of prostitution:** The idea of regulation is that the dangerous unregulated market is replaced by a safe regulated market. However, provision of a regulated market does not result in the demise of an unregulated market. Not surprisingly given connections with organised crime (see paragraph 46), many pimps don’t want to pay taxes. Thus the dangerous unregulated market coexists with a new regulated market.⁷⁹
59. Evidence suggests that in countries which have adopted either of these approaches, there are:
 - **Higher levels of trafficking:**
 - Germany and the Netherlands, which have some of the most widely regulated prostitution sectors, were both ranked in the group of top destination countries listed

⁷⁵ Jari Kuosmanen (2008). Tio år med lagen: Om förhållningssätt till och erfarenheter av prostitution i Sverige [*Ten Years with the Law: On Approaches to and Experiences of Prostitution in Sweden*]. In Holmström & Skilbrei eds., 2009, page 29

⁷⁶ Melissa Farley et al, *Men who buy sex- who they buy and what they know*, Eaves, London, 2009, page 22

⁷⁷ Social Services Act 2001:453 For an English translation of the legislation see: <http://www.scribd.com/doc/32167396/Social-Services-Act-in-Sweden>

⁷⁸ Ekberg G, 2004, *Op Cit*. See for example details of the service provided by the Stockholm municipality (Swedish) <http://www.stockholm.se/prostitutionsenheten>

⁷⁹ Suzanne Daley (2001) <http://www.nytimes.com/2001/08/12/world/new-rights-for-dutch-prostitutes-but-no-gain.html?pagewanted=all&src=pm>; Dina Siegel (2009) ‘Human trafficking and legalized prostitution in the Netherlands’, <http://www.doiserbia.nb.rs/img/doi/1450-6637/2009/1450-66370901005S.pdf>

by the UN Office of Drugs and Crime in their 2006 report on trafficking in human beings.⁸⁰

- A retired German chief police detective has described Germany as a “centre for the sexual exploitation of young women from Eastern Europe, as well as a sphere of activity for organized crime groups from around the world.”⁸¹ Chief Superintendent Helmut Sporer from the Augsburg police recently said “The sex buyers are looking for fresh meat. Nowadays, the average woman in prostitution in Germany is an 18-20 year old trafficked girl from Romania.”⁸²
- In the Netherlands, the US Trafficking in Persons Report 2012 confirms that trafficking victims continue to be exploited in the regulated sex industry and notes the issue of local pimps coercing vulnerable young women into prostitution.⁸³
- In a study carried out by the Dutch National Police on trafficking in the regulated prostitution sector, researchers estimated between 50 per cent and 90 per cent of women in legalized brothels were ‘working involuntarily’.⁸⁴
- A 2008 *New York Times* article quoted a Dutch report that over 75 per cent of Amsterdam’s 8,000 to 11,000 prostituted persons are from Eastern Europe, Africa and Asia. In the same article, the mayor of Amsterdam is quoted as saying that “we realize that this [legalization] hasn’t worked, that trafficking in women continues... Women are now moved around more, making police work more difficult.”⁸⁵
- Ten years after the introduction of the New Zealand Prostitution Reform Act 2003, a leading politician has recognised the likelihood of trafficking into prostitution.⁸⁶ Campaigners in New Zealand say “in recent years there has been media exposure of the plight of some foreign women, lured to work illegally in New Zealand’s decriminalised sex industry, yet finding themselves in ‘slave-like’ conditions.”⁸⁷ The 2012 US Department of State Trafficking in Persons report highlights the particular problem of internal trafficking of young people for sexual exploitation in New Zealand.⁸⁸
- Two recent academic studies have concluded that legalizing or decriminalizing prostitution leads to higher levels of human trafficking within a country. One

⁸⁰ UNODC, Trafficking in Persons: Global Patterns, June 2006,

http://www.unodc.org/pdf/traffickinginpersons_report_2006ver2.pdf

⁸¹ Manfred Paulus quoted in Der Spiegel 30 May 2013

<http://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html>

⁸² Chief Superintendent Helmut Sporer speaking at a European Women’s Lobby seminar at the European Parliament 1 October 2013 <http://www.womenlobby.org/Actualite/EWL-News/article/ewl-seminar-addresses-the-reality?lang=en>

⁸³ US Trafficking in Persons Report 2012, pages 263-4 <http://www.state.gov/j/tip/rls/tiprpt/2012/>

⁸⁴ Korps landelijke politiediensten. Schone Schijn: De signalering van mensenhandel in de vergunde prostitutiesector [Keeping Up Appearances: The Signs of Human Trafficking in the Legalized Prostitution Sector] (KLPD, Driebergen, 2008), www.om.nl/onderwerpen/mensenhandel_en/@148766/de_signalering_van/

⁸⁵ Marlise Simons (24 February 2008) Amsterdam Tries Upscale Fix for Red-Light District Crime. *New York Times* <http://www.nytimes.com/2008/02/24/world/europe/24amsterdam.html?pagewanted=all&r=0>

⁸⁶ http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10875922

⁸⁷ <http://www.scoop.co.nz/stories/PO1206/S00285/sex-trafficking-under-spotlight.htm>

⁸⁸ US Trafficking in Persons Report, 2012, *Op Cit*, page 265

published by Cho et al, which involved an empirical analysis of 150 countries worldwide, found that “on average countries where prostitution is legal experience larger reported human trafficking flows.”⁸⁹ Marinova et al. also found this to be the case.⁹⁰

- **Safety has not improved**

- One academic notes that “women... claim that legalization increases competition and demands for unsafe and dangerous sex acts.”⁹¹
- In Australia, the brothel The Daily Planet in Melbourne has alarm buttons in every room. According to one of the bouncers who works there, the use of these buttons – after the woman has been hit or assaulted – is not uncommon.⁹²
- After New Zealand changed their law, 35 per cent of those surveyed had felt unable to refuse a client they didn’t want in the previous 12 months, and violence continues to be experienced by those in prostitution with most still reluctant to report these incidents to the police.⁹³
- The lack of regulation in New Zealand permits abuses, particularly of young people, to go unchecked.⁹⁴ Under the Prostitution Reform Act Police in New Zealand have no right of entry to brothels and no powers to request age identification documents, nor are brothel owners required to maintain a record of age identification of sex workers. Recent press and community reports have suggested girls as young as 13 are involved in prostitution.⁹⁵
- As Monica O’Connor, the co-author of a study into the Irish prostitution industry published in 2009, put it in her evidence to the Dail committee for Justice, Defence and Equality, “it is incredibly naïve and flies in the face of the overwhelming evidence to believe that we can make prostitution safe. It is an inherently harmful, abusive, exploitative and coercive industry.”⁹⁶
- A Police Chief Superintendent from Augsburg, Germany recently said that the normalization of prostitution, through the German legislation has brought more vulnerability for prostituted persons. He reported a dramatic increase in the number of women in prostitution (30 per cent in his area), mainly in bars and private brothels,

⁸⁹ Seo-Young Cho et al, Does legalized prostitution increase human trafficking? World Development Volume 41, 2013, page 61

⁹⁰ Marinova, N and James, P The tragedy of Human Trafficking: Competing theories and European Evidence. Foreign Policy Analysis 8, 2012, pages 231-253

⁹¹ Waltman, *Op Cit*, page 461

⁹² Sheila Jeffreys, ‘Prostitution and Trafficking in Australia: 20 years of liberalisation’, paper delivered at the Seminar on the Demand Question, Helsinki, 1 December 2006

⁹³ The New Zealand Prostitution Law Review Committee (PLRC), 2008, pages 46, 55-56

⁹⁴ *Ibid*, page 109

⁹⁵ http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10874035;

<http://www.stuff.co.nz/auckland/local-news/manukau-courier/8512918/Families-pimp-girls-warden>

⁹⁶ Evidence to the Dail Committee for Justice, Defence and Equality, 12th December 2012.

[http://oireachtasdebates.oireachtas.ie/Debates%20Authoring//WebAttachments.nsf/%28\\$VLookupByConstructedKey%29/committees~20130116~JUJ/\\$File/Daily%20Book%20Unrevised.pdf?openelement](http://oireachtasdebates.oireachtas.ie/Debates%20Authoring//WebAttachments.nsf/%28$VLookupByConstructedKey%29/committees~20130116~JUJ/$File/Daily%20Book%20Unrevised.pdf?openelement) page

where they are isolated: “Women are afraid to tell the truth to the police”.⁹⁷ A Government evaluation of the German Prostitution law has said “As regards improving prostitutes’ working conditions, hardly any measurable, positive impact has been observed in practice.”...The Federal Government will examine to what extent the protection of victims of trafficking in human beings and forced prostitution can be improved... The Prostitution Act has not recognisably improved the prostitutes’ means for leaving prostitution.”⁹⁸

- **Prostitution appears to have increased**

- The New Zealand Prostitution Law Review Committee (PLRC) noted in 2008 that street prostitution in Auckland more than doubled in just one year (2006-2007), with press reports and local support services suggesting even higher increases.⁹⁹
- They recommended that those working in street prostitution should be encouraged to move into off street work, but five years later the problem remains. Concern about the situation has led to the introduction of a Private Members Bill by a Member of Parliament to amend the PRA making street prostitution illegal.¹⁰⁰
- The number of people in prostitution in Germany rose from an estimated 60,000-200,000 in 1996 to 400,000 in 2006.¹⁰¹
- Germany has become a destination for sex tourism, with more sex buyers travelling to Germany to visit the brothels, and a business place for pimps.¹⁰²

Addressing Concerns about Clause 6

Whether the Situation in Northern Ireland is Different from Elsewhere?

60. We recognise that the North is not exactly the same as the South, but since the nature of prostitution does not tend to change from place to place, we urge the Committee to scrutinize the June 2013 report from the Houses Of The Oireachtas Joint Committee on Justice, Defence and Equality which when it reviewed the law on prostitution concluded **by supporting the Swedish approach** saying: It “**found compelling the accounts that it heard during its visit to Sweden from witnesses including police...** The evidence indicating that using the criminal law to tackle demand for prostitution has reduced trafficking” (p68) and that support for the Swedish approach came from a broad cross-section of society (p68).

⁹⁷ Chief Superintendent Helmut Sporer, *Op Cit*,

⁹⁸ *Report by the Federal Government on the impact of the Act regulating the legal situation of prostitutes (Prostitution Act) Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 2007, pages 79-80*

⁹⁹ PLRC, *Op Cit*, page 118

¹⁰⁰ Asenati Lole-Taylor MP introduced the Prostitution Reform (Control of Street Prostitution) Amendment Bill in February 2013, consultation draft http://www.parliament.nz/en-NZ/PB/Legislation/ProposedBills/2/1/6/50HOH_MEMBILL185_1-Prostitution-Reform-Control-of-Street-Prostitution.htm

¹⁰¹ Michèle Hirsch, Plan of action against traffic in women and forced prostitution 1996, [http://www.coe.int/t/dghl/monitoring/trafficking/Source/PDF-EG\(96\)2_E.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Source/PDF-EG(96)2_E.pdf); TAMPEP National Report on HIV and Sex Work, Germany 2007 <http://tampep.eu/documents/Germany%20National%20Report.pdf>

¹⁰² Chief Superintendent Helmut Sporer *Op Cit*, Also <http://www.theguardian.com/world/shortcuts/2013/jun/12/germany-now-europes-biggest-brothel>

Evidence from Sweden

61. A number of Members raised questions about the evidence from Sweden in the Second Stage Debate.
- a. Some members and Department of Justice Officials specifically referred to a report from the Swedish Board of Health and Welfare in 2007 (or other reports which cite this study) which said that it is difficult to discern whether prostitution has increased or decreased.¹⁰³
 - This report along with other reports and data was considered by the Swedish Government evaluation of the Sex Purchase Law in 2010, chaired by Anna Skarhed, which concluded: “The overall picture we have obtained is that, while there has been an increase in prostitution in our neighbouring Nordic countries in the last decade, as far as we can see, prostitution has at least not increased in Sweden. There may be several explanations for this but, given the major similarities in all other respects between the Nordic countries, it is reasonable to assume that prostitution would also have increased in Sweden if we had not had a ban on the purchase of sexual services. Criminalisation has therefore helped to combat prostitution.”¹⁰⁴
 - The fact is that prostitution markets are fluid and determining the scale of the market necessarily has an element of estimation. The findings of the National Board of Health and Welfare did not prevent the later evaluation of the Swedish law from concluding that the law had had a positive impact restricting the extent of prostitution.
 - b. Basil McCrea MLA quoted the Swedish National Rapporteur on Human Trafficking as reporting "a general lack of knowledge concerning the extent of trafficking for sexual purposes in Sweden."¹⁰⁵
 - The report that Mr McCrea refers to is a Swedish Government Strategy Document from 2009 which introduced several Government initiatives to address trafficking.¹⁰⁶ The comments made by Detective Superintendent Walhberg were made in the context of introducing a new training programme to improve police enforcement as part of the Government’s new Action Plan (and new injection of funding) for combating human trafficking from 2008-2010.
 - Immediately after the sentence quoted by Mr McCrea the report states “The number of cases detected and reported depends on the police’s priorities and the resources they set aside for surveillance and other police work.” In the context of launching the new training programme and operational resources it is unsurprising that the Swedish Government would point to areas needing improvement.

¹⁰³ Eriksson, A. & Gavanas, A. National Board of Health and Welfare, *Prostitution in Sweden*, 2007, page 63
http://www.socialstyrelsen.se/lists/artikelkatalog/attachments/8806/2008-126-65_200812665.pdf

¹⁰⁴ Swedish government report SOU 2010:49, *Op Cit*, section 4.3

¹⁰⁵ Official Report, 23 September 2013, page 47

¹⁰⁶ *Swedish Government Report Against Prostitution and Human trafficking for Sexual Purposes*, 2009
<http://www.government.se/sb/d/11503/a/133671>

- The most recent Situation Report on Human Trafficking from the National Rapporteur has reported that the Action Plan and accompanying resources resulted in increased prosecutions for human trafficking, pimping, purchase of sexual services and other related offences.¹⁰⁷
- The extensive annual Situation Reports produced by the National Rapporteur in Sweden demonstrate a good knowledge and understanding of trafficking in Sweden, but also as recognised in the latest IDMG Report, human trafficking is “difficult to detect because of its hidden nature”¹⁰⁸.
- It is clear from the Situation Reports that the Swedish police consider the sex purchase law a key tool in gaining intelligence about and combating trafficking for sexual exploitation.

Policing the Offence in Northern Ireland

62. There have been a number of concerns raised about policing this offence. We believe the evidence shows that this offence can be effectively enforced:

- We note that the Joint Committee in the Republic concluded that “a ban on purchase a sexual service **can be effectively and efficiently enforced by the Gardaí**. Most prostitution is currently advertised through websites that can be readily found; similarly, contact numbers and premises used by prostitutes are easily identified. This will facilitate enforcement by disabling or diverting phone numbers, apprehending purchasers at premises, and identifying and prosecuting organisers. Monies recovered from those who organise prostitution can be used to offset the cost of enforcement.” (p71, emphasis added)
- When the law was first discussed in Sweden, the police force raised concerns. Chief Detective Inspector Per-Uno Hågestam of the Stockholm Police District Anti-Trafficking Group in particular was highly critical when the law was introduced; however, on retiring he commended the effectiveness of the new approach.¹⁰⁹ The implementation of the law included a package of training and awareness-raising about the underlying principles, together with resources dedicated to enforcement and monitoring of the law. Over a decade into the implementation of this law, **the Swedish police report that criminalisation of the purchaser is an effective way of finding pimps and traffickers although effectiveness depends on access to resources and the crime being given sufficient priority by police and within the judicial system.**¹¹⁰

¹⁰⁷ Swedish National Police Situation Report on Trafficking in Human Beings No.13, 2012, page 6

¹⁰⁸ Second Report of the Inter-Departmental Ministerial Group on Human Trafficking, October 2013, page 4

¹⁰⁹ G. Skagerlind, ‘Polischef Per-Uno Hågestam: Sexköpslagen fungerar över förväntan’ [transl. Chief Criminal Inspector Per-Uno Hågestam: The Law that Prohibits the Purchase of Sexual Services Functions Beyond Our Expectations]. Morgonbris 4, 13, October 2004, cited in Gunilla Ekberg, 2004; *Op Cit*

¹¹⁰ Swedish Government Report SOU 2010:49, English Summary, *Op Cit*, page 39

- Some, including members of the police, have suggested that introducing clause 6 would prevent people reporting suspected trafficking and hinder intelligence gathering.¹¹¹ However, the indications from Sweden are that this will not be the case. The evaluation of the Swedish law found **“There are no indications that the criminalization of sex purchases has made it more difficult for people being exploited in street prostitution to get in touch with the authorities. In connection with the measures targeting street prostitution, including those from the police, it appears that the opportunities to seek help from and contact with authorities have become better, not worse.”**¹¹² The National Board of Health and Welfare Prostitution in Sweden report 2007 particularly noted “the Göteborg Police ...report that they have received anonymous tips from clients who suspect human trafficking.”¹¹³

The Impact on Prostitutes

63. A number of Members raised concerns that Clause 6 would have a detrimental effect on those currently involved in prostitution. We believe the evidence from Sweden does not reflect this.
- The evidence from Sweden indicates that criminalising the purchase of sexual services **does not drive prostitution underground**: Kajsa Wahlberg, Swedish National Rapporteur on Human Trafficking speaking at the European Conference on Human Trafficking in December 2009, said: “In Sweden there is relatively little prostitution. The perception that this is because prostitution has gone underground is not true. Prostitution cannot go underground because the buyers need to be able to find the women. Prior to the law prohibiting the purchase of sexual services the pimps could easily send the women out looking for buyers. Nowadays they have to advertise and make arrangements which means that the risk of getting caught increases.”¹¹⁴
 - Claims that changing the law has also made **prostitution more dangerous** for individuals working in the industry have also been consistently shown to be unfounded. The National Board of Health and Welfare in Sweden stated in 2003 that “Police who have conducted a special investigation into the amount of violence have not found any evidence of an increase. Other research and the responses of our informants indicate a close connection between prostitution and violence, regardless of what laws may be in effect.”¹¹⁵ The 2008

¹¹¹ <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/criminalising-people-who-pay-for-sex-wont-help-antitrafficking-fight-says-police-chief-29553457.html>

¹¹² Swedish government report SOU 2010:49, *Op Cit*, section 4.6.3

¹¹³ National Board of Health and Welfare, Prostitution in Sweden, *Op Cit*, page 48

¹¹⁴ Report from the European Conference on Human Trafficking, December 2009, *Op Cit*

¹¹⁵ National Board of Health & Welfare, *Prostitution in Sweden 2003, 2004*, Authored by Eva Ambesjö, Annika Eriksson, & Merike Lidholm. Stockholm: Socialstyrelsen.

http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/10488/2004-131-28_200413128.pdf

prostitution inquiry conducted in Sweden also established that the claims made by opponents about a worsening situation were baseless.¹¹⁶

- Recent data from Norway shows a decrease in severe violence against those in prostitution. The research showed a halving of the number of people in prostitution who had experienced rape since purchase was criminalised in 2009 compared to those surveyed in 2008. Violence from pimps was also halved and violence from clients was down from 89 per cent to 74 per cent.¹¹⁷
- Mr McCrea MLA raised the concern that people would be more likely to engage in unprotected sex as an unforeseen consequence of clause 6. He referred to the presence of condoms being viewed as evidence of people having sex by the police in Sweden.¹¹⁸ The National Rapporteur's most recent Situation Report reports that "the great majority of people reported for purchasing sexual services admit the crimes."¹¹⁹ Furthermore the evaluation of the Swedish Law reports that "It is considered difficult to prove attempted crimes, with the result that, in connection with street prostitution, the police deliberately wait until the sexual act has begun before intervening, and the offence has thus been committed in full."¹²⁰ The National Board of Health and Welfare reported in 2007 that many individuals advertising sexual services on the internet make stipulations about condom use.¹²¹ This suggests Clause 6 should not lead to more unsafe sexual behaviour.

The Need for More Research?

64. We are concerned by the way in which the Department of Justice has gone about announcing that they are commissioning additional research into prostitution. The announcement by the Department that it was commissioning research three weeks before the Second Stage debate appears to be a delaying tactic since they have indicated that it is "unlikely" that the research will be completed by the end of the Committee stage. The Department of Justice knew that this Bill was coming from the time Lord Morrow began his consultation in August 2012. Lord Morrow introduced his Bill to the Assembly in June of this year. Why did the Department not commission the research prior to September 2013?
65. The Minister for Justice stated in the Second Stage debate that the purpose of the research "is to establish the extent and nature of prostitution in Northern Ireland; it is not to put out any proposals. It is to establish what the situation is. We can then develop proposals on whether legislation is appropriate or necessary and how we would go about it." We are not clear how this will differ from the 2011 research which set out "to publish a research paper which would investigate the issue for women in Northern Ireland involved in prostitution and to

¹¹⁶ Swedish government report SOU 2010:49 English Summary, *Op Cit*, pages 37-38

¹¹⁷ 64 per cent raped in 2008, ProSentret *Dangerous Liaisons* report (2012) <http://prosentret.no/publikasjoner/pro-sentrets-reports-in-english/> pages 16, 26

¹¹⁸ Second Stage Debate, Official Report, 23 September 2013, page 86

¹¹⁹ Situation Report 13, *Op Cit*, page 21

¹²⁰ Swedish government report SOU 2010:49 English Summary, *Op Cit*, page 40

¹²¹ Prostitution in Sweden, 2007, *Op Cit*, page 56

explore best practice elsewhere”¹²² and therefore what benefit this new research will bring to this debate. We note that in the 2011 research 40 to 100 women were identified working in prostitution but that the report stated it is hard to estimate the exact numbers due to the hidden nature of prostitution.¹²³

Clause 7: Requirements for resources for investigation or prosecution

66. Clause 7 requires the Department to provide suitable training and tools to ensure effective investigation or prosecution of human trafficking offences and slavery offences. There would be little point in having legislation to tackle human trafficking and slavery if investigators and prosecutors lack the requisite tools and training to identify victims and prosecute perpetrators.

International Obligations

67. Clause 7 will ensure that we comply with Article 9 and 18(3) of the Directive which require that states “take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting [human trafficking offences] are trained accordingly” and “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” and “regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings aimed at enabling them to identify and deal with victims and potential victims.
68. The Convention recommends that there should be provision or strengthening of “training for relevant officials in the prevention of and fight against trafficking in human beings” (Article 29(3)).

Evidence of Need

69. Currently there have been only two successful prosecutions in Northern Ireland. The GRETA report on the UK notes that this low level of prosecutions has a detrimental impact on victims and fails to provide them with the option of claiming compensation from the offender in the framework of a criminal trial.”¹²⁴
70. This duty also requires training to **investigate forced labour cases** that are not necessarily related to trafficking. The Joseph Rowntree Foundation said in its report “there needs to be more detail [in regard to training] about forced labour where trafficking is not present.”¹²⁵ Similarly, in 2010, the ATMG said that there is, “a concern that the police in general do not

¹²² Issues for women in Northern Ireland involved in prostitution, *Op Cit*, Executive Summary

¹²³ *Ibid*, page 40

¹²⁴ GRETA Report, *Op Cit*, para 353, page 79

¹²⁵ Joseph Rowntree Foundation, *Regulation and Enforcement to Tackle Forced Labour in the UK: A Systematic Response*, 2012, page 44

respond appropriately when information about cases of domestic servitude or forced labour, involving men as well as women, [are] brought to their attention.”¹²⁶

71. The GRETA report made a number of recommendations on training:¹²⁷
- Recommendation 9 urged training “periodically in order to improve the detection of potential victims of trafficking, the formal identification of victims and the provision of assistance to them. Such training should be provided to law enforcement officers, immigration officials, staff working in immigration removal centres, staff working in shelters for victims of trafficking, local authorities staff, diplomatic and consular staff, health professionals, social workers and labour inspectors.”
 - Recommendation 10 invited the UK “to step up the training provided to prosecutors and judges on the issue of [human trafficking] and the applicable legislation and case-law, by stressing the importance of applying a human rights-based approach on the basis of the Council of Europe Convention and the case-law of the European Court on Human Rights.”
 - Recommendation 34 further states there should be continuing “efforts to train law enforcement officials to detect cases of [human trafficking] and to step up proactive investigations, including through co-operation between the police, UKBA and other relevant actors and the setting up of more units of specialised investigators.”

How Will This Clause Help

72. We would hope that this clause will help to increase the number successful prosecutions in the Province.
73. We are particularly concerned about the potential implications of the National Crime Agency (NCA) not operating in Northern Ireland and the impact that may have on trafficking operations. This may make this clause even more essential. We note that the Minister for Justice has said that the PSNI will “not be able to draw on the direct operational support of the NCA in Northern Ireland, except where there are immigration offences”.¹²⁸

Potential Amendments

74. We acknowledge that this clause may require amendment as a consequence of the reference to the “Department” made at the opening of the clause. We suggest that either each department is listed in a subsection to this clause or a general phrase such as “all Departments and agencies responsible for investigating or prosecuting a human trafficking offence or slavery offence shall take the necessary measures.” This would mean that the responsibility for all training does not lie just with the Department of Justice.

¹²⁶ *Wrong Kind of Victim? Op Cit*, page 70

¹²⁷ GRETA Report, *Op Cit*, pages 84 and 88

¹²⁸ [AQW 26625/11-15](#), Answered 10/10/13

Clause 8: Non-prosecution of victims of trafficking in human beings

75. Clause 8 would ensure that no prosecution or imposition of penalties on victims of trafficking occur if a victim commits a crime under duress associated with trafficking or if the victim was a child at the time. This clause does not apply to victims of forced labour.

International Obligations

76. Article 8 of the EU Directive requires that “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 trafficked.
77. Article 26 of the Convention has a similar requirement that States should “provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”

Evidence of Need

78. In the ATMG Report published in 2013, it was argued *that* “It remains the case in the UK that trafficked children are prosecuted for crimes they are forced to commit while being exploited and under the control of traffickers, while their traffickers go unpunished.” The report went on to say that “It is reported that, despite the ACPO and CPS guidance, many children, in particular Vietnamese young people, are being arrested when found in cannabis farms and sent to prisons or Young Offenders Institutes.”¹²⁹
79. In Northern Ireland, the Law Centre have submitted that victims have been prosecuted and detained before establishing whether actions were the result of coercion.¹³⁰
80. The Centre for Social Justice Report *It Happens Here* published in March 2013 found that the existing CPS policy on non-prosecution of victims of trafficking is “not widely known about” and “not being adequately implemented across the criminal justice sector.” The report recommends creation of “a statutory statement of policy of non-prosecution of victims of modern slavery, creating an obligation across all sectors of the criminal justice system.” The report states that this statutory protection is crucial if the duty of non-prosecution is to be taken seriously, affirming that to do so would not create wholesale immunity or a loop hole for people who would wish to exploit it. Rather that it would create a clear statement that it is in the public interest for victims to be formally identified, for their victim status to be considered and that the offences for which they have been charged are considered in the light of the pressures exerted on them through their experience of exploitation and trafficking.¹³¹

¹²⁹ *In the Dock, Op Cit*, June 2013, pages 116 and 117

¹³⁰ GRETA Report, *Op Cit*, para 332, page 75

¹³¹ Centre for Social Justice, *It Happens Here*, March 2013 page 97

81. CARE in NI welcomes the PPS in Northern Ireland’s recently published “Policy for Prosecuting Cases of Human Trafficking.”¹³² While it is positive that the PPS has outlined that “should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor mitigating against prosecution”¹³³, we remain unconvinced that this policy goes far enough in looking to protect victims of human trafficking from prosecution.
82. In our evidence to the consultation on the Prosecution Policy, we raised two concerns:
- The CPS Policy for Prosecuting Cases of Human Trafficking, which applies in England and Wales has stronger wording stating that, “Where there is clear evidence that the suspect has a credible defence of duress, the case should be discontinued on evidential grounds”.¹³⁴ We recommended that the policy on non-prosecution in cases of duress be strengthened, including listing factors that would indicate the offence has been committed under duress.
 - The non-prosecution policy does not specifically cover the case of children who are trafficked and should be treated as victims. The CPS Policy for England and Wales says,¹³⁵ “Where young people are involved and where there is a credible suspicion that the child or youth might have been trafficked and exploited through criminal activity, then that would generally provide a defence of duress. If new information or evidence supports the fact that the child or youth has been trafficked and has committed the offence whilst in a coerced situation, then there is a strong public interest to stop the prosecution.” We recommended that the case of children committing offences because of being trafficked should be specifically covered in the Northern Ireland policy.

How this Clause Will Help

83. Given the evidence above, we are deeply concerned by how the policy of non-prosecution on grounds of interest is actually working in practice. We submit that a legislative solution may be a better approach in light of the fact that some individuals in the UK have been charged with offences that they were forced to commit due to their trafficked status.

Addressing Concerns about Clause 8

84. We understand that a number of criticisms were levelled against this clause during the Second Stage debate, including concerns around judicial discretion and the argument that this clause

¹³² Public Prosecution Service for Northern Ireland, Policy for Prosecuting Cases of Human Trafficking, September 2013
<http://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Publications/Policy%20for%20Prosecuting%20Cases%20of%20Human%20Trafficking.pdf>

¹³³ *Ibid*, page 20

¹³⁴ http://www.cps.gov.uk/publications/docs/policy_for_prosecuting_cases_of_human_trafficking.pdf, page 30

¹³⁵ *Ibid*, page 31

effectively provides “blanket immunity” for those who have been trafficked. We acknowledge that amendments to this clause may be appropriate, but we do believe that it is important that legislation makes clear that victims of trafficking in human beings should not be prosecuted for offences they committed as a consequence of being trafficked.

85. It is important to note that the clause does not in fact provide for a “blanket immunity”. It provides only for prosecution to be waived or for penalties not to be imposed where the victim “has committed a criminal act as a **direct consequence** of the trafficking in human being” and where the victim has been **compelled** to commit the criminal act as a direct consequence of being subjected to threats, abduction, fraud, deception, etc. Thus, it does not provide a “get out of jail free” card for victims of trafficking to avoid all prosecution. This clause would only apply where the offence would not have occurred but for the offender being themselves a victim of human trafficking and subjected to the coercion of another.
86. The above criteria retain the necessity for prosecutorial and judicial consideration both in determining the relationship between the offence and the offender’s status as a victim of human trafficking and (for adult offenders) the connection between the criminal act and the coercive actions of their trafficker.

Clause 9: Victim of trafficking in human beings

87. This clause employs useful terminology already used in England and Wales for the purpose of defining a victim so that it is possible to refer to victims in later clauses in Parts 2 and 3 of the Bill to ensure that victims are able to receive particular services and support which are open to them.
88. A victim is defined by:
 - their identification by a competent authority – currently through the National Referral Mechanism; and
 - the definition of “trafficking in human beings” used in the European Convention on Human Trafficking.
89. The Department of Justice has suggested that this clause is unnecessary. However, we note that Lord Morrow could have been faced with criticism if there had been no definition of a victim for Parts 2 and 3 of the Bill. By ensuring that clause 9 is included, this problem is avoided.
90. It is also salient to note that the Government at Westminster felt that they needed to define a victim in the Legal Aid Act 2012 and did so in relation to the European Convention. This clause is based on the wording used in the Legal Aid Act.¹³⁶

¹³⁶ See Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, Paragraph 32

Clause 10: Requirements for assistance and support

91. Clause 10 sets out a number of obligations on the Department of Justice and the Department of Health to provide assistance and support to victims of human trafficking.

International Obligations

92. Articles 11 and 14 of the Directive and Article 12 of the Convention set out the details of the practical assistance and support that states must provide to victims.
93. Article 11 requires Member States:
- “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”;
 - “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 be trafficked;
 - “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”; and
 - “to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.”
94. The “assistance and support” should 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 medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate” There should also be particular help for those victims with special needs.
95. Article 14(1) sets out the measures that need to be taken to assist and support child victims. There must be a “durable solution” for the child and access to education for child victims and children of victims. Article 14(3) says where appropriate and possible assistance and support should be available to the family of a child victim if they are in the Member State’s territory.
96. Article 12 of the Convention sets out similar requirements to Article 11 and sets out that the assistance “shall include at least:
- standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
 - access to emergency medical treatment;
 - translation and interpretation services, when appropriate;
 - counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;

- assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- access to education for children.”

97. An addition requirement of the Convention that is “Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.”

Evidence of Need

98. The provision of proper assistance and support for victims of trafficking is one of the key emphases of the GRETA report. This is especially seen in recommendation 26 of the report, which states that the UK should “ensure that all potential and actual victims of trafficking are provided with adequate support and assistance from their identification through to their recovery.” GRETA specified that this should include:

- “adopting clear support service minimum standards for victims of trafficking and the provision of adequate funding to maintain them; -
- ensuring that all children victims of trafficking benefit from the assistance measures provided for under the Convention, including appropriate accommodation and access to education
- enabling victims of trafficking to have access to the labour market, vocational training and education as a form of rehabilitation;
- ensuring that victims of trafficking who need it can benefit from translation and interpretation services;
- improving the provision of legal advice or assistance to victims on various matters (NRM, asylum criminal proceedings, compensation).”¹³⁷

99. The Anti-Trafficking Monitoring Group noted a number of difficulties with regard to support services for victims. In their 2013 report, they stated that in Northern Ireland “the availability of ongoing specialist support services or interpreters trained in dealing with cases of trafficking is patchy. Many victims do not receive the counselling they need and are entitled to.”¹³⁸

100. The Law Centre has also noted significant issues with regard to access to support services. In their briefing paper on the new working arrangements for adult victims of trafficking in Northern Ireland, they noted that “In practice accessing specialist support services for victims has been ad hoc and inconsistent. Many victims are not ready to engage with specialists so soon after escaping from their traffickers and while they are in a period of reflection and recovery. In addition, some victims need more comprehensive and long term support.”¹³⁹ While praising aspects of the guidance published by the Department of Justice, the Law Centre

¹³⁷ GRETA Report, *Op Cit*, page 86

¹³⁸ In the Dock, *Op Cit*, page 126

¹³⁹ <http://www.lawcentreni.org/Publications/Law%20Centre%20Information%20Briefings/LCNI-Briefing-Trafficking-March-2013.pdf> page 4

noted that “it is very brief on any detail about how social services, in particular, can assist in the welfare and protection of adult victims of human exploitation recovered here.”¹⁴⁰

How this Clause Will Help

101. Although services are currently provided by Migrant Help and Women’s Aid, they are not mandated by law and without this protection they exist simply at the pleasure of the current administration. Clause 10 would make the provision of assistance and support for victims of trafficking secure. It could not be compromised without the full scrutiny and approval of the Northern Ireland Assembly.
102. Since the publication of Lord Morrow’s draft Bill the Minister of Justice has intimated an interest in introducing secondary legislation to ensure that practical assistance and support is provided to victims of human trafficking.¹⁴¹ However, in light of Lord Morrow’s Bill, he has opted to wait and see what happens to the Bill as it makes its way through the Northern Ireland Assembly.
103. We are very pleased that there seems to be consensus on all sides with regard to this clause and that both the Minister for Justice and the Minister for Health are supportive of it. We are of the view that it would be preferable for it to be in primary rather than secondary legislation, but the important point for us is that it is in legislation rather than in guidance.

Potential Amendments

104. We understand that the Department of Health, Social Services and Public Safety has concerns about the limiting of assistance in 10(1)(b)(i) to the families of child victims in this clause. 10(1)(b)(i) is intended to meet the requirements of Article 14(4)(3) (see paragraph 95 above) but also to ensure that if the family of the child was involved in the trafficking there would be no recourse to assistance. We understand that there is conflict with other obligations (e.g. emergency medical care) so we recommend that the words “if and only if they are not suspected to have committed a human trafficking offence” be removed.

Clause 11: Compensation for victims of trafficking

International Obligations

105. Article 17 of the EU Directive requires that victims of trafficking have “access to existing schemes of compensation to victims of violent crimes of intent”.

¹⁴⁰ *Ibid*, page 6

¹⁴¹ NGO Engagement Group Meeting Minutes p6 <http://www.octf.gov.uk/Publications/Human-Trafficking/Minutes-from-the-second-meeting-of-the-Engagement.aspx>

106. Article 15 of the European Convention says that there should be a right for victims to gain “compensation from the perpetrators” [15(3)] and in 15(4) “Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.”

Evidence of Need

107. In 2010, the Anti-Trafficking Monitoring Group set out the potential avenues of compensation for victims:¹⁴²

- A compensation order in criminal proceedings (which was highlighted by the PPS in their draft policy on Human Trafficking Offences)
- Application to Criminal Injuries Compensation Authority
- Civil litigation
- In some cases going before an employment tribunal.

108. Clearly there are routes for individuals to claim compensation, but the Anti-Trafficking Monitoring Group has consistently raised concerns about whether victims do in practice receive the compensation due:

- In 2010, they said there were “**numerous practical and legal barriers**” facing victims of trafficking if they wish to seek compensation;¹⁴³
- They argued that the Government was failing to provide access to compensation by preventing victims from staying in the UK to pursue compensation since “policy for resident permits does not include grants of leave for the purpose of the victims seeking compensation.” They recommended a change to this policy.¹⁴⁴
- In their latest 2013 Report, the ATMG said, “the current compensation avenues are ineffective in securing compensation for trafficked persons and do not fulfil the spirit of the requirement for compensation in the Convention or Directive”.¹⁴⁵

109. The figures in Northern Ireland add to the evidence, since there have only been two cases of compensation paid out through the Criminal Injuries Compensation Scheme while there have been over 90 potential victims of human trafficking found in Northern Ireland since 2009.¹⁴⁶ We note that six cases of compensation have been lodged in 2013.¹⁴⁷ While there is some support provided by Victim Support NI,¹⁴⁸ this is for victims of violent crime and some individuals who are trafficked may not fall within this definition. Since there have only been

¹⁴² Wrong Kind of Victim? *Op Cit*, footnote 251, page 117

¹⁴³ *Ibid*, page 117

¹⁴⁴ *Ibid*, pages 68, 117 and 75

¹⁴⁵ In the Dock, *Op Cit*, page 91

¹⁴⁶ [AQW 25270/11-15](#)

¹⁴⁷ [AQW 25620/11-15](#)

¹⁴⁸ <http://www.victimsupportni.co.uk/what-we-do/compensation>

two prosecutions in Northern Ireland, there has been little scope for victims to be awarded a compensation order by the courts, although we note that one confiscation order was made.

110. GRETA noted that “very few victims of trafficking seek compensation” and said in their Recommendation 29¹⁴⁹ said the UK “should adopt measures to facilitate and guarantee access to compensation for victims of trafficking”, and in particular to:
- 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.”

How this Clause Will Help

111. Clause 11 of Lord Morrow’s Bill seeks to break down the barriers facing human trafficking victims and improve their access to compensation by requiring that the Department of Justice set out – potentially through guidance:
- The procedures available for victims to claim compensation;
 - What arrangements will be available to assist someone in their claim (e.g. information, legal aid etc); and
 - What arrangements will be available to assist someone who is seeking leave to remain to claim compensation.

Clause 12: Child Trafficking Guardian

112. Clause 12 requires a child trafficking guardian to be appointed as soon as a child is identified as a possible trafficking victim if there is no suitable person with parental responsibility available.

Detail of the Clause

113. Clause 12(1) 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, as defined by subsection (3). The guardian should be safeguarding the child’s best interests.
114. Clause 12(2) sets out the responsibilities of a child trafficking guardian and seeks to encompass the UNICEF expectation that “The role of a guardian is to be an advocate for the child in a wide range of discussions and decisions about what should happen to the child, in particular to

¹⁴⁹ GRETA Report, *Op Cit*, pages 8 and 87

ensure that the decision-making process primarily considers the best interests of the child. The role is also to be a link between the child and the various agencies the child comes into contact with, to ensure the child is kept informed of any relevant developments with respect to him or her, and to accompany the child in a physical way, in particular when she or he is moved between various places.”¹⁵⁰

115. Clause 12(3) sets out the conditions that apply for a child to have a child trafficking guardian, that is if the person who has parental responsibility for the child:
 - is suspected of taking part in a human trafficking offence;
 - has another conflict of interest with the child;
 - is not in contact with the child; or
 - is in a country outside of the UK (ie the child is unaccompanied).

116. Clause 12(4) defines who can be a child trafficking guardian:
 - employees of a statutory agency;
 - employees or volunteers of a “recognised charitable organisation”.

117. Clause 12(5) requires relevant agencies to recognise the authority of the child trafficking guardian in relation to a particular child.

118. Clause 12(6) defines a relevant agency as a person or organisation which provides services to the child (e.g. housing, education) or to which the child needs access in relation to being a human trafficking victim (e.g. courts, CPS, police).

119. Clause 12(7) states the Department:
 - Shall by order set out the arrangements for appointing a child trafficking guardian as soon as possible after identification of a trafficked child;
 - May set out rules on training for child trafficking guardians, in a similar way to magistrates (see Courts Act 2003, section 10(4));
 - Shall by order designate which organisations can be a recognised charitable organisation. This is in place to ensure that only specialised NGOs could be involved in being a child trafficking guardian.

International Obligations

120. This meets the requirements of Articles 14(2) and 16(3) of the EU Directive. Article 14(2) outlines the following: “Members 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.” Article 16(3) states: “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.”

¹⁵⁰ Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, UNICEF, 2006, page 117

121. The Convention requires that an unaccompanied child who is identified as a victim shall have representation “by a legal guardian, organisation or authority which shall act in the best interests of that child” (Article 10(4)).

Evidence of Need

122. Table 4 sets out key facts about children trafficked in Northern Ireland. Children who are identified as trafficked are recognised as “looked after children” and are the responsibility of Health and Social Care Trusts under the Children (NI) Order 1995. The guidance on care for trafficked children¹⁵¹ suggests that in some circumstances the Trust will take parental responsibility.

Table 4: Key Facts about Children Trafficked in Northern Ireland

Key Facts
18 trafficked children identified after April 2009 ¹⁵²
8 children cared for by Health and Social Care Trusts ¹⁵³
6 children have been subject to a care order up to December 2012, all of them foreign nationals ¹⁵⁴
These 6 children were allocated a guardian ad litem (GAL) and the Trust established parental responsibility ¹⁵⁵
3 children have gone missing ¹⁵⁶
One of these missing children had a GAL ¹⁵⁷

123. The fact that three rescued trafficked children in care in the Province have gone missing (despite the fact that at least one must have had a guardian ad litem) should be a matter of real concern for legislators. Every single child matters and we must do everything we can to protect these vulnerable children and young people.

151 http://www.dhsspsni.gov.uk/oss_working_arrangements_for_the_welfare_safeguarding_of_child_victims_of_human_trafficking.pdf pages 7-8

152 See Table 2 above

153 [AQW 166676/11-15](#), Answered 26 Nov 2012

154 [AQW 25367/11-15](#), Answered 13 Sept 2013

155 [AQW 166676/11-15](#), Answered 26 Nov 2012

156 *Ibid*

157 [AQW 25159/11-15](#), Answered 13 Sept 2013

124. We recognise that some of these children have received a guardian ad litem, but this is a much narrower role than that proposed in this Bill. Guardian ad litem only represent a child in care proceedings when a care order is made. However, not all trafficked children are subject to a care order, as demonstrated in Table 4. In addition, these children will also have other agencies to deal with if they are subject to asylum and immigration matters or if they need to be a witness in a criminal case related to the trafficking and exploitation to which they have been subjected.
125. It is recognised **international best practice to have a guardian role in trafficking cases**: the UN¹⁵⁸ and UNICEF¹⁵⁹ recommend this role. In its recommendation on the UK, GRETA said it “is essential”¹⁶⁰ and repeated the need in Recommendation 22, saying that the UK should “ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian”.¹⁶¹
126. In the last 12 months:
- The Law Centre (NI) has said that, “Every separated child should have immediate access to an independent advocate” and “There should be “an expanded role for the Guardian ad Litem Agency” so that they can “advise other decision makers (such as UKBA and the Asylum and Immigration Tribunal) of the child’s best interests.”¹⁶²
 - The introduction of a guardian was recommended as an action for the UK by the US State Department in the 2013 Trafficking in Persons Report.¹⁶³
 - In Westminster the Joint Committee on Human Rights has said: “There may also be a role for other individuals to advocate the best interests of unaccompanied migrant children. We are persuaded that providing children with a guardian could support children more effectively in navigating asylum, immigration and support structures and help them to have their voices heard. We therefore support establishing pilot programmes in England and Wales to examine the case for guardianship in more depth.”¹⁶⁴
 - *Still at Risk*, a major new Home Office funded Children’s Society and Refugee Council study, recommended “A system of protection needs to be developed which includes an independent trusted adult appointed to a separated child as soon as they come to an authority’s attention. This person’s role would ensure that all potential victims of trafficking are able to understand their rights, ensure that their voice is heard in decisions

¹⁵⁸ Prevent. Combat. Protect. [Human Trafficking](#). Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, November 2011, pages 76-77

¹⁵⁹ See Guidelines on the Protection of Child Victims of Trafficking, UNICEF technical notes, September 2006, section 4.2, page 17 and Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, UNICEF, 2006, section 5.2, page 51 and pages 117-8, Check List for Guardians: Roles and Responsibilities

¹⁶⁰ GRETA Report, *Op Cit*, para 245, page 57

¹⁶¹ GRETA Report, *Op Cit*, page 86

¹⁶² Improving the system for responding to separated children in Northern Ireland: a reflection paper, Law Centre (NI), March 2013, Recommendations on page 7

¹⁶³ US Department Trafficking in Persons Report 2013, *Op Cit*, page 378

¹⁶⁴ Joint Committee on Human Rights, Human Rights of unaccompanied migrant children and young people in the UK, HL Paper 9, HC 196, June 2013, page 5

that affect them and are supported effectively through the different legal processes they are engaged in.”¹⁶⁵

How this Clause will Help

127. Having a child trafficking guardian would ensure effective support could be given to children who have been trafficked into Northern Ireland. Trafficked children are particularly vulnerable to re-trafficking. The child trafficking guardian proposed here will provide someone who will be a constant, able both to accompany and speak on behalf of the child throughout its interactions with the state.
128. The clause sets out who can be a child trafficking guardian and that they should be recognised by relevant agencies working with the child. This recognition is essential for the guardian to fulfil his or her role effectively. Clause 12 makes provision for Northern Ireland to address a very serious problem and in so-doing to put itself very much at the cutting edge of international best practice, leading the way in the UK and also at potentially very little cost (as seen in the USA¹⁶⁶). The clause does not set out how a system of child trafficking guardians should be implemented which gives flexibility to the Department of Health: it makes provision for trained volunteer child trafficking guardians as well as the option of paid guardians. Volunteer guardians would only require training and regulatory resources.
129. We are very pleased that the Minister for Health has decided to back the introduction of Child Trafficking Guardians in Northern Ireland and hope that members from all sides of the Assembly will back this clause as it goes forward.

Clause 13: Protection of Victims in Criminal Investigations

130. Clause 13 requires the Chief of Police to ensure that there is no secondary victimisation of a victim and that special care is taken in the case of child victims.

International Obligations

131. Clause 13 fulfils the requirement of Article 12(4) and 15(3) of the European Directive.
 - Article 12(4) requires to “ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation” by avoiding:
 - unnecessary repetition of interviews during investigation, prosecution or trial;
 - 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;
 - unnecessary questioning concerning the victim’s private life.

¹⁶⁵ http://www.refugeecouncil.org.uk/assets/0002/9408/Still_at_Risk-Report-final.pdf page 9

¹⁶⁶ A paper which we have produced outlining the costs of the system which operates in the US is available on request.

- Article 15(3) covers child witnesses so that:
 - interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
 - interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;
 - interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;
 - the same persons, if possible and where appropriate, conduct all the interviews with the child victim;
 - 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;
 - 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.”

132. Article 30 of the Convention, requires protection of the victim’s private life, and where appropriate, identity and ensuring the victim’s safety and protection from intimidation during judicial proceedings. Special care must be taken of children’s needs in court proceedings.

Evidence of Need

133. Clause 13 is similar to sections 3 and 4 of the Trafficking People for Exploitation Regulations 2013¹⁶⁷ which were introduced by the British Government to make England and Wales compliant with the Anti-Trafficking Directive Articles 12 (4) and 15 (3). It is unfortunate that Northern Ireland should have now fallen behind England and Wales in this regard which need not have happened had the Criminal Justice Bill made these provisions.¹⁶⁸

134. The 2013 Regulations use the word “complainant” whereas clause 13 uses the word “victim” since victim is defined in clause 9.

How this Clause Will Help

135. Clause 13 would ensure that there is no secondary victimisation of a victim (13a), covering the requirements of Article 12(3), and that special care is taken in the case of child victims (13b) covering the requirements of Article 15(3). It would provide for victims of trafficking to receive special treatment during police investigations and seeks to protect them from additional stress and anxiety during the investigation process caused by unnecessary re-telling of their story, personal interrogation or contact with their accused traffickers. We believe that this could be of real value for victims. We are very pleased that the Minister for Justice

¹⁶⁷ http://www.legislation.gov.uk/ukxi/2013/554/pdfs/ukxi_20130554_en.pdf

¹⁶⁸ Lord Morrow argued for such an amendment: <http://www.niassembly.gov.uk/Documents/Official-Reports/Plenary/2012-13/Microsoft%20Word%20-%20@@aims-hansard-20130219221648953.pdf> page

supports this clause and hope that members from all sides of the House will back it going forward.

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

136. In Northern Ireland vulnerable witnesses are eligible for so-called “special measures” under the Criminal Evidence (Northern Ireland) Order 1999 (CENIO). Victims of trafficking for sexual exploitation are automatically entitled to special measures under the CENIO. This clause extends the provisions to trafficking for other types of exploitation and extends special measures for children in particular circumstances.

137. The protections available under CENIO include:

- Article 11: Screening witness from accused;
- Article 12: Evidence by live link;
- Article 13: Evidence given in private;
- Article 15: Video recorded evidence in chief.

International Obligations

138. Clause 14 builds on the requirements of Article 30 of the Convention (see paragraph 132 above) and Article 12(4) (see paragraph 131 above); in particular, Article 12(4) requires that a victim does not have to give evidence in open court. Article 15 address measures required for child witnesses: that they can give video evidence and without members of the public being present.

Evidence of Need

139. Clause 14 is similar to, but goes further than, the Schedule of the Trafficking People for Exploitation Regulations 2013¹⁶⁹ which were introduced by the British Government to make England and Wales compliant with the EU Directive. It is unfortunate that Northern Ireland should also have now fallen behind England and Wales in this regard which could similarly have been avoided through appropriate provisions in the Criminal Justice Bill.¹⁷⁰

140. The ATMG said in their 2013 Report, “Special measures should be granted as a matter of course in all trafficking trials given that trauma may be suffered by trafficked persons for sexual and non-sexual exploitation. All trafficked persons arguably fit within these categories. However, only cases involving sexual offences are the victims afforded automatic rights to apply for special measures and they may not be put in place unless requested. Currently persons trafficked for labour do not qualify for automatic entitlement to special measures and prosecutors have to argue why these individuals are vulnerable and intimidated witness. There

¹⁶⁹ See footnote 167

¹⁷⁰ Lord Morrow argued for such an amendment, see footnote 168

are no guarantees that such arguments will be successful and an order made. There were reported cases of forced labour where some special measures were not granted. It should be good practice for all police forces/CPS to request these protection mechanisms for all trafficked persons. A better option would be to make them automatically available in all trafficking cases rather than having to make application to the court for them. This would bring the UK in line with its obligation under the Convention and Directive.”¹⁷¹

How this Clause Will Help

141. **Clause 14** amends the CENIO, so that:

- A trafficking victim should automatically be eligible for special measures under the CENIO. Clause 14(a) amends Article 5(4) so that it covers trafficking for labour as well as any sexual offence (which covers trafficking offences for sexual exploitation);
- Evidence can be given in private for a labour trafficking victim. Clause 14(b) amends Article 13(4)(a);
- If the age of a victim is uncertain and is believed to be under the age, the witness shall be presumed to be under 18. Clause 14(c) amends Article 21 and clause 4(f) amends Article 39.
- An offender may not cross examine a labour trafficking victim. Clause 14(d) amends Article 22.
- An offender may not cross examine a child victim of an labour trafficking offence – 14(e)(a) amends the criteria in Article 23(3) so that it includes new paragraph 23(3)(cd). Clause 14(e)(b) ensures that the a child who is under the age of 17 is protected for labour trafficking offences as well as sexual exploitation offences.

142. These special measures will make it much easier for trafficking victims where there is no element of sexual exploitation to act as witnesses in criminal trials. Giving evidence at trial can be a stressful experience for witnesses and this can be especially so for trafficking victims, whatever form of exploitation they experienced. Consequently, any measures which help to make this process easier (without jeopardising the trial process) would be valuable. In particular, the protection from having to give evidence in open court face to face with their abuser is a vital provision. It is hoped that in making it easier for trafficking victims to give evidence in Court, this clause will help the courts to secure more convictions of traffickers, an area where Northern Ireland and indeed the UK as a whole has not been strong up to now.

Potential Amendments

143. At Consideration Stage, there should be an amendment to change the word “victim” to “complainant” in the amendment proposed to Article 21 in clause 14(c) so there is consistent use of terminology across the Criminal Evidence (Northern Ireland) Order 1999.

¹⁷¹ In the Dock, *Op Cit*, page 85

Clause 15: Prevention

144. Clause 15 obliges the Department of Justice to publish a strategy annually on raising awareness and reducing trafficking and slavery offences in “co-operation with non-governmental organisations and other relevant organisations.”

International Obligations

145. Such a strategy would help ensure that Northern Ireland is compliant with the spirit of:
- Article 18 of the European Directive – “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” and “appropriate action...aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.” would be helpful in keeping the Department of Justice focused on tackling human trafficking and slavery offences and holding the Department to account if they fail to take effective action on these issues.
 - Article 35 of the European Convention – “Each Party shall encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention.

Evidence of Need

146. Raising awareness of human trafficking is one of GRETA’s core themes. This is particular seen in recommendation 14 of the report, which states the UK “should plan future information and awareness-raising campaigns with the involvement of civil society and on the basis of previous research and impact assessment. More should be done to raise awareness of internal trafficking and the risks of trafficking of British nationals abroad, with a special emphasis on trafficking in children. More attention should also be paid to raising awareness of the risks of trafficking in men.”¹⁷²
147. We also believe that it is important that members of the Committee are cognisant of the fact that GRETA in its report raised concerns about data collection on human trafficking. They said, “concerns have been raised about the lack of reliable data on adult and child victims of trafficking in Northern Ireland. Different bodies are involved in collecting data but there is no central data collection and analysis point, which is crucial for planning policies to protect and assist victims of trafficking.”¹⁷³ This is exactly the sort of thing that could be addressed in an annual strategy.

¹⁷² GRETA Report, *Op Cit*, p84

¹⁷³ *Ibid*, para 132, page 36

How this Clause Will Help

148. The Minister of Justice, despite initial opposition, has recently decided to introduce an annual action plan on a non-statutory basis. The first plan was published in May 2013.¹⁷⁴ This is a welcome step. However, **we believe that it would be better if the report was statutorily required.** At the current time, the Minister could decide to withdraw the annual report without any scrutiny from the Assembly. Statute would ensure that this could not be done. Moreover, the report proposed in Clause 15 **would also cover slavery offences** where there is no element of trafficking.

Clause 16: Northern Ireland Rapporteur

149. This clause requires the Department of Justice to set up a new body, independent of government, to report to the Assembly on the performance of this Act and on other related matters.

International Obligations

150. This clause would fulfil:

- Article 19 of the European Directive, which requires each state to take measures to establish “national rapporteurs or equivalent mechanisms”. The Directive says that “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 co-operation with relevant civil society organisations active in the field, and reporting.”
- Article 29(4) of the European Convention which says that “Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.”

Evidence of Need

151. The Inter-departmental Ministerial Group (IDMG) on Human Trafficking has been acting as the UK’s National Rapporteur.¹⁷⁵ Whilst this might technically meet the demands of the Directive as drafted, it is generally recognised that Rapporteurs are **independent** of the body they are overseeing. We note that there is now independent NGO representation on the IDMG¹⁷⁶ but this is still not enough to meet the spirit of the requirements for a National Rapporteur.

¹⁷⁴ <http://www.octf.gov.uk/Publications/Human-Trafficking.aspx>

¹⁷⁵ GRETA Report, *Op Cit*, page 95

¹⁷⁶ Second Stage Debate, Official Report, 24 September 2013, page 56

How this Clause Will Help

152. This clause would ensure an independent body in Northern Ireland would be able to hold the relevant departments to account. We recognise that the rapporteur is required at the national level, not the regional level, but the Northern Ireland Assembly cannot legislate for the whole of the UK.
153. We are cognisant of the fact that the Home Secretary announced on 25 August that there should be a “modern slavery commissioner” for the United Kingdom and that this will be introduced through a Modern Slavery Bill for England and Wales.¹⁷⁷ To our mind, what is important is that there is a rapporteur providing independent scrutiny of the work of the PSNI and relevant departments in Northern Ireland. If it can be shown that it would be better if this was provided for the whole of the UK, we would be supportive of that. We believe that this clause should be retained until more detail is confirmed of how this Commissioner would work in the Northern Ireland context. We understand that a draft Bill will be published in this session of Parliament and a final Bill introduced in the next session.¹⁷⁸

Clauses 17-19

154. The final three clauses of the Bill are administrative in nature. Clause 17 sets out definitions in the Bill. Clause 18 confirms that any orders in the Bill should be made by affirmative resolution and clause 19 sets out the title and commencement. CARE has no comments on those aspects of the Bill.

Costs of the Bill

155. We note that there is some concern about the potential costs of this Bill. Introducing any new costs at a time of fiscal constraint needs to be justified, but given the impact on human lives we think an additional estimated £1.3m of new spending is not unreasonable. We also note that during the Second Stage Debate there was comment on the £28m spent on policing recent protests.¹⁷⁹
156. A recent report on the costs of organised crime also puts the cost of the Bill in context. The Home Office estimated the scale of human trafficking of foreign women for sexual exploitation (but not labour exploitation or domestic human trafficking for sexual exploitation) at a sum of

¹⁷⁷ Confirmed in Second IDMG Report, October 2013, *Op Cit*, paragraph 5.53, page 39

¹⁷⁸ <https://www.gov.uk/government/news/home-secretary-begins-evidence-sessions-on-modern-slavery>

¹⁷⁹ Second Stage Debate, Official Report, 23 September, page 87

£130m available to traffickers and the social and economic costs to those who are trafficked and the ensuing costs (excluding policing costs and the UK Border Agency) at £890m.¹⁸⁰

157. The 2013 IDMG report suggested that trafficking in Northern Ireland made up 1 per cent of the all of the trafficking in the UK, in which case the **scale of organised crime in Northern Ireland would be approximately £1.3m and the social and economic costs would be approximately £8.9m.**¹⁸¹ In this context, the costs of the Bill look to be value for money.

Conclusion

158. CARE in Northern Ireland believes that the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill is an extremely important piece of legislation. The Bill would mean Northern Ireland is taking the lead in combating trafficking within the UK. This would be excellent news for the victims of trafficking in Northern Ireland, very bad news for the traffickers and positive for the people of Northern Ireland as a whole. It will help Northern Ireland to reconnect with its great abolitionist tradition and see the Northern Ireland Assembly make a decisive difference for some of the most vulnerable individuals already here and who come to the Province. We are happy to provide oral evidence to the Justice Committee if they would find that helpful in their deliberations.

October 2013

CARE in Northern Ireland Public Policy Team,
East Belfast Network Centre, 55 Templemore Avenue, Belfast, BT5 4FP

mark.baillie@care.org.uk

¹⁸⁰ Home Office, [Understanding Organised Crime: Estimating the Scale and the Social and Economic Costs](#), Research Report 73, Authored by Mills H, Skodbo S and Blyth P, October 2013, Page 10.

¹⁸¹ Ibid, These figures tie up with Table A1.22, page 86