

Human Trafficking Team
Protection and Organised Crime Division
Department of Justice
Room B4.20 Castle Buildings
Stormont Estate
Belfast
BT4 3SG

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To whom it may concern

Thank you for the opportunity to respond to the Consultation on 'Human Trafficking and Slavery: Strengthening Northern Ireland's Response'. Under article 7(2) of the 2003 Order, the Northern Ireland Commissioner for Children and Young People (NICCY) has a duty to keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children. Under article 7(3), this relates to services provided for children by relevant authorities. In carrying out our function, NICCY's paramount consideration is the rights of the child and our work is based on the United Nations Convention on the Rights of the Child (UNCRC). The Office was created in accordance with The Commissioner for Children and Young People (Northern Ireland) Order 2003 to safeguard and promote the rights and best interests of children and young people in Northern Ireland. As a signatory of the UNCRC, as part of the UK State Party, Northern Ireland legislation must have child victim's rights and best interests at its heart. This submission is not intended to be comprehensive, however, there are a number of specific points that we have raised below that we ask you to take into consideration when developing this Bill to ensure these principles are upheld. Please note that we have also responded directly to the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. In the main, our response focused on Clause 12 of the Bill, 'legal advocates for child victims', which has subsequently been changed to 'child trafficking guardian'. We understand that DOJ will be reviewing the responses to Lord Morrow's Bill as part of the consultation process. A copy of NICCY's response to Lord Morrow's Bill is attached which was submitted in 16 October 2012. Although Clause 12 of the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill is not a focus of this Bill, we would like to set out our current position on this as part of our response to you.

Legislation for the Proposals

At a time when a range of developments regarding trafficking are being considered, we welcome DOJ's efforts to maintain focus, cohesion and expediency on the legislative framework around trafficking and exploitation by embedding as many additional provisions as possible into Lord Morrow's Bill.

Clause 12

NICCY welcome the principle of Clause 12 and are pleased that the Department of Health, Social Services and Public Safety have accepted the need for a 'guardian' for under 18 year olds that are suspected or known to be trafficking. We believe that any child identified as being 'separated' as defined by HSCB guidance, should be entitled to a 'guardian' (Health and Social Care Board, 2013). It can be very difficult initially for professionals to identify children as being trafficked, especially if they are under threat or duress from traffickers to deny this if apprehended. With access to a Guardian a separated child may be more likely to confide as being trafficked than if they were placed in care without the intervention of a specialist who understands the indicators of trafficking and the type of difficult and traumatic experiences these children will have had. This has been shown to be the case in a Scottish evaluation of a Guardianship programme (Crawley and Kohli 2013). Local information has confirmed that there is a high risk of separated children who have been trafficked going missing from care within a very short period of first coming to the attention of the various agencies (Health and Social Care Board, 2013). Aside from concerns that a hierarchy is being created between sub groups of separated children, it is very positive progress in that Northern Ireland is on course to be the first part of the UK to put the appointment of such a guardian on a statutory footing.

Research commissioned by NICCY has recommended that a guardian for separated children be independent of Government and have statutory authority (Kohli et al 2014). I believe that a guardianship role for any separated child should, as far as possible, be in keeping with General Comment 6 from the Committee on the Rights of the Child, which states that a Guardian should represent the child's best interests in all matters affecting them; be committed and informed in all actions and have the authority to be present in all planning and decision making processes (including immigration and appeal hearings, care proceedings and the search for durable solution) as well as having the necessary expertise in all areas including a child's legal, health and psychological needs (UNCRC, 2005). We understand that the Department for Health, Social Services and Public Safety has responsibility for the implementation and development of regulations relevant to Clause 12 of Lord Morrow's Bill. We are currently taking forward dialogue with the Department, along with the HSCB regarding the recent review of arrangements for separated children subject to immigration control.

Consolidation of Offences of Human Trafficking

NICCY welcomes this Bill's clear definition of child victims as those under 18, as does Lord Morrow's. However, other relevant UK legislation such as immigration and asylum law does not specify this. We believe that the Bill should address any anomalies in cited legislation, including the different age thresholds set out in immigration and asylum legislation and the 2008 Sexual Offences Order. EU GRETA has also raised concerns about the need to harmonise UK legislation relating to trafficking.

Sentencing

We welcome the fact that Lord Morrow and the Minister for Justice have agreed to remove minimum sentencing for children and young people (under 18 yrs old) as set out under Clause 4 of Lord Morrow's Bill. Furthermore, NICCY strongly agrees with the proposal that in the final Bill, investigation and prosecution of trafficking will not be dependent on victim complaint or reporting. Statutory based, multi-agency guidance on child trafficking

stated that 'many of these children are reluctant to disclose their plight either out of fear of reprisal or due to a misplaced loyalty to their trafficker' and this reluctance only increases when the trafficker is a parent or family member (Working Together to Safeguard Children Who May Be Trafficked-Department for Children, Schools and Families, 2007, p.4; ECPAT, 2010).

We note that the Minister for Justice does not agree with the principle of unconditional immunity. Therefore, we very much welcome a non-prosecution clause to protect victims forced to commit crimes by their traffickers in Clause 8 of Lord Morrow's Bill. This is in line with Article 8 of the EU Trafficking Directive 2011/36/EU Preventing and Combating Trafficking in Human Beings and Protecting its Victims enshrines the right for victims of trafficking to not be prosecuted for involvement in criminal activities. 'Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings.' Forcing children to beg or steal is a serious violation of their rights and children who are trafficked for labour exploitation, including forced criminality, should be seen as victims of crime and not as perpetrators. This Clause also echoes Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings (the Anti-Trafficking Convention) which requires the United Kingdom: "In accordance with the basic principles of its legal system, [to] provide for the possibility of not imposing penalties on victims [of trafficking] for their involvement in unlawful activities. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. The safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in." Although 'prosecuting authorities in the UK have always been in a position not to prosecute', there have been recent cases in England and Scotland where under 18s trafficked for cultivation of cannabis, have been wrongly prosecuted and detained in youth justice facilities whilst the criminals who trafficked them have escaped justice. In June 2013, they brought their case to the Court of Appeal and won (L, HVN, THN & T v R [2013] EWCA Crim 991) (Migrant Children's Project Case Law). In cases where children do end up in the criminal justice system, legal professionals need to understand the legal tools and opportunities available to protect child victims, be sensitive to the needs of children who are vulnerable witnesses and ultimately prosecute the traffickers. In light of the case evidence of the failings of the current legal system to protect victims, existing guidance issued by the Crown Prosecution Service for prosecutors related to human trafficking are being reviewed (Point 3 of the Judgement). A similar process of guidance review is being conducted by the PPS in NI (NI Attorney General-Official Report to the Committee for Justice- 6 March 2014). These very recent cases highlight the extreme importance of case law and international human rights instruments informing the investigation and prosecution of cases. Every effort must be made to ensure that Law offers an effective tool to fight child trafficking and give real protection to its victims.

Civil Orders

In relation to whether the Courts should be able to impose STPOs or STROs on those aged 18 and under, Article 39 of the UNCRC is very clear that children who are neglected, abused, exploited, tortured or who are victims of war must receive special assistance to help them recover their health, dignity and self respect. We welcome special protection measures for all victims irrespective of age, however, we would stress the need for a child

protection approach as the basis of responses to all cases of trafficking and exploitation where children are involved, including in the rare occasions where children who are exploited or trafficked, go on to commit serious crimes. The inherent vulnerability of children and their evolving capacity to understand and make informed consent to involvement in criminal activity are key factors which should be given significant weight when considering their culpability. In relation to consent, the preamble to the EU Directive on 'Preventing and Combating Trafficking in Human Beings and Protecting Victims' is unambiguous in its statement that with regards to children, consent should never be considered valid. Furthermore, the UNCRC is clear that children should only be detained as a measure of last resort and for the shortest appropriate period of time and to have their best interests as a primary consideration (Article 37 and 3 of the UNCRC). In the most recent Concluding Observations from the Committee on the Rights of the Child to the United Kingdom of Great Britain and Northern Ireland, it was noted with concern that "the number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort" (Committee on the Rights of the Child (2008). There are a range of instruments in international law, including the Riyadh Guidelines, the Beijing Rules, the Havana Rules and General Comment Number 10 on 'Children's Rights in Juvenile Justice which advocate the requirement of youth crime policies and interventions 'to avoid narrow focus on the crime and to take into account the social and contextual factors that are frequently associated with youth offending.' (Gillen, 2006)

Specific Crime of Child Trafficking and Exploitation

Campaigners in England, notably ECPAT UK, are calling for the creation of a specific crime of child trafficking and exploitation to be included in the Modern Slavery Bill currently going through Westminster which they argue would reflect the severity of this abuse of children and convict more offenders. NICCY would ask that consideration is given to the arguments to assess whether they would be appropriate for Northern Ireland.

Anti-Slavery Commissioner

NICCY agrees that a monitoring mechanism for human trafficking and slavery is carried out through a UK wide Commissioner. We recognise the vital role that such a monitoring mechanism can have in scrutinising and challenging Government on their actions. From my own experience as a Commissioner I would highlight the need for the person in the role to have independence from Government and the remit, powers and resources to fully monitor and hold public authorities to account in its own jurisdiction. We would seek assurances that sufficient funding / resources will be made available to ensure the required focus on Northern Ireland. Furthermore we also agree that it is important to understand profiles, trends and agency activity at both a UK and NI level. Recent official statistics for 2013 through the National Referral Mechanism (NRM) indicate that the country of origin of the majority of cases of trafficked children has been the UK or Ireland (n=15, 75%) (National Crime Agency, 2014). Due to the land border that Northern Ireland has with the Republic of Ireland, it would be important for a commissioner or rapporteur role to include close liaison with the Republic of Ireland both in understanding trafficking patterns and in creating robust inter-jurisdictional arrangements.

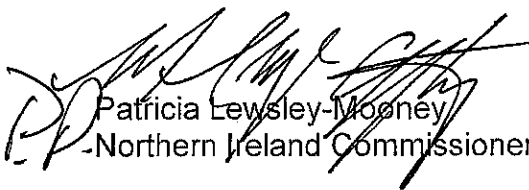
Improving Data Collection and Assessment

My Office recently published research on Guardianship arrangements for separated children in Northern Ireland in order to better understand the evidence for law, practice

and provisions here (Kohli, Connolly and Beckett, 2014). One of the recommendations from this research was the need for improved data and information gathering on the facts around separated children, trafficked children being a sub group of this. For this reason we welcome the focus on this issue within the consultation. There is a need for improved systematic liaison between a range of agencies that may be 'first responders' to a separated child / victim of human trafficking, to build a more accurate picture of the scale and nature of the problem and to ensure that services and support they are given are available and adequate. We accept that the proposal to make it compulsory for the Public Sector to refer potential victims of human trafficking to the NRM may improve reporting. It is also important to ensure that provisions are in place for voluntary and community sector organisations to link to the referral process as they may be the first point of contact. We also welcome the work that is being done through the NI Human Trafficking Action Plan 2013-14 to improve public education, professional training and surveillance systems to reduce the number of children that go undetected. The Health and Social Care System have also developed new data collection and recording systems for trafficked children (Notification Report on Separated Children) who become 'looked after' which is in line with its delegated statutory function. The information they collect will provide a fuller picture of the circumstances and short term outcomes for these young people which is important for reviewing the effectiveness of law, policy and practice from a child rights perspective. However, NICCY will also be raising the importance of analysing the longer term trajectories of these young people, as outlined in the recent report 'By their Side and on their Side: Reviewing the Evidence for Guardianship Arrangements for Separated Children in NI' (Kohli et al 2014). It is available electronically from the reference list below.

Thank you for the opportunity to respond to these proposals. We hope that our comments are informative. Please do not hesitate to contact the office if you require clarification regarding any of the issues raised in this submission.

Yours sincerely



Patricia Lewsley-Mooney
-Northern Ireland Commissioner for Children and Young People

Copy	Lord Morrow	DUP
	Eilís McDaniel	DHSSPS

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