

Convener
Christine Grahame MSP, Justice Committee
Stewart Maxwell MSP, Education and Culture Committee
Margaret McCulloch MSP, Equal Opportunities Committee
Christina McKelvie MSP, European and External Relations Committee
The Scottish Parliament

In 2014 Scotland Welcomes the World



12 December 2014

Dear Convener

HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) BILL

I am writing to you given your Committee's relevant interest in issues relating to the trafficking and exploitation of adults and children.

As you will know, I have this week introduced to Parliament the Human Trafficking and Exploitation (Scotland) Bill. The Bill will:

- strengthen the criminal law against traffickers, with a new single offence against the trafficking of both adults and children for all forms of exploitation;
- increase to life imprisonment the maximum penalty for a trafficking offence and exploitation offences by way of slavery, servitude and forced or compulsory labour;
- give adult victims of trafficking the same rights to access immediate support and assistance as child victims already have;
- ensure guidance for prosecutors in dealing with the victims of trafficking and exploitation who are forced to commit crime as a direct result of their victim status; and
- require Scottish Ministers to work with other bodies to publish and keep under review a Scottish Anti-Trafficking and Exploitation Strategy.

In developing the Bill, the Government has taken account of various relevant reports, inquiries and consultations, including the Equal Opportunities Committee's 2010 *Report into Migration and Trafficking*¹ and the consultation in 2013 by Jenny Marra MSP on a possible Human Trafficking Member's Bill². The accompanying documents provide context to the development of the Bill. Given the likely interest of your Committees' members, it may be helpful to provide some further background to specific aspects of the Bill and associated matters.

¹ <http://archive.scottish.parliament.uk/s3/committees/equal/inquiries/migration/migration.htm#top>

² <http://www.jennymarra.com/human-trafficking-bill/4579313773>

Victim Identification / National Referral Mechanism

One of the most important aspects of the response to human trafficking is the need to improve the identification and support of both adult and child victims. Human trafficking is a hidden and complex crime and it is widely acknowledged that current data and estimates of the potential number of trafficking victims in Scotland, whether through the National Referral Mechanism (NRM) or National Crime Agency Strategic Assessment, are likely to provide a significant under-estimate of the true extent of this crime.

The NRM, established by the UK Government in 2009, is the process by which people who may have been trafficked are identified, assessed and can access immediate assistance and support. The NRM process has been the subject of repeated criticism over time in various reports and inquiries, including the Anti-Trafficking Monitoring Group's document *Wrong Kind of Victim* (2010)³ and the Equality and Human Rights Commission's *Inquiry into Human Trafficking in Scotland* (2011)⁴.

In April 2014, the UK Home Secretary commissioned a review of the NRM process. The Scottish Government and other relevant stakeholders in Scotland, including Police Scotland, COPFS, COSLA and third sector organisations were consulted as part of the review process. The final report of the Review was published in November 2014⁵. The Review found that awareness of the NRM was low and that the system was disjointed and applied inconsistently. The Review recommended a fundamental overhaul of the NRM referral process and also that new arrangements for establishing the conclusive identification of trafficking victims should be explored. The Review made a number of other recommendations to improve the collection and collation of data and intelligence about human trafficking.

All of the recommendations from the NRM Review have been accepted in principle by UK Ministers. However, the detail of how these recommendations will be progressed and implemented is not yet clear. The report of the NRM Review and the UK Government's acceptance of its recommendations were confirmed too late for these to be taken into account in the drafting of our Human Trafficking and Exploitation (Scotland) Bill.

We will seek to engage closely with the UK Government and relevant Scottish stakeholders in considering and, if relevant, taking forward the recommendations from the NRM Review and consider carefully any implications for our Bill. Our priority will be to ensure that, whatever arrangements are put in place, can provide greater assurance that data and intelligence will reflect more fully the scale and impact of this crime. We will keep Parliament updated about relevant developments during the passage of our Bill.

Victims Assistance and Support

The NRM process aims to enable the victims of human trafficking to access relevant support and assistance.

Children, i.e. those aged under 18, who may have been the victims of trafficking have the statutory right to access support and protection, in line with their assessed needs, under existing children's legislation, including the Children (Scotland) Act 1995 and the Children's

³ <http://combattrafficking.eu/sites/default/files/documents/ATMG%20full%20report%20June%202010.pdf>

⁴ <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/human-rights-scotland/inquiry-human-trafficking-scotland>

⁵ <https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf>

Hearings (Scotland) Act 2011⁶. The Scottish Government has produced a toolkit for agencies working with children and young people to ensure that staff are able to identify trafficked children and make appropriate referrals. The toolkit is used in conjunction with National Child Protection Guidance⁷. Provisions under the Children and Young People (Scotland) Act 2014, when implemented, will also ensure that children, including the victims of trafficking, have a named person responsible for promoting and safeguarding their safety and wellbeing.

Through the Human Trafficking and Exploitation (Scotland) Bill, adult victims of trafficking will be given the same right as child victims to receive immediate support and assistance based on an assessment of their needs. The Bill sets out the minimum types of support and assistance which should be considered when assessing each potential adult victim's needs, including access to suitable accommodation; medical treatment; interpretation and translation services, etc. Access to relevant support will not be conditional on a victim agreeing to participate with the criminal justice process against a trafficker but that assistance can only be provided where the adult consents.

As noted above, the Bill will put on a statutory basis, guidance from the Lord Advocate to prosecutors in dealing with the victims of trafficking and exploitation who have been forced to commit a crime as a direct consequence of their victim status. This provision is consistent with requirements within Article 8 of the EU Directive on Human Trafficking.

The Victims & Witnesses (Scotland) Act 2014, passed by Parliament in December 2013, includes provisions to protect and support vulnerable witnesses within the criminal justice system. This includes automatic access to special measures and support for victims of human trafficking and amended section 249 of the Criminal Procedure (Scotland) Act 1995 by requiring the courts to consider making a Compensation Order in all relevant cases.

Cross Border Engagement

As Committee Members are aware, Human Trafficking is a cross-border crime, which does not respect international or national borders and can also take place between different parts of the UK, as well as within Scotland. We have acknowledged the need to continue to work effectively with other administrations within the UK and internationally to tackle this crime.

In October, the Lord Advocate brought together prosecutors from Scotland, England and Wales, Northern Ireland and the Republic of Ireland to explore how they can work together to further disrupt and prosecute traffickers.

In addition, the Scottish Parliament has also been asked to consider a Legislative Consent Motion to agree amendments to the UK Modern Slavery Bill to allow provisions relating to enforcement powers for ships and the role of the proposed Independent UK Anti-Slavery Commissioner to extend to Scotland. The Commissioner will aim to promote understanding and good practice in combating trafficking and exploitation and supporting victims across different UK administrations. Scottish Ministers will be able to direct the work programme of the Commissioner and commission reports relevant to trafficking issues in Scotland. The Scottish Government has also welcomed amendments to the UK Modern Slavery Bill to require larger businesses to report on the actions that they are taking to ensure that their supply chains are trafficking free.

⁶ <http://www.legislation.gov.uk/asp/2011/1>

⁷ <http://www.scotland.gov.uk/Publications/2014/05/3052>

In its final report, the Smith Commission included within the section on “issues for further consideration”, a recommendation that the Scottish and UK Governments should explore together the potential to devolve to Scotland the power to extend the temporary right to remain in the UK for someone who is identified as a victim of human trafficking in Scotland⁸. The Scottish Government will explore this recommendation as a matter of urgency with the UK Home Office.


Human Trafficking & Exploitation Strategy

The Human Trafficking & Exploitation (Scotland) Bill is an important step in our response to challenging and, ultimately, eradicating human trafficking and exploitation in Scotland. However, we recognise that legislation alone cannot address all of the issues necessary to combat trafficking and identify and support its victims. The Bill will commit Scottish Ministers to work with other relevant public and third sector organisations and business representatives to prepare and review on a regular basis a Human Trafficking and Exploitation Strategy.

Over recent months officials have been engaging with relevant stakeholders about the possible content of the Strategy. Further consideration is currently being given to the Strategy in light of the NRM Review Report and the recent publication of the UK Government’s Modern Slavery Strategy alongside the existing Human Trafficking Action Plan for Northern Ireland. The Strategy will link with other relevant documents, for example Scotland’s National Action Plan to tackle child sexual exploitation⁹. We will continue to engage with key stakeholders and wider business and public and third sector interests in the development of a draft Strategy. We will keep the Scottish Parliament informed about the progress of the draft Strategy during the passage of the Human Trafficking and Exploitation (Scotland) Bill.

I hope the above information provides helpful context to the introduction of the Human Trafficking & Exploitation (Scotland) Bill. I am writing in similar terms to Jenny Marra MSP and Christina McKelvie MSP as co-Conveners of the Cross-Party Group on Human Trafficking.

Human trafficking and exploitation are, rightly, emotive issues which have a devastating impact on the lives of victims. There are many different views about how best to respond to these complex and multifaceted crimes. As the Bill progresses through Parliament we will continue to listen and remain open to ideas which can make a genuine difference in bringing those who commit or facilitate these crimes to justice and better identify and support victims.

Best wishes


MICHAEL MATHESON

⁸ http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

⁹ <http://www.scotland.gov.uk/Resource/0046/00463120.pdf>