

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

Background

The EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims requires to be implemented by all parts of the UK. The Northern Ireland Executive has proposed only two changes to the law to be compliant with the EU Directive – firstly that where offences are carried out abroad, individuals can be prosecuted in Northern Ireland and secondly, that internal trafficking within the UK is made a crime. As this falls short of the EU Directive, a private members Bill has been proposed by Lord Morrow to enable NI to reduce demand, tackle trafficking and support victims.

What the Bill proposes

The Bill is comprised of 5 parts:

Part 1 deals with Human Trafficking offences and to comply with the EU Directive, it sets out that the **consent** of a victim to any action related to trafficking is irrelevant where the victim agreed to the action because of threats, abduction, fraud, deception, the abuse of power or a position of vulnerability, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person or because the victim was a child when the trafficking took place.

When the court is considering sentencing, certain '**aggravating factors**' are proposed that the court should take into account so as to make the crime more serious and therefore giving the criminal a longer sentence. These factors include offences committed by a public official or person who is a member of a criminal organisation, offences committed against a child or vulnerable adult, offences endangering the life of the victim or committed by use of serious violence.

The Bill also creates an offence where a person makes or promises payment for the sexual services of a prostitute.

The Bill provides for the investigation and prosecution of human trafficking. It proposes that the Department of Justice shall take necessary measures to ensure that those responsible for such investigation or prosecuting are trained accordingly and given the necessary effective investigative tools.

Comment – The above is positive as it ensures there the trafficker cannot argue that the victim in some way agreed to the action related to trafficking. Consideration is being given to the situation which the victim was part of.

It has been considered that one of the primary reasons for human trafficking is for the purposes of prostitution. At present it is only illegal to pay for a prostitute if it can be ascertained that there was coercion involved. The Bill therefore makes it an offence simply for those who pay/promise to for a prostitute. The punishment for this is simply a fine and the question is whether this is severe enough and should sentencing extend to

imprisonment. More generally, there are other factors that precipitate human trafficking but the Bill narrows these to prostitution based on the higher number of those who are both the victims of trafficking and sexual exploitation. There is no breakdown of the gender, age or nationality however of those victims so it is difficult to determine whether the 'aggravating factors' that a judge will have to take into consideration will be effective in increasing sentences and thereby deter trafficking – one of the purposes of the Bill itself.

More generally, it is a positive measure that training is provided. The Bill however is very general in its wording and there is no reference to the extent or level of training or how it is to be assessed or if any contemplate any accountability as to the standard of that training.

Part 2 of the Bill covers assistance and support of the victims. The test of whether a person is a victim is where there are 'reasonable grounds' to believe that they are a victim. The Bill provides for support until 3 months after criminal proceedings are completed and particular reference is given to child victims.

The Bill also provides that Legal Aid should be made available to those who are victims. In addition, compensation should also be made available to victims.

Each child who is a victim of trafficking is to have a 'legal advocate' appointed to represent them and to ensure all decisions are taken in the child's best interest.

Comment – One of the important purposes of the Bill is to provide support and assistance to the victim. The concern is however that this is limited to only 3 months after the criminal proceedings against the trafficker are completed. While resources are limited and it is perhaps prudent to have some kind of restriction put in place, it seems to leave the victim again potentially vulnerable, a relatively short period of time after the court proceedings have taken place. In addition, with regards to children the Bill sets out to promote the long-term welfare of that child and it is questionable if this can be achieved if post-court support only is to last for that 3 month period.

The provision of a legal advocate is positive given the particular vulnerability of children and especially if they are of different nationality without any family assistance while here in Northern Ireland.

Part 3 of the Bill deals with amendments to related legislation.

Part 4 of the Bill deals with prevention and makes it a requirement of the Department of Justice to annually publish a strategy on raising awareness of and reducing trafficking.

Part 5 of the Bill deals with its general legal interpretation.

Comment – the publication of an annual strategy is a positive measure as it ensures that a continual role of the Department is to raise awareness of and to consider ways of reducing trafficking. Both of these are emphasised as requirements under the EU Directive. The

wording again is wide and the level of the requirements is left open to speculation, rather than more definite proposals.

Conclusion

The Bill is positive in that it takes on the responsibility of addressing the issue of trafficking in Northern Ireland. It is particular to this jurisdiction as it focuses on what causes the demand for trafficking, namely prostitution. It provides for the protection and support and assistance for victims and also for the requirement to provide a strategy to raise awareness and to reduce trafficking.

The Bill is narrow in the fact that it criminalises only one element of the cause for the demand in trafficking, whereas it is recognised by the EU Directive that there are other factors that increase such a demand. There may also be concerns as to why there is cut off of support to the victim after 3 months following court proceedings, especially if that victim is a child and how they can be afforded long-term welfare following such an ordeal.

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On behalf of the Board of Contemporary Christianity
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