



Human Trafficking (Scotland) Bill

Consultation Response – December 2013

Introduction

Together warmly welcomes the consultation on a draft proposal for a *Human Trafficking (Scotland) Bill* and would like to commend the work of Jenny Marra MSP and her team in putting together such a comprehensive body of work. Together's response specifically focuses on how the provisions in the draft proposal might be strengthened to ensure a child-rights approach to combating trafficking in Scotland. In producing this response, Together draws from its 2013 *State of Children's Rights* report which was produced following wide consultation with children's organisations across Scotland. This involved gathering views and opinions from 135 professionals working with and for children, through 3 seminars held across Scotland and an online survey completed by 53 children's organisations.

About Together

Together (Scottish Alliance for Children's Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have over 250 members including large international and national non-governmental organisations (NGOs) such as UNICEF UK, Save the Children, Barnardo's and CHILDREN 1st through to volunteer-led playgroups and after school clubs. Our activities include:

- Collating an annual *State of Children's Rights* report to set out the progress made to implement the UNCRC in Scotland.
- Working in partnership with the Scottish Government and Scotland's Commissioner for Children and Young People (SCCYP) on the *Scottish Children's Rights Implementation Monitoring Group* to develop a common understanding on progressing the UNCRC.
- Submitting the NGO alternative report to the UN Committee on the Rights of the Child to provide an independent NGO perspective on the extent to which Scotland is meeting its UNCRC obligations.

Together would like to make the following recommendations:

- The Human Trafficking (Scotland) Bill should fully embed a child-rights approach and have the best interests of children affected by trafficking at its core.
- The Human Trafficking (Scotland) Bill must comply with international standards including the UNCRC and its Optional Protocol on the sale of children and the EU Human Trafficking Directive (and especially Article 8).
- The Human Trafficking (Scotland) Bill should meet the Scottish Government's commitments to combat human trafficking arising from the on-going Summit process and in the SNAP¹ action plan.

¹Scotland's National Action Plan for Human Rights, 2013

Together would also like to draw attention to the recommendations made around child trafficking in its 2012 and 2013 *State of Children's Rights reports*.²

Recognising the vulnerability of child victims of trafficking

The vulnerability of children is the primary factor rendering them susceptible to trafficking and the reason why children are among those most exposed to the risk of being trafficked.³ Their dependence on adults and lack of power within the family structure generally makes them easier to control. The focus upon child victims in the European Commission's overview paper '*The EU rights of victims of trafficking in human beings*'⁴ recognises the greater risk facing children and the need to take a child-sensitive approach to trafficking in human beings.

The Optional Protocol to the UNCRC on the sale of children (which was ratified by the UK on 20th February 2009) recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.⁵ Specifically, Article 8 of the Optional Protocol asks that State Parties recognise '*the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses.*'

Together agrees with the aim of the Bill to create, in statute, specialist rights and minimum standards for child survivors of human trafficking; as well as all in terms of criminal investigations, prosecutions, and proceedings. It also supports the 'child-specific' rights proposed in the survivor standards included in the proposal for a Bill.

The Scottish Guardianship Service recognises the vulnerability and enhanced risk facing children and young people and specifically offers support to unaccompanied asylum seeking children in navigating the immigration, asylum and welfare processes and assistance in accessing help when they need it and making informed decisions about their future.⁶ Together has welcomed the Scottish Government's commitment to continue funding the Scottish Guardianship Service⁷ and would recommend the following:

- In line with The Trafficking Monitoring Group '*In the Docks*' report, a *Human Trafficking (Scotland) Bill* should include a duty to appoint a legal guardian to each suspected trafficked child in order to act in the child's best interests and to act as a link between the multiple agencies involved in prosecuting child trafficking.

A rights-based approach to combating child trafficking

The EU Human Trafficking Directive took effect in the UK in April 2013. It is a comprehensive legal instrument that, if implemented, can lever more integrated anti-trafficking responses, including through its child-focused provisions.⁸ Article 8 of EU Human Trafficking Directive states the following:

² Scotland's National Action Plan for Human Rights, 2013

³ Scotland's Commissioner for Children and Young People (2011). *Scotland: A safe place for child traffickers? A scoping study into the nature and extent of child trafficking in Scotland*

⁴ European Commission (2013). *The EU Rights of victims of trafficking in human beings*

⁵ UN Assembly (2002). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

⁶ http://www.aberlour.org.uk/how_we_help/services/248_scottish_guardianship_service

⁷ Scottish Government (2013). *The 5th UK Government Report to the UN Committee on the Rights of the Child: Scottish Government submission*

⁸ Serious Organized Crime Agency (SOCA) and United Kingdom Human Trafficking Centre (UKHTC) (2013). *United Kingdom National Referral Mechanism: provisional statistics 2012*

“Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, the child’s best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.”⁹

The EU overview report titled ‘*The EU rights of victims of trafficking in human beings*’² refers to the UNCRC, including taking the child’s best interest as a primary consideration (Article 3); prevention of public dissemination of any information that could lead to the identification of a child victim (Article 16) and a child victim who is a third-country national can only be returned once the child’s best interest has been taken into consideration (Article 22).

SCCYP’s report on child trafficking in Scotland states that children’s rights are often not upheld with child victims facing discrimination as a result of their age, and their views are not always sought after, and if so, are regularly discounted.¹⁰ As a general principle of the UNCRC, Article 12 ensures that children and young people must have their right to be consulted on their views in decisions affecting them upheld, and that these views should be taken into account.

The Optional Protocol to the UNCRC on the sale of children¹¹ includes that State Parties shall protect the rights and interest of child victims during the criminal justice process, by:

- Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- Providing appropriate support services to child victims throughout the legal process;
- Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

With regard to the 2008 UK Concluding Observation by the UN Committee on the Rights of the Child that, with reference to human trafficking, the UK should “*implement its obligations by ensuring that child protection standards for trafficked children meet international standards,*”¹² Together recommends that a Human Trafficking (Scotland) Bill should:

- Be drafted in accordance with the UNCRC and its Optional Protocol on the sale of children;
- Reflect the child rights measures included in the EU overview: ‘*The EU rights of victims of trafficking in human beings*’, and
- Comply with the EU Directive on Human Trafficking and especially Article 8.
- Includes statutory assistance for trafficking survivors and statutory protection against unjust criminalisation

⁹ EU Directive 2011/36/EU ‘on Preventing and Combating Trafficking in Human Beings and Protecting its Victims’

¹⁰ Scotland’s Commissioner for Children and Young People (2011). *Scotland: A safe place for child traffickers? A scoping study into the nature and extent of child trafficking in Scotland*

¹¹ UN General Assembly (2000). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

¹² Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No 78a-h

- Be accompanied by guidance on the non-criminalisation of survivors of trafficking developed in partnership with other relevant agencies, (especially criminal justice and the judiciary).

Raising awareness of child trafficking:

Together supports the proposal for a Human Trafficking Act that comprises a “*systematic approach to raising awareness amongst communities and key professional sectors and groups, including through training.*”¹³ Together also supports the proposal for Scottish Ministers to lead the development and implementation of a Strategy for Scotland against Human Trafficking, which has particular regard to the need to “*raise, in a systematic manner, public and professional awareness, especially via public campaigning with evaluation, as well as through multi-disciplinary training in audience and delivery.*”

Raising awareness and training is pivotal to a consistent recognition of the full range of implications of human trafficking in Scotland and for effective cooperation between multiple agencies such as the police, COPFS and victims services. It is vitally important that awareness raising and training is child-centred and focuses on the vulnerability and support needs of children and young people.

Optional Protocol 2 to the UNCRC includes that State Parties must encourage the participation of the community in fulfilling the above obligations, and in particular, children and child victims.

- Together recommends that a Human Trafficking (Scotland) Bill should introduce child-specific trafficking training for frontline staff across Scotland that is reviewed and updated regularly to improve identification of trafficked children and safeguard responses.¹⁴

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¹³ Jenny Mara (2013). *Human Trafficking (Scotland) Bill*

¹⁴ This recommendation is taken from: *The Anti-Trafficking Monitoring Group (2013). In the Dock: Examining the UK's Criminal Justice Response to Trafficking*