Equal Opportunities Committee Inquiry into Migration and Trafficking

At my appearance on 28 September to give evidence to your inquiry, you asked for further information on attendance at the UK Inter-departmental Ministerial Group on Human Trafficking (IDMG) and the implications for Scotland of the UK not opting-in to the proposed EU Directive on human trafficking.

The IDMG has responsibility for overseeing implementation of the UK Action Plan to Tackle Human Trafficking and comprises Ministers from various UK and devolved Government departments with a policy interest in human trafficking. The IDMG has met seven times since my appointment as Cabinet Secretary for Justice, namely:

Thursday 19 July 2007
Thursday 24 January 2008
Thursday 24 April 2008
Thursday 13 November 2008
Wednesday 18 March 2009
Wednesday 4 November 2009
Wednesday 13 January 2010

The Scottish Government has been represented at all of these meetings and I was able to attend the meeting on 19 July 2007 personally, as it occurred during Parliamentary recess. Unfortunately, the other meeting dates were organised for days on which I had Parliamentary commitments.

A Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims (repealing Framework Decision 2002/629/JHA) was published on 30 March 2010. It aims to promote an integrated approach to combating trafficking within the EU, introducing, at EU level, common provisions on criminalisation, penalties and other sanctions, as well as measures for victim protection.
The Council reached a general approach on the text of the Directive on 4 June, while the Parliament completed its first reading of the proposed Directive and adopted amendments proposed by its LIBE & FEMM Committees on 2 September. Triilogue discussions between the Parliament, Commission and the current (Belgian) Presidency commenced on 14 September and are continuing.

Under the Lisbon Treaty, Member States have 3 months from the publication of a Directive to opt-in. The UK Government advised the Council of the EU in June 2010 that the UK was not opting-in to the Directive at that stage. The UK will review its position after the Directive has been adopted and may decide to apply to opt-in at that point.

Scotland is already broadly compliant with the Directive (as published in March 2010) and that will be further strengthened by amendments made by the Criminal Justice and Licensing (Scotland) Act 2010 (“The 2010 Act”). However, as noted above, the Directive is still going through the final negotiation process and compliance will need to be assessed once the final outcome of negotiations (and the UK’s opt-in decision) is known.

The Directive as published seeks to extend Member States’ jurisdiction over trafficking offences and requires that Member States establish extraterritorial jurisdiction in a number of circumstances not covered by our current law. The 2010 Act therefore creates new offences which criminalise the trafficking of persons into, within or out of a country other than the UK. The new offences will apply to UK nationals, persons habitually resident in Scotland and UK corporate bodies. These add to the existing trafficking offences (in the Criminal Justice (Scotland) Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004) which apply to all trafficking into, within or out of the UK.

For your information, the annex attached to this letter outlines all the provisions contained in the 2010 Act amending trafficking legislation.

I hope you find this information helpful.

KENNY MACASKILL
Annex to letter

Criminal Justice and Licensing (Scotland) Act 2010 (“the Act”)

- Section 46 of the Act extends the extraterritorial effect of trafficking offences, in both the Criminal Justice (Scotland) Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to ensure that the offence applies to anything done in or outwith the UK. It contains provisions to create new offences of trafficking of persons into, within or out of a country other than the UK. The new offences apply to UK nationals, persons habitually resident in Scotland and UK corporate bodies.

- Section 46 of the Act also extends the scope of the current offence provisions concerning trafficking in human beings so that they refer to facilitating the “entry into” the UK as well as the “arrival in the UK”. It also makes clear that the sheriff court as well as the high court has jurisdiction to deal with these extraterritorial offences. These changes will mean that facilitating the arrival in or entry into the UK of a person for the purposes of exploitation, regardless of where the facilitation took place and irrespective of the nationality of the facilitator, will be an offence under Scots law.

- The definition of exploitation in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 is expanded to include:
  - offences under the human tissue legislation to apply to such conduct wherever it takes place,
  - removing body parts (including blood) which would amount to an offence other than under human tissue legislation i.e. for purposes other than transplantation,
  - cases where the role of the person being exploited is entirely passive and that person is being used to enable others to gain a benefit of any kind.

- Section 88 of the Act amends the Criminal Procedure (Scotland) Act 1995 by
  - Substituting “relevant age” for “age of 16” and
  - Inserting a definition of “relevant age” in the case of a person who is giving or is to give evidence in proceedings for a trafficking in human beings offence as the age of 18 and in any other case the age of 16.
  - This means that special measures normally only available to those less than 18 years old will be available to 16 and 17 year olds in trafficking cases only.

- Section 99 of the Act amends the Antisocial Behaviour etc. (Scotland) Act 2004 to provide for the closure of premises associated with the commission of offences in relation to brothel keeping, trafficking of human beings and child exploitation. This will be a discretionary power for the police and will assist by widening closure powers to help tackle the misery of all forms of trafficking in human beings.