

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

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This set of accompanying notes has been prepared by Lord Morrow in order to assist Assembly Members. The notes need to be read in conjunction with the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. The notes do not form part of the Bill. They are not, and are not meant to be, a comprehensive description of the Bill, so where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

2. The objective of this Bill is to provide Northern Ireland with a more robust legal framework in relation to:
 - the prosecution of traffickers and those subjecting people in NI to conditions of slavery;¹
 - the provision of improved support for the victims of trafficking; and
 - for tackling the demand for trafficking.
3. It will make NI a more difficult place for traffickers and for those who use the services of people who have been trafficked or are exploited and will make NI a more progressive and humane place for the victims of trafficking and slavery. It will also have the benefit of helping NI meet its international obligations:
 - to reduce demand, tackle trafficking for sexual and labour exploitation, successfully prosecute cases and support victims as set out in the European Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (EUD);² and
 - achieve better compliance with the Council of Europe Convention on Action against Trafficking in Human Beings,³ recently highlighted by GRETA report on the UK's compliance with the Convention,⁴ although the paragraphs below only make references to the EU Directive.

¹ Offences under Section 71 of the Coroners and Justice Act 2009

² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011

³ Council of Europe Treaty Series No 197, 2005

⁴ GRETA 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

CONSULTATION

4. The Sponsor carried out an eight week consultation on the policies behind the Bill from August to October 2012. A total of one hundred and forty-seven responses were received. Of those, a majority of respondents acknowledged the need for further action on trafficking and in the vast majority of cases agreed aspects of the Bill would make a positive difference in Northern Ireland.
5. In particular, there was support for introducing a slavery offence and an offence of paying for sexual services of a person. There was also support for including the following issues to be counted as aggravating factors for the purposes of court sentencing: paramilitary involvements, threats to a victim's family, involvement of a family member and involvement of a person in a position of trust.

OPTIONS CONSIDERED

6. In developing this legislation, the Sponsor considered the following options:
 - **Option 1** - to seek to amend the Criminal Justice Bill, introduced in the Northern Ireland Assembly in June 2012 and enacted in April 2013, which inserts provisions into the Sexual Offences Act 2003 and amends the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to create new offences to ensure the United Kingdom's compliance with the European Directive on Human Trafficking. The Sponsor considered the scope for adding provisions to this legislation to strengthen the provision of assistance and support for victims of human trafficking, to address the demand for sexual services, and to provide for investigations and prosecutions.
 - **Option 2** - to introduce and enact a standalone Bill to improve assistance and support to victims, to make it an offence to pay for the sexual services of a prostitute in Northern Ireland, to strengthen provisions relating to the investigation and prosecution of trafficking and slavery offences and to require a Northern Ireland rapporteur.
7. The Sponsor considered that, although the Criminal Justice Bill addressed some of the concerns around strengthening human trafficking offences, more could be done to improve the legislative framework on human trafficking in Northern Ireland which could not be accommodated within the scope of the Criminal Justice Bill. For this reason, the Sponsor concluded that a separate Bill was necessary.

OVERVIEW

8. The Bill has 19 clauses.
9. Clauses 1 to 8 cover offences and investigation/prosecution of offences. The principal aim of these clauses is to ensure there are effective offences and sufficient resources for effective investigation and prosecution of cases. The clauses bring in some new

definitions in relation to human trafficking and slavery offences and create a new offence of purchasing sexual services to reduce demand for trafficked individuals and combat exploitation.

10. Clauses 9 to 12 set out legal requirements for providing effective assistance and support for victims of human trafficking.
11. Clauses 13 and 14 provide additional protection for victims and witnesses during investigations and trials. Clause 14 amends the law on “special measures” for witnesses to ensure that all trafficked victims are eligible for special measures.
12. Clauses 15 and 16 require the Department of Justice to publish a strategy every year to raise awareness of and reduce human trafficking and slavery; and to set up a Northern Ireland Rapporteur.
13. Clauses 17 to 19 set out definitions and commencement information.

COMMENTARY ON CLAUSES

Clause 1: Definition of Human Trafficking and Slavery Offences

Clause 1 sets out what the Bill means by a human trafficking offence and a slavery offence.

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

- Sections 57 to 59 of the Sexual Offences Act 2003 (SOA) that covers sexual exploitation (and would cover the new offence 58A introduced by the Criminal Justice Act 2013 (CJA));
- 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.

A slavery offence means an offence under section 71 of the Coroners and Justice Act 2009.⁵

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

Clause 2(1) sets out the conditions when the consent of a victim to either a human trafficking offence or slavery offences shall be seen as irrelevant, i.e. situations of duress, or the victim is a child.

Clause 2(2) defines vulnerability.

⁵ This part of the Bill has been introduced as a result of the Consultation on Lord Morrow’s Bill

Clause 3: Aggravating factors

The EUD requires courts to consider aggravating factors when passing a sentence for a human trafficking offence (Article 4). **Clause 3(1)** sets out the aggravating factors that apply to both human trafficking and slavery offences. The EUD specifies that under these circumstances, there must be a penalty of a maximum of ten years' imprisonment. Since the maximum penalty is 14 years, no penalty is stipulated within this section; rather they will be taken into account for sentencing up to 14 years.

The Bill contains additional factors that can be counted as aggravating after the consultation on Lord Morrow's Bill: threats to a victim's family, involvement of a family member, involvement of a person in a position of trust, a previous offender.⁶

Clause 3(2) sets out definitions for three of the terms used in Clause 3(1).

Clause 4: Minimum sentence for human trafficking and slavery offences

This is a new clause added to the Bill after Lord Morrow's consultation and applies where a person is convicted of a human trafficking or slavery offence.

Clause 4(2) requires there to be a minimum custodial sentence of two years unless there are exceptional circumstances which justify not having this minimum sentence.⁷

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

Clause 5 amends section 4 of the A&IA 2004 so that additional definitions are included in the Act to mirror the EU Directive. It goes beyond the changes in the CJA 2013.

- **paragraph (a)** extends definition of force, threats, deception to cover coercion, abduction and fraud;
- **paragraphs (b) and (c)** extend the Act's definition of abuse of power – someone who abuses mental or physical disability, youth or family relationship – to include a position of trust relationship;
- **paragraph (d)** introduces a new subsection: (4)(e) to cover situations where trafficking occurs because of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- **paragraph (e)** introduces new subsection (4C) to set out definitions:⁸

⁶ Note that being a previous offender is recognised as an aggravating factor in the Sentencing Guidelines on Overarching Principles: Seriousness (para 1.22, page 6, Dec 2004)

⁷ Based on Firearms (Amendment)(Northern Ireland) Order 2005, Article 70

⁸ This clause introduces a new subsection after the new subsections 4A and 4B introduced by Section 7 of the Criminal Justice Act 2013.

- (a) to ensure that forced begging and exploitation of criminal activities are covered by the Act;
- (b) to state that position of trust has the same meaning as in the Sexual Offences Order (Northern Ireland) 2008 (SONIO).

Clause 6: Paying for sexual services of a person⁹

This clause aims to reduce the demand for trafficking by substituting a new Article 64A of the SONIO 2008 for the one that was introduced by the Policing and Crime Act 2009. Rather than making it an offence for paying for sexual services if the prostitute is subjected to force it makes it an offence for paying for sexual services.

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**);¹⁰
- 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**).

No other articles in the SONIO 2008 on prostitution would be amended by this Bill.

Clause 7: Requirements and resources for investigation or prosecution

Clause 7 sets out three requirements for investigation or prosecution, which meet Article 9 (Investigation and prosecution).

- **clause 7(1)** – that there must be sufficient training and resources for investigating and prosecuting human trafficking and slavery offences;
- **clause 7(2)** - a prosecution is not dependent on reporting or accusation by a victim;
- **clause 7(3)** - a prosecution can take place even if victim has withdrawn their statement.

⁹ This clause was Clause 4 in Lord Morrow's Draft Bill and has been substantially amended as a result of the consultation.

¹⁰ The maximum penalty reflects the penalty in Sweden. In July 2011, the maximum penalty was raised from six months to one year imprisonment. <http://www.government.se/sb/d/4096/a/119861>

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

Clause 8 sets out the requirement for no prosecution or imposition of penalties on victims of trafficking if a victim commits a crime under duress associated with trafficking (**clause 8(a)**) or if victim was a child at the time (**clause 8(b)**) which meet the stipulations of Article 8 (Non-prosecution or non-application of penalties to the victim).

PART 2: ASSISTANCE AND SUPPORT

Clause 9: Victim of trafficking in human beings

This clause uses the terminology first introduced in Westminster in 2012 to **define a victim** so that it is possible to refer to victims in later clauses. A victim is defined by:

- their identification by a competent authority – i.e. the National Referral Mechanism, which meets the EUD requirement to identify victims; and
- the definition of “trafficking in human beings” used in the European Convention on Human Trafficking.¹¹

The detail of this clause is:

- **clause 9(1)** – defines a victim as someone for whom there are reasonable grounds to believe they are a victim of human trafficking and there has not been a conclusive determination that they are not;
- **clause 9(2)** – defines reasonable grounds as being decided by the competent authority under Article 10 of the Trafficking Convention, the Article on identification of victims;
- **clause 9(3)** – defines a conclusive determination;
- **clause 9(4)** sets out definitions associated with this section and the European Trafficking Convention. In particular, this section defines “trafficking in human beings” as having the same meaning as in the Convention, that is Article 4a: *“Trafficking in human beings” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”*

Clause 10: Requirements for assistance and support

Article 11 (Assistance and support for victims of trafficking in human beings) of the Directive sets out a list of practical assistance and support that States must provide to adult victims of human trafficking. Care for a trafficked child would be met by the requirements of the Children (NI) Order 1995.¹² **Clause 10** sets out obligations on the relevant Government departments:

- **clause 10(1)(a)** - meet the needs of victims up until 3 months after criminal proceedings are completed;
- **clause 10(1)(b)(i)** –provide assistance to a family of a child victim if they resident in Northern Ireland as long as they not suspected as having committed a human trafficking offence;
- **clause 10(1)(b)(ii)** - provide assistance and support regardless of an individual’s willingness to act as a witness;
- **clause 10(1)(b)(iii)** - provide assistance and support with the agreement of the individual;
- **clause 10(1)(b)(iv)** - provide assistance and support that takes due account of the victim’s safety and protection needs. This is not a requirement of the EUD but is a requirement of the European Convention against Human Trafficking, article 12(2). The Bill contains a new addition that there should be recognition of the need for assistance from a person of the same gender;
- **clause 10(1)(b)(v)** – the assistance and support shall be provided to assist victims in their physical, psychological and social recovery. This is not a requirement of the EUD but is a requirement of the European Convention against Human Trafficking, article 12(1).¹³

Clause 10(2) lists the type of assistance and support that victims should receive.

Clause 11: Compensation for victims of trafficking

Article 17 (Compensation to Victims) requires that victims of trafficking have “access to existing schemes of compensation to victims of violent crimes of intent”. The 2010 Anti-trafficking Monitoring Group states there are four types of compensation available to victims of trafficking in the UK, but they are not successfully used:¹⁴

- compensation order in criminal proceedings;
- application to Criminal Injuries Compensation Authority;
- civil litigation;

¹¹ See Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1, Part 1, Paragraph 32

¹² See *The Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking*, Guidance issued by The Department of Health, Social Services and Public Safety and the Police Service for Northern Ireland, February 2011

¹³ See also the *Explanatory Report to the Convention*, Article 12, pages 46-49, especially paragraphs 150 and 164

¹⁴ *Wrong Kind of Victim? One Year on: An Analysis of UK Measures to Protect Trafficked Persons*, The Anti-Trafficking Monitoring Group, June 2010, page 117, footnote 251

- in some cases before an employment tribunal.

Some of these compensation options go beyond the scope required by the Directive (ie beyond compensation to victims of violent crime) so **Clause 11** requires that the Department of Justice must, by order, set out:

- **clause 11(a)** - how the compensation routes shall operate for victims of trafficking
- **clause 11(b)** - what assistance will be provided a person (both adults and children) applying for compensation and seeking leave to remain in order to claim compensation.

Clause 12: Child trafficking guardian

Articles 13-16¹⁵ of the Directive set out additional protective measures that apply specifically to children, including a guardian or representative who is required to support the child's best interests throughout the investigation and court proceedings **where there is no parent available**.

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.

The term that is generally used in international instruments for the role outlined in this new clause is 'guardian'. However, in the UK legal system, guardian has a different meaning (a parental responsibility figure) so an alternative phrase is needed to distinguish between the two roles. This clause uses the term **child trafficking guardian** to discriminate it from a legal guardian as understood within UK law, whilst covering the role referred to as 'guardian' by international instruments.

Clause 12(2) sets out the responsibilities of a child trafficking guardian. This list is based on the requirements of a guardian set out in two UNICEF documents¹⁶ 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 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.*" Please note that this function is different from that of a guardian ad litem.

¹⁵ Article 13: General provision on assistance, support and protection measures for child victims of trafficking in human beings; Article 14: Assistance and support child victims; Article 15: Protection of child victims of trafficking in human beings in criminal investigations and proceedings; Article 16: Assistance, support and protection for unaccompanied child victims of trafficking in human beings

¹⁶ 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

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).

Clause 12(4) defines who can be a child trafficking guardian:

- employees of a statutory agency;
- employees or volunteers of a “recognised charitable organisation”.

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

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

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.

Clauses 13 and 14 meet obligations of Article 12 (Protection of victims of trafficking in human beings in criminal investigation and proceedings) and Article 15 (Protection of child victims of trafficking in human beings in criminal investigation and proceedings) to ensure victims of trafficking are supported and protected during criminal investigations and trials against traffickers.

Clause 13: Protection of victims in criminal investigations

Clause 13 meet obligations of Article 12(4) and Article 15(3) and requires the police chief to ensure that there is no secondary victimisation of a victim (**13a**) and that special care is taken in the case of child victims (**13b**).¹⁷

¹⁷ This clause is a combination of E&W Trafficking People for Exploitation Regulations 2013, Regulations 3 and 4

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

Clause 14 meets obligations of Articles 12 and 15 to ensure victims of trafficking are supported and protected during criminal proceedings against traffickers. In Northern Ireland vulnerable witnesses are eligible for so-called “**special measures**” under the Criminal Evidence (Northern Ireland) Order 1999 (CENIO). Child victims of a sexual offence are automatically entitled to special measures under the CENIO. These clauses extend the provisions to trafficking for other types of exploitation.

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.

Clause 14 amends the CENIO, so that:¹⁸

- 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 a labour trafficking offence – **14(e)(i)** amends the criteria in Article 23(3) so that it includes new paragraph 23(3)(cd). **Clause 14(e)(ii)** ensures that the a child who is under the age of 17 is protected for labour trafficking offences as well as sexual exploitation offences.

Clause 15: Prevention

Clause 15 obliges the Department of Justice to publish a strategy every year on raising awareness and reducing trafficking and slavery offences in co-operation with non-governmental organisations and other relevant organisations. This will meet the demands of Article 18 (Prevention).

¹⁸ It mirrors the E&W Trafficking People for Exploitation Regulations 2013, Schedule 1, but also goes further than E&W since an offender is not able to cross examine a labour trafficking victim under this clause.

Clause 16: Northern Ireland Rapporteur

Clause 16 obliges the Department of Justice to establish an independent body to report to the Assembly on the performance of this Act and on other related matters to human trafficking and slavery. This will meet the demands of Article 19 (National Rapporteurs or equivalent mechanisms).

Clause 17: General interpretation

Clause 17 sets out interpretation so:

- **clause 17(2)** - a child is defined as being under the age of 18 in the same way as a child is defined in the Children (NI) Order 1995;
- **clause 17(3)** - if the age of the person is uncertain and there is reason to believe they are a child, they shall be treated as a child;

Clause 18: Orders

Clause 18 states that orders under this Bill will be made by negative resolution.

Clause 19: Short title, commencement and extent

Clause 19 sets out the title of the Act and that it will come into force as determined by the Department of Justice.

FINANCIAL EFFECTS OF THE BILL

14. There are some additional costs associated with the following key provisions: longer sentences arising from the creation of aggravating factors in trafficking offences; investigation and prosecution of the new offence of paying for sexual services; providing legal advocacy for children; special measures for giving evidence for trafficking victims; and providing a Northern Ireland rapporteur. The Sponsor believes that, given the benefits to be gained by society from preventing serious criminal offences and from protecting victims, the Bill represents value overall. It is estimated that, after taking into account estimated savings achieved as a result of certain provisions of the Bill, the new costs arising from the implementation of the Bill will be approximately £1.3 million.

HUMAN RIGHTS ISSUES

15. The provisions of the Bill are, in the Sponsor's view, compatible with the provisions of the Human Rights Act 1998.

LEGISLATIVE COMPETENCE

16. The sponsor of the Bill, Lord Morrow of Clogher Valley, had made the following statement under Standing Order 30:

“In my view the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill would be within the legislative competence of the Northern Ireland Assembly.”

APPENDIX: ARTICLES IN THE EURO TRAFFICKING DIRECTIVE

Article 1:	Subject matter
Article 2:	Offences concerning trafficking in human beings
Article 3:	Instigation, aiding, abetting and attempt*
Article 4:	Penalties
Article 5:	Liability of legal persons*
Article 6:	Sanctions on legal persons*
Article 7:	Seizure and Confiscation*
Article 8:	Non-prosecution or non-application of penalties to the victim
Article 9:	Investigation and prosecution
Article 10:	Jurisdiction
Article 11:	Assistance and support for victims of trafficking in human beings
Article 12:	Protection of victims of trafficking in human beings in criminal investigation and proceedings
Article 13:	General provision on assistance, support and protection measures for child victims of trafficking in human beings
Article 14:	Assistance and support to child victims of trafficking in human beings
Article 15:	Protection of child victims of trafficking in human beings in criminal investigations and proceedings
Article 16:	Assistance, support and protection for unaccompanied child victims of trafficking in human beings
Article 17:	Compensation to Victims
Article 18:	Prevention
Article 19:	National Rapporteurs or equivalent mechanisms
Article 20:	Coordination of the EU strategy on trafficking in human beings
Article 21:	Repeal of Framework Decision **
Article 22:	Transposition **
Article 23:	Reporting**

* Covered by current law

** Administrative provisions

APPENDIX: CORRELATION OF EUD ARTICLES WITH CLAUSES OF BILL

Requirement	EUD Article	Clause Number
The “Trafficking Action”: Recruitment, transportation, transfer, harbouring or reception of persons, including exchange or transfer of control over that person	2(1)	Covered in wording of current offences “arranges or facilitates”.
By means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception	2(1)	Definition of force, threats, deception already exists in section 4(4)(c) of the A&IA and is extended to cover coercion etc by clause 5(a).
By means of the abuse of power	2(1)	Abuse of power is defined in terms of mental, physical disability, youth or family relationship in A&IA in 4(4)(d). Clause 5(b) and 5(c) extends this definition to include a position of trust relationship. Clause 5(e) introduces a new subsection 4(4C)(b) to state that position of trust has the same meaning as in SONIO.
By means of the abuse of position of vulnerability	2(1) & 2(2)	Defined in clause 2(2).
By means of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person	2(1)	New subsection 4(4)(e) in A&IA introduced by Clause 5(d).
Definition of exploitation: sexual exploitation	2(3)	Covered by SOA and SONIO.
Definition of exploitation: Forced labour or services, including begging, slavery or practices similar to slavery, servitude	2(3)	Covered in A&IA, section 4(4)(a). To ensure forced begging is covered, an additional definition is included in subsection 4(4C)(a) via Clause 5(e).
Definition of exploitation: exploitation of criminal activities	2(3)	An additional definition is included in subsection 4(4C)(a) via Clause 5(e).
Definition of exploitation: removal of organs	2(3)	Covered in A&IA 2004, section 4(4)(b)
Consent shall be irrelevant	2(4)	Defined in clause 2(1)

Requirement	EUD Article	Clause Number
Conduct involving a child	2(5)	Covered in current offences: No specific act has to take place for an offence against a child. Clause 2(1) states that a child cannot consent to a human trafficking offence.
Definition of a child	2(6)	Defined in clause 17(2).
Committed against particularly vulnerable victim – child	4(2)(a)	3(1)(d) 3(2) defines vulnerable adult.
Committed within the framework of a criminal organisation	4(2)(b)	Not included
Deliberately or by gross negligence endangered the life of the victim	4(2)(c)	3(1)(g)
Committed by use of serious violence or has caused particularly serious harm	4(2)(d)	3(1)(h)
Committed by a public official in relation to duties	4(3)	3(1)(a)
Non-prosecution or non-application of penalties to victim	8	8(a) for adults under duress 8(b) for children
Not dependent on reporting or accusation of victim	9(1)	7(2)
Criminal proceedings may continue if victim has withdrawn statement.	9(1)	7(3)
Prosecution can take place for a sufficient period of time after the victim has reached the age of majority	9(2)	Not needed since there is no statute of limitation for criminal actions
Necessary measures to ensure persons, units or services responsible for investigating or prosecuting offences are trained accordingly	9(3)	7(1)
Effective investigative tools are available	9(4)	7(1)
Jurisdiction	10	Current law and CJ Act
Provided before, during and for an appropriate time after criminal proceedings	11(1)	10(1)(a)
As soon as the competent authorities have reasonable grounds for believing that the person is a trafficking victim	11(2)	10(1)(a)
Support is not conditional on the victim's willingness to act as a witness	11(3)	10(1)(b)(ii)
Establish appropriate mechanisms aimed at early identification, assistance and support for victims	11(4)	10(1)(a)

Requirement	EUD Article	Clause Number
Assistance and support shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence	11(5)	10(1)(b)(iii) and 10(2)
Information shall include information on reflection and recovery period, the possibility of granting international protection and refugee status	11(6)	10(2)(e)
Member States shall attend to victims with special needs	11(7)	10(2)(b)
Access to free legal counselling and free legal representation (to be free if insufficient resource),	12(2)	Clause 10(2)(i)-(j)
Victim may have access to witness protection	12(3)	Serious and Organised Crime and Police Act 2005, sections 82-94
Requirements to ensure witness protected during criminal investigation/proceedings	12(4)	Clause 13 and Clause 14
Child shall be provided with assistance, support and protection, with the best interests of the child as a primary consideration.	13(1)	Children (Northern Ireland) Order 1995
As above if child is unaccompanied	16(1)	Children (Northern Ireland) Order 1995
If age of person is uncertain and there are reasons to believe that person is a child, the person is presumed to be a child	13(2)	Clause 17(3)
Assistance and support to child provided following an individual assessment of the special circumstances to provide a durable solution for the child. Services to include access to education for child victims and children of victims	14(1)	Children (Northern Ireland) Order 1995
As above if child is unaccompanied	16(1) - 16(2)	Children (Northern Ireland) Order 1995
Appointment of a guardian or representative for child to support child in obtaining assistance and support services when holders of parental responsibility have conflict of interest	14(2)	Clause 12
As above if child is unaccompanied	16(3)	Clause 12
Where appropriate and possible, assistance and support to the family of the child when family is in Member State	14(3)	10(1)(b)(i)

Requirement	EUD Article	Clause Number
In criminal investigation/proceedings, child should have a representative. Parents should not be the representative if there is a conflict of interest or where child is unaccompanied or separated from the family	15(1)	Children (Northern Ireland) Order 1995 and 12
As above if child is unaccompanied	16(4)	Children (Northern Ireland) Order 1995 and 12
Free legal counselling, free legal representation including for claiming compensation for child, unless they have sufficient resources.	15(2)	Children (Northern Ireland) Order 1995 and 11
Various measures related to child witnesses	15(3) - 15(5)	Already covered in national legislation, Clauses 13 and 14
Compensation for victims	17	Clause 11
Take measures to reduce demand	18(1)	Clause 15
Actions to raise awareness and reduce trafficking	18(2)	Clause 15
Regular training for officials likely to come into contact with victims	18(3)	7(1)
Offence to use services provided by objects of exploitation with knowledge	18(4)	Policing and Crime Act 2009 (Section 15) – introduced Article 64A of SONIO. Replaced in this Bill by Clause 6
Take measures to establish national rapporteurs or equivalent mechanisms	19	Clause 16