

## **Justice Committee**

### **Human Trafficking and Exploitation (Scotland) Bill**

#### **Written submission from Barnardo's Scotland**

Barnardo's Scotland welcomes the introduction of the Bill and believes that the offence, as drafted, will make a significant impact on efforts to tackle human trafficking and exploitation in Scotland. However, we are concerned as to the absence of specific reference to children in this Bill. Children are at greater risk of being trafficked and can be more vulnerable to the long term impacts of trafficking and exploitation than adults. Currently, the Bill fails to fully recognise the specific vulnerabilities of children or to provide much needed clarity around provision for child victims of trafficking. Barnardo's Scotland is concerned that failing to properly consider the specific rights and needs of trafficked children in this legislation, will put Scotland at odds with international Law and legislation in Northern Ireland, England and Wales.

Barnardo's Scotland calls for a specific section on children within the Bill, to include the following:

- A definition of child, for the purpose this Bill, as any person who is under 18 years of age and a clause on presumption of age.
- Clarity around provision for trafficked children, as provided under the Children (Scot.) Act 1995, and in particular, what the provision should be for 16, 17 year olds, on the face of the Bill.
- We are concerned that the Bill, as currently drafted, will succeed in ensuring provision for over 18s, but will potentially leave a gap, especially for 16 and 17 year olds, by failing to clarify provision for this group of children.
- The introduction of Independent Guardians, on a statutory footing, for all children who are, or who are suspected of having been, trafficked.
- Provision for a statutory defence for children, so that a trafficked child cannot be found guilty of an offence in Scotland where that offence has been carried out as a result of their being trafficked.
- An additional statutory aggravation to recognise the vulnerability of child victims of trafficking and the seriousness of a trafficking offence against a child, at the stage of sentencing.

#### **Barnardo's Scotland: Anti- Trafficking and Child Sexual Exploitation Services**

1. Barnardo's, UK wide and within Scotland, has a wealth of experience in working with unaccompanied and trafficked children. Across the UK, we have 5 Anti-Trafficking services and 1 specialist fostering service for unaccompanied/trafficked children. Barnardo's, in England, is currently providing the Independent Advocacy service that is being trialed in 23 local authority areas, as part of an initiative relating to the Westminster Modern Slavery Bill.

### *Barnardo's Scotland*

2. Between 2010-2013, Barnardo's ran the 'Hamilton Park Avenue' service in Glasgow, which provided residential long-term placements to Unaccompanied Asylum Seeking Children and Young People, between 15 and 18 years, who were looked after and accommodated by Glasgow City Council. Hamilton Park worked closely with the Scottish Guardianship Service, jointly run by Aberlour Trust and the Scottish Refugee Council. The service accommodated up to 5 young people at a time, both male and female, and provided support tailored to their complex needs. In total, the service supported 8 young people, in long-term placements; most of these young people had been trafficked into Scotland.
3. Safer Choices, a Barnardo's Scotland child sexual exploitation service, has nearly years of experience of dealing with children who have been trafficked, both internal and external to Scotland, for sexual exploitation. We also have a further 2 dedicated child sexual exploitation services, in Edinburgh and Dundee.
4. This response is based on the views of our practitioners and experience of delivering services to child victims of trafficking

### **Vulnerability of children and trafficking**

5. *It is the view of Barnardo's Scotland that it is critically important that the specific rights and needs of the trafficked child is taken into full consideration and acknowledged in the legislation. Moreover, the Bill must set out clearly arrangements for the provision of care and accommodation for trafficked children.*
6. International law, EU Directive 2011/36 on preventing and combatting trafficking ("Trafficking Directive") is directly effective in all parts of the UK, and in Scotland. Recital (8) to the Trafficking Directive highlights that children are more vulnerable than adults and at greater risk of becoming victims of trafficking.
7. Due to Barnardo's experience of service delivery to child victims of trafficking, we are acutely aware of the vulnerability of child victims. We work with children who are trafficked into and throughout Scotland. Many of these children arrive in Scotland with nothing, have lost everything, and been through a journey of unimaginable trauma. Many children don't even understand that have been trafficked due to the manipulation and coercion of a trafficker. In other circumstances, a child may be aware they have been trafficked, but are loyal to their trafficker and do not trust statutory agencies.
8. In addition to the trauma a child may have suffered on their journey to or travel within Scotland, professionals who come into contact with them can often fail to identify they are in fact a victim of exploitation. This proves to be problematic in ensuring that a child gains access to appropriate services, and crucially, safe accommodation, where they are safe from their traffickers and further exploitation.

9. With many young people, the risk of their being re-trafficked is high, which is why rapid identification of a child suspected to be trafficked, safe and appropriate accommodation, and intervention from skilled practitioners are all so vitally important for the outcomes for the child.
10. Our practitioners are aware of cases where children have been prosecuted for committing criminal acts whilst being under the control of their trafficker, and as a direct result of their being trafficked. A lack of training, awareness and recognition of the vulnerability of trafficked children has seen children convicted for crimes, or detained in young offender's institutions. This has been particularly apparent with the recent case involving young SE Asian boys, who had been found working in cannabis farms in Scotland and then prosecuted for being involved in the supply of drugs, despite very clear indications that they were victims of trafficking.
11. In many respects, it is due to the extreme vulnerability of trafficked children that we find the fact that the specific rights and needs of child victims of trafficking find no place in the legislation, particularly concerning. We see the Bill as an opportunity to give much needed clarity to what provision should be for victims of child trafficking in Scotland, both with regard to the obligations of local authorities around child trafficking specifically, and a commitment in legislation to the trafficked child's best interests.
12. While the existing child protection system is the place in which suspected and child victims of trafficking should be identified, supported and protected, we feel that it is imperative that current Scottish legislation which specifies the provision for children in need, should be clearly outlined and referenced in the Bill.
13. This is because, as highlighted above, trafficked children have particular vulnerabilities and needs, and in some ways, are particularly vulnerable to falling through gaps in the child protection system. Putting the rights, vulnerabilities and duties towards trafficked children in one place, means that those who are obligated to protect and provide services to trafficked children understand clearly what that will require. We are not calling for duplication of current legislation, or in the child protection system, but for clarity around the provisions that must be made available to trafficked children in the actual Bill.
14. We feel that there needs to be a guarantee, in law, that the support trafficked children receive, in particular those who are 16 or 17 years old, provided under the 1995 Act, will be at least the equivalent to the support and assistance for adult victims of human trafficking set out in Section 8 of the draft Bill.

### **Definition of a child**

15. Within the EU Trafficking Directive, Scotland has a range of obligations to protect and support the recovery of child victims of trafficking, defined as children up until the age of 18. The Children (Scotland) Act 1995 (the "1995 Act") which governs the obligations of Local Authorities towards children and families in their area, defines a child as a person under the age of 18 (Section 93 (2) (a) of the Act). *Therefore, for the purpose of this legislation, in accordance with the*

*Trafficking Directive and the 1995 Act, there must be a clear definition of a child as someone who is under 18.*

### **Presumption of age**

16. Establishing the age of a child who is suspected to have been trafficked can be difficult due to the child having been provided with false documents by traffickers, or having no documents indicating their age at all. *Thus, the Bill should have, in addition to a definition of a child, a clause which states that where a person who is suspected of being a victim of trafficking and there is reason to believe they may be under 18, they should be treated as a child. Further, the Bill should specify that until an age assessment of that person's age has been carried out by a local authority, a public authority must assume that a person is younger than 18, and a child<sup>1</sup>.*

### **Best interests of the child**

17. In addressing the needs of a trafficked child, the child's best interests must be a primary consideration, in accordance with both the Charter of Fundamental Rights of the European Union and Article 3 of the United Nations Convention on the Rights of the Child. *We would urge the Scottish Government to include a clause within the Bill that will but a clear commitment, in legislation, to the best interests of the trafficked child.*

### **Clarification of provision for children**

18. We recognise that children who are trafficked should have their needs best met within the child protection system, where needs will be assessed in line with the child centred approach set out in GIRFEC. However, children who are trafficked do not always fit neatly into the legislation currently in place, and we are concerned that some may fall through the gaps in current child protection arrangements.
19. In Scotland, a 'child', depending on the legal context, can be defined as someone who is under the age of 16, rather than under 18. Therefore, at 16, a child can be treated as an adult e.g. a 16 year old can be prosecuted within the adult criminal justice system, rather than the Children's Hearing System; or, can leave home without the permission of parents. Although, local authorities are obligated under the 1995 Act to provide support to children who are in need of protection up to the age of 18, in practice, the nature of this support can look different depending on if a child is over or under 16.
20. Section 8 (1) of the draft bill states that "*Where there are reasonable grounds to believe that an adult is a victim of an offence of human trafficking, the Scottish Ministers must, during the relevant period, secure for the adult the provision of*

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<sup>1</sup> See example in Part 5 'Protection of Victims', Section 50 Modern Slavery Bill. Available at: <http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0069/15069.pdf>

such support and assistance as they consider necessary given the adult's needs." This support is detailed in section 8(4) as including (but not limited to):

- (a) accommodation,
- (b) day to day living,
- (c) medical advice and treatment,
- (d) language translation and interpretation,
- (e) counselling,
- (f) legal advice,
- (g) information about other services available to the adult,
- (h) repatriation.

21. This means that there is a commitment to provision for adult victims in legislation. We are concerned that the Bill, as currently drafted, will succeed in ensuring provision for over 18s, but will potentially leave a gap, especially for 16 and 17 year olds, by failing to clarify provision for this group of children.
22. As highlighted in a report, commissioned by the Legal Services Agency, there are inconsistencies in treatment by local authorities in respect of duties owed by them to trafficked children aged 16 or 17, under the Children (Scotland) Act 1995<sup>2</sup>. Although under the 1995 Act, a local authority must provide protection for a child in need, the nature of the protection varies across Scotland for 16 and 17 year olds.
23. The report shows that local authorities are not consistent in how they provide accommodation to trafficked children, with some local authorities accommodating unaccompanied and trafficked children (aged 16 & 17) under section 22 of the 1995 Act, and not Section 25.<sup>3</sup>
24. The difference is significant as under Section 25, a young person becomes 'looked after' by the local authority and will therefore be entitled access to through care and aftercare (Section 29 of the 1995 Act). Under Section 22 of the 1995 Act, however, a trafficked child would not be given 'looked after' status, would be subject to more 'ad hoc' provision and "will not be guaranteed the additional support and heightened duty of care that he or she would be accorded as a "looked after" child".<sup>4</sup> Legal opinion of Senior Counsel, Janys M Scott QC, sought on this issue concludes that a child accommodated under Section 22 would be "*at a serious disadvantage (...) as compared with children accommodated under Section 25, as there will be no prospect of receiving after-care under Section 29 (of the 1995 Act)*"<sup>5</sup>.
25. We would therefore like to see clarity around provision for trafficked children, especially those who are 16 and 17 years old, to guarantee in law that the

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<sup>3</sup> Ibid., p.26.

<sup>4</sup> Ibid., p.15.

<sup>5</sup> Ang, J. (2014) *Legal issues in the accommodation and support of asylum seeking and trafficked children under the Children (Scotland) Act 1995*. P.30. Available at: [http://www.lsa.org.uk/docs/SLF%20Report%20FINAL%20\(2\).pdf](http://www.lsa.org.uk/docs/SLF%20Report%20FINAL%20(2).pdf).

support they receive will be, at the very least, the equivalent to the support and assistance for adult victims of human trafficking set out in Section 8(4) of the draft Bill; and, that it will be clear, in legislation, that their needs must be fully assessed, and met, within the child protection system.

26. This could be done through a new provision which would ensure that *where a child is suspected to be a victim of trafficking and who is 16, but under 18 and:*
- *appears to require accommodation;*
  - *has no one with parental responsibility for him, is lost or abandoned, or there is no one who can provide suitable care for the child; and,*
  - *the child wishes to be accommodated; then,*
  - *the local authority must provide such accommodation under Section 25 of 1995 Act.*
27. Furthermore, by ensuring that trafficked children who require accommodation can access throughcare and aftercare (Section 29 of the 1995 Act), Scotland would be meeting its obligations under Article 14 of the EU Trafficking Directive, to assist child victims of trafficking in the long term, in their “physical and psychosocial recovery (...) following an individual assessment of the special circumstances of each particular child victim, taking account of the child’s views, needs and concerns with a view to finding a durable solution for the child.”

### **Independent Guardians**

28. Child victims of trafficking need someone who will stand alongside them, independent of statutory agencies, to help them navigate legal, asylum and local authority processes, and who can begin to address some of the impact of trauma they have suffered:

*“We can be a single point of contact for a child and the glue that can pull everything together for them. Even if a child has to tell their story over and over again to many different professionals, we can be there by their side, being a consistent person for them, who has the child’s best interests in mind”. (Hannah Stott, Independent Child Advocate Service Implementation Manager, Barnardo’s England).*

29. In Scotland, the Scottish Guardianship Service, run by Aberlour Trust, provides a guardianship service which does exactly what victims of child trafficking need. However, we believe that this role of ‘Independent Guardian’ needs to be placed on a statutory footing *i.e.* so that local authorities/agencies involved in service provision for the child would be obliged to share information (within the remit of the law) to a Guardian to allow them to carry out their functions in relation to the best interests of the child. The recently passed Northern Ireland Human Trafficking and Exploitation Act 2015, we would suggest, has provision for the support that we would like to see accorded to child victims of trafficking in Scotland.<sup>6</sup>

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<sup>6</sup> See Part 3, Section 21, Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, available at: [http://www.legislation.gov.uk/nia/2015/2/pdfs/nia\\_20150002\\_en.pdf](http://www.legislation.gov.uk/nia/2015/2/pdfs/nia_20150002_en.pdf)

30. An Independent Guardian would also, in Scotland, increase the understanding of all those involved in providing services to the child. Even with training and awareness raising of professionals, it is not possible for all professionals to become experts in trafficking. Independent Guardians would increase the in knowledge of everyone they would encounter in their duties e.g. Police and local authority frontline staff, and in such a way would serve to increase understanding and skills in a targeted way.

### **A statutory defence for children**

31. According to UNICEF, trafficked children must never be “punished, prosecuted or detained for any crime committed as a direct consequence of being trafficked.”<sup>7</sup> In 2008 the UN Committee on the Rights of the Child recommended that the UK “should always consider, both in legislation and in practice, child victims of these criminal practices (sexual exploitation and abuse), including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders.”<sup>8</sup>
32. In addition to statutory Lord Advocate’s guidelines, which we understand would set a presumption of non-prosecution of trafficking victims; we believe that a statutory defence for children is necessary as a further safeguard, which would be available to children (under 18) where there has been a failure by agencies to identify them as victims of trafficking. This is would mean that a trafficked child cannot be found guilty of an offence in Scotland where that offence has been carried out as a result of their being trafficked.
33. It is important to note that a statutory defence is available to children in both the Modern Slavery Bill<sup>9</sup> and the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.<sup>10</sup>

### **A statutory aggravation- trafficking offence against a child**

34. We would ask Ministers to consider that it would be appropriate to include a statutory aggravation which would recognise the vulnerability of children, and the seriousness of a trafficking offence against a child, at the stage of sentencing. The Northern Ireland Act, again, sets a precedent for such a measure.<sup>11</sup>

### **Conclusion**

<sup>7</sup> UNICEF, *Guidelines on the Protection of Child Victims of Trafficking*, September 2006

<sup>8</sup> Committee on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, October 2008.

<sup>9</sup> Part 5, Section 45 (4)(a) Modern Slavery Bill.

<sup>10</sup> Part 4, Section 22 (6)(a)(b) Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

<sup>11</sup> Part 1, Section 6 (i)(d) Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

35. We look forward to discussing these issues with the committee.

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