1. The Equality and Human Rights Commission (the Commission) was established in statute in the Equality Act 2006 and came into being on 1 October 2007. The Commission champions equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights and make sure that everyone has a fair chance to participate in society.

2. Migration is one of the key issues shaping our society today. It is an issue which arouses strong emotions and public passions. As a reserved matter the policy and processes of migration are largely controlled by Westminster. However, once settled in Scotland a migrant's life will be directly affected by the quality of the housing, education, leisure services, and healthcare services that they receive; all of which come within the remit of Scottish public authorities. We welcome this inquiry as recognition of the important role that the Scottish Government has to play with regard to the issues of migration and trafficking.

3. The Scottish Government has recognised the importance of population growth to the future prosperity and economic sustainability of Scotland. Immigration, whilst not the only solution, can make a contribution to population growth. Scotland has seen an increase in the number of people born outside of the UK during this decade with record gains during 2007/08. In part this increase can be attributed to the accession of the A8 countries to the European Union and the decision to allow A8 nationals to work in the UK. However, this trend could be quickly reversed as the UK becomes an economically less attractive option in the wake of the recession in contrast to A8 countries where employment opportunities are increasing. Population gains already achieved are also at risk as there is some evidence that the migration patterns of post-enlargement migrants tend to be circular with many choosing to return to their country of origin after time working in the UK.

4. The Commission sees its role in this debate as twofold. Firstly, we have an important role working with stakeholders to understand the consequences of migration on services, in the workplace and on our communities, as well as the life chances and opportunities of those residing the in the United Kingdom. Secondly, we are statutorily required to protect the human rights of all individuals, both for immigrants themselves, especially where their rights are not met, and UK citizens, where migration has an impact on their lives. There is increasing evidence, including from the Commission’s own work, that reveals deep inequalities, human rights concerns and barriers to good relations among migrant communities. It is the role of the Commission to help

---

1 For more information on these please see paragraphs 17 – 19.
establish the precise nature and cause of such issues and to encourage responses from the appropriate body.

RACE RELATIONS ACT 1976

5. Key to the Commission’s activities on migration is to ensure that employers and service providers adhere to their responsibilities under the Race Relations Act 1976 (RRA). The RRA prohibits discrimination by any person or any public, private or voluntary organisation that carries on any of the activities referred to in the RRA, including employment, trade unions and business organisations, vocational training, education, housing, management of premises, or providing goods, facilities or services or exercising public functions.

6. In addition to outlawing discrimination on racial grounds the RRA introduced a positive duty (the race equality duty) on all listed public authorities in carrying out their various functions, to have due regard to the need to eliminate unlawful racial discrimination, promote equality of opportunity and promote good relations.

7. In 2009, Audit Scotland’s produced an important report into the impact of the race equality duty (RED) on council services which clearly demonstrates that councils tend to focus on process, rather than outcomes when it comes to meeting the duty:

   ...councils lack clear objectives for how services will translate the race duty into improving services for minority ethnic communities. At present, councils identify processes such as undertaking more staff training, writing plans and carrying out employee monitoring. Focusing on processes may cause councils to lose sight of the overall aim of the race equality duty: to make improvements for minority ethnic communities and promote good relations.

8. In part, the focus on paper exercises rather than clear objectives may be driven by a lack of information about the local migrant population. The Audit Scotland report also found that councils lacked a ‘clear picture’ of the local ethnic minority population, with the most prominent information gaps relating to recent economic migrants, their language preferences, service needs and views on council services. Half of all councils did not have projections for economic migrants.

9. To further illustrate how the slow pace of implementation of the RED has impacted on Public agencies ability to comply both with duties but also with basic norms of good planning we would cite the NHS's implementation of patient data as an area of concern. Scottish Health services have been slower to introduce robust systems of patient monitoring than their English counterparts. This data is an important tool for planning in health services, enabling the NHS to monitor the impact of its services on different ethnic groups; to better understand the health needs of different ethnic groups; and to check that NHS Scotland is making progress towards meeting its objectives on tackling racism and discrimination and promoting equality. Yet, in Scotland,
the monitoring of discharge data is only 23.7% of all discharges. Disaggregated, the picture is even starker with six health boards recording less than 1% and a further four boards falling below the average. The Commission accepts that data collection can be difficult to implement in some scenarios, however the English NHS averages 90% for equivalent monitoring\textsuperscript{viii} statistics. Such low levels of information about the ethnic diversity of service users may make it difficult for a public authority to demonstrate compliance with the specific duties, in particular the duties to monitor for adverse race impacts and to ensure access to information and services.

10. The reality is that we simply do not know who is resident in Scotland at any one time as there is no central repository for monitoring the flows of migrants to and from Scotland. This can make life difficult for local service providers but reinforces the need for local data collection. We understand that this is a resource-intensive exercise however, in the absence of collation by a central authority it must fall to public authorities to monitor migration at the local level to ensure services do not suffer as a result of inaccurate data on the local population.

11. The race, gender and disability duties are a legal obligation and should remain a priority even in times of economic difficulty. The Commission will assist public authorities to meet their duties by providing practical guidance and developing good practice. Where authorities are failing to meet their duties the Commission may exercise its enforcement powers in order to require compliance.

Good Relations

12. The RED specifically requires listed public authorities to promote good relations between people of different racial groups. The Commission is aware of the damage that can be done by unfounded myths and rumours circulating amongst both settled and immigrant communities. The Commission believe that the good relations duty requires public authorities to challenge myths that arise in relation to a particular ethnic group. Again, the collection and monitoring of accurate data can be employed by authorities to challenge damaging and specious myths.

13. One of the most potentially inflammatory issues is the allocation of social housing. Widespread media reporting has suggested that migrants receive priority in housing allocation and in doing so displace non-migrants. The Commission undertook research in this area last year to better understand the facts behind these stories. It found no evidence that housing allocation discriminated against white groups, rather that:

\begin{quote}
[the] policies represented an attempt to prioritise the most needy at a time of severe shortage in the supply of social housing. In this respect, the allocation policies were fair. There was no evidence that allocation policies discriminated against white groups.\textsuperscript{ix}
\end{quote}
14. The research concluded that despite the lack of evidence the perception that migrants displace British applicants persist. Again monitoring and evidence becomes critical to enable an authority to effectively respond to unfounded myths. However, the research also suggests caution when adopting myth-busting exercises in order to avoid perpetuating the myth. It is recommended they are undertaken in conjunction with strong political leadership and other activities to help combat anti-migration messages.

**Equality Act 2010**

15. The Equality Act 2010 received royal assent on the 8th April. Once enacted, the Race Equality Duty (along with the disability and gender duties) will be replaced by a new general duty that has been expanded to include sexual orientation, age, religion and belief and gender reassignment.

16. The Scottish Ministers have been given the power to create the specific duties that will set out what public authorities in Scotland need to do to meet the general equality duty. The Commission believes that the new specific duties should help authorities identify what areas they need to focus on and what activities would be suitable. In our response to the recent Scottish Government consultation we set out what we believe the key stages of the specific duties should be in our response to the recent Scottish Government consultation on this issue. The Commission believes that there are some core building blocks which should underpin the development of the specific duties. These components form a cycle of activity which will enable public authorities to meet their public sector equality duty.

i. **Figure 1: The building blocks of the specific duties**

17. As outlined in Figure 1, we believe the key stages of the specific duties are:
• Evidence: public authorities must gather and analyse relevant evidence across all of the protected characteristics to identify local needs and priorities;
• Objectives: Evidence must then be used by public authorities to develop clear, realistic and measurable objectives which focus on the most significant inequalities
• Actions: authorities should outline the specific steps that they will take to meet their objectives and the wider general duty
• Outcomes: actions should lead to improved outcomes for each of the mandate groups.
• Monitoring and reporting: authorities should routinely monitor the impact and effectiveness of their equality actions in meeting their wider corporate objectives, and report publicly on this. This reporting information must then form part of the evidence available to the authority and so the cycle continues.
• Involvement is placed at the centre of the cycle and must run throughout this process; at each stage, public authorities should involve stakeholders. Public authorities should also consider the potential impact of the objectives and actions on equality for all the relevant protected characteristics and can achieve this through Equality Impact Assessment of policies.

18. In a difficult economic period it will be imperative that public authorities ensure the decisions they take do not unfairly impact on Scotland’s migrants. It is equally important that decisions are made in a transparent manner and any negative impacts on local communities are managed to ensure the local migrant communities are not treated as scapegoats for cuts to local services. Well-developed equality schemes, comprehensive equality monitoring and impact assessments should be undertaken and should help to counter these issues.

Evidence of Discrimination

19. Whilst immigration is the target of many hostile news stories, migrants themselves can become the targets of exploitative practices and, in the worst cases, serious human rights abuses. The Commission has recently published an inquiry into the employment practices in the meat and poultry processing sector in England and Wales. An industry worth hundreds of millions of pounds and which relies predominantly on agency workers, 70% of which are migrant workers. The report evidences the consistent mistreatment of migrant workers. Examples included:
• Physical and verbal abuse which workers described as making them feel like they were being treated as an ‘animal’ or ‘object’.
• The mistreatment of pregnant workers which included being given no further work once the pregnancy was discovered by managers.
• Working time regulations were regularly breached with 90 hour weeks not uncommon and individual shifts lasting 16-18 hours.
• Racist language and treatment.
20. Mistreatment went unchallenged because of the vulnerable employment status of agency staff, language difficulties and lack of awareness of labour rights or even human rights.

21. In Scotland, the Commission recently supported a case taken by the Central Scotland Racial Equality Council in which two Polish workers were awarded a total of £25,000 in an employment tribunal case against a Perthshire fruit picking company. During the hearing, the Tribunal heard evidence about the horrendous conditions the students were housed in during their time at the farm, sleeping in a converted metal container with no running water, and sharing twelve showers between almost 200 people. Additionally, there were discrepancies relating to rates of pay, underpayment of wages, incorrect payslips and incorrect deduction of tax. In the written judgement of *Kowal and Obieglo v David Leslie Fruits* the Employment Judge Hosie said:

There is no doubt that the discrimination in this case was serious. It caused the claimants’ considerable distress, leaving them at one point in the situation where they feared they would be left stranded and homeless in a foreign country with no money to get home, or even imprisoned for an offence which had been fabricated. Their hopes of spending a pleasant summer picking fruit in Scotland and earning some money to assist with their University educations turned into a nightmare. They were treated appallingly, without any common decency or respect, and left frightened and humiliated.

22. The students involved in the case have now returned to Poland where this case is receiving significant media attention including several television interviews (an example of the coverage is provided at appendix one). We can only estimate the damage that this type of coverage does to Scotland’s reputation and its ability to attract migrants.

23. We must recognise that Scotland is competing in a global marketplace for migrants. Stories of exploitation will travel from Wishaw to Warsaw in seconds and significantly reduce our appeal to those looking for a new country in which to study or work and settle down. If Scotland is to be a destination of first, not last, choice then what is needed is a well developed attraction and retention strategy that begins to address the public hostility towards immigration by explaining the demographic imperative and setting out the contribution that migrants make to our society, both to contemporary Scotland and also historically. Critically the Government must set out how it intends to bring an end to the exploitation and human rights abuses of those migrants already living in Scotland.

**Human Trafficking**

24. Our starting point is the international recognition that human trafficking is, fundamentally, a violation of human rights\textsuperscript{xii}. It is exploitation that violates the dignity and mental and physical integrity of its victims. It reduces human life to a commodity to be bought and sold. We agree with the Council of Europe (the CoE) that human trafficking is the ‘modern form of the old worldwide slave trade’\textsuperscript{xiii}.
25. The centrality of human rights to anti-trafficking is reflected in the substantial body of international legal instruments against it \(^{xv}\). We regard the CoE’s Convention on Action against Trafficking in Human Beings as the leading regional legal instrument articulating human rights based policy and action against the phenomenon \(^{xv}\). The ratification by the UK Government of this in December 2008 was a necessary but not a sufficient step for human rights based practice against trafficking \(^{xvi}\).

26. Human trafficking is complex. Its purposes include sexual and labour exploitation \(^{xvii}\). It is local, national and transnational, with a constant flow of victims across and within borders, countries, cities and towns. It relies on control, subtle and violent \(^{xviii}\). It is covert linking to underground economies and its profitability for organised crime \(^{xx}\) is itself a driver for trafficking \(^{xx}\). Other drivers include the abuse of the social vulnerability \(^{xxi}\) and poverty of victims, demand for sexual exploitation and cheap labour \(^{xxii}\), gender inequalities \(^{xxiii}\), and impacts from migration policy \(^{xxiv}\).

27. Our statutory \(^{xxv}\) and international responsibilities \(^{xxvi}\) on human rights in Britain, the severity of exploitation in trafficking, and given its victims possess hardly any of the central and valuable freedoms in our Equality Measurement Framework \(^{xxvii}\) together moved us in February 2010 to launch an Inquiry into human trafficking in Scotland with a focus on trafficking for commercial sexual exploitation \(^{xxviii}\). This focus reflects a priority concern for our Inquiry on the depth of physical and psychological exploitation that we suspect relates to the abuse of the vulnerability of mainly women and girls, from within and outside the UK, in Scotland’s sex industry.

28. Turning to the nature of human trafficking in Scotland, we think this is the crux question, the answer to which is foundational to properly understanding what is actually going on in such a covert world. We welcome especially the recent work by, respectively, Amnesty International Scotland \(^{xxix}\) and the Scottish Government \(^{xxx}\), on the nature of human trafficking in Scotland. Our Inquiry will seek to build on this evidence base in Scotland, particularly with regard to victims’ experiences in the sex industry. We are particularly interested in this as we suspect that victims of sex trafficking, internal and cross-border, are increasingly and predominantly located in a growing indoor sex market arranged via telephone, the internet, and that is located in private flats.

29. Our starting point on understanding the nature of human trafficking is to understand those involved in it. This has two aspects. First to understand the situation, motivations, and vulnerabilities of the victims of trafficking as well as of those around the victims before the current exploitation started, as well as now. Second is to understand the traffickers, or more precisely the range of persons – from family members to hardened criminals - involved in its internal or transnational forms linked or not to organised crime. This is a world where victims and exploiters are reluctant to talk so proactive approaches comprising information sharing are prerequisites to better learn the nature of trafficking from both the victim and criminal angles.
30. Efforts to understand human trafficking should, in our view, primarily look to understand the motivations, vulnerabilities, and experiences of those involved in it, and secondarily to estimate the numbers of victims and traffickers or the geographical locations of exploitation; issues of scale are necessary of course but we think the fundamental interest always has to be on the nature of trafficking and therein on the human impact on victims, which are severe. This perspective is important in principle to give voice to the voiceless, but also in practice, in two senses: a focus on the experiences of victims is the best way to get insights of the machinations of exploitation necessary to better understand trafficking, and by looking at experiences first and numbers second one recognises the inherent secrecy and likelihood of underreporting in human trafficking and guards against the danger of less attention and resource against trafficking due to a lack of quantitative evidence of its extent.

31. We think that there are five essential considerations when inquiring into the nature of trafficking. The first is to prioritise the histories and experiences of victims. Second is to adopt the broad interpretation of human trafficking recommended by the CoE that starts from exploitation, works back from this, recognises that human trafficking isn’t a transnational concept but covers the exploitation through trafficking of Scots and other UK nationals as well. Third is, as the Committee suggests, to look at the destinations of exploitation - be it sweatshops, private sex flats, domestic servitude, coerced criminality etc., - and in so doing ask what is driving movements into sites of exploitation and recognise that they aren’t hermetically sealed. Fourth is to look at the means – deception, control, abuse of vulnerability – that are in play as well as the techniques of control – debt bondage, fostering addictions, and threats to loved ones – which are employed to deepen control. Finally one should look at victims’ interactions with agencies, if any.

32. Our final comment relates to the Committee’s interest in the scale of human trafficking and in particular the numbers involved and the geographical locations of exploitation. Given the covertness of human trafficking and the controversy surrounding the robustness of estimates of the number of trafficking victims we advise caution in both the confidence and the importance that one attaches to them. It is vital to make efforts to paint a broader picture of the scale of human trafficking in Scotland, and we welcome the work of the Scottish Crime and Drug Enforcement Agency and the Scottish Government on this. We welcome these efforts precisely because they recognise that it is inappropriate to deal with this issue solely by numbers, rather estimates on scale should be only one consideration when developing policy, allocating resources, and measuring success.

Sally Mackenzie
Parliamentary and Policy Officer
Graham O’Neill
Senior Enforcement Officer
Equality and Human Rights Commission Scotland
12th April 2010
Appendix 1

Coverage of the recent *Obieglo v David Leslie Fruits* case in the Polish Press

PAWEŁ RYBICKI | Sobota [3.04.2010, 22:19]

"Niewolnicy" z Polski zbuntowali się w Szkocji

(fot. flickr/empirical perception)

**Polacy potrafią walczyć o swoje prawa – a przynajmniej potrafią to poza granicami własnego kraju.**


Farmer będzie od teraz traktował pracowników lepiej. Lub nie będzie zatrudniał Polaków.

References

---

iv Race discrimination legislation is now contained within the Equality Act 2010. The Scottish government intends to consult on the draft regulations setting out the Specific Duties over the summer months.
xii Audit Scotland Report, 19.
vi Audi Scotland Report, 22.
---

All statistics taken from *Improving data collection for equality and diversity monitoring, Ethnicity Completeness in SMR01 and SMR00, All Scotland, August 2009.*
---

---

The importance of understanding that human trafficking as fundamentally as a violation of human rights is reflected, amongst other things, in (i) Principles 1 to 3 of the United Nations’ (the UN) ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ (2002) that state: ‘1. the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims, 2. states have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons, and 3. anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers”; and by (ii) paragraph 3 of the Preamble to the Council of Europe’s Convention on Action against Trafficking in Human Beings (the CoE Convention) that ‘trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being’, which is explained at paragraph 42 of the Explanatory Report to the CoE Convention as reflective of the CoE’s recognition of the ‘recognition of trafficking in human beings as a violation of human rights appears directly or indirectly in an important number of international legal instruments and international declarations’.
Paragraph 3 of the Explanatory Report to the CoE Convention states that trafficking in human beings 'with the entrapment of its victims, is the modern form of the old worldwide slave trade. It treats human beings as a commodity to be bought and sold, and to be put to forced labour, usually in the sex industry but also, for example, in the agricultural sector, declared or undeclared sweatshops, for a pittance or nothing at all. Most identified victims of trafficking are women but men also are sometimes victims of trafficking in human beings. Furthermore, many of the victims are young, sometimes children. All are desperate to make a meagre living, only to have their lives ruined by exploitation and rapacity'.

Many international instruments have long made a contribution to combating trafficking in human beings. The two main progenitors, at the global level, have been the UN and the International Labour Organisation with, for instance, the UN's Forced Labour Convention (1930) or its Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) both including provisions and obligations against human trafficking.

However it wasn’t until the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (the Trafficking Protocol) was introduced to supplement the UN Convention against Transnational Organised Crime (2000) that the UN had a dedicated legal instrument targeted at human trafficking. Whilst this step was vital and commendable it is very important to recognise the Protocol’s limitations especially from a human rights perspective.

Three are noteworthy: (i) it lacked a focus on the importance of protecting victims, including not applying to all victims irrespective of their histories of exploitation, be they purely local, national, or transnational (legal or illegal); (ii) it applied only to transnational trafficking, thereby omitting coverage of the exploitation and criminal activity that occurs within borders linked or not to earlier transnational movement and exploitation of victims; and (iii) it applied only to transnational trafficking that related in some way to organised crime.

The CoE Convention was drafted in part to move beyond these limits with paragraph 61 of its Explanatory Report stating that ‘the drafters wanted the Convention to make clear that it applied to both national and transnational trafficking, whether or not related to organised crime … that is the Convention is wider in scope than the Palermo Protocol and … is intended to enhance the protection which the Palermo Protocol affords’. Most fundamental though was the desire of the CoE to define human trafficking as ‘first and foremost an issue of violation of human rights’ of victims, as stressed at paragraph 5 of the Preamble to the CoE Convention, ‘that respect for victims’ rights, protection of victims, and action to combat trafficking in human beings must be the paramount objectives’.

See paragraph 4 in endnote 14 above. Further the CoE Convention’s Chapter III comprises obligations on the promotion and the protection of the rights of victims. These rights range from the identification of victims onto their assistance towards recovery, through to granting of reflection periods and potentially residence permits, as well as provisions relating to compensation, and to the return of victims if appropriate to the relevant State. These rights (i) form a set of standards for the treatment of victims that States must adhere to; (ii) must be developed, interpreted, and monitored by States in a manner that respects gender equality and the rights of the child; and (iii) apply to victims, in the appropriate personalised manner, irrespective of their migration status or whether they have been victims of cross-border trafficking and / or trafficking within the State.

The UK Government signed the CoE Convention in March 2007, ratified it in December 2008, with the Convention taking effect in the UK in April 2009. We regard ratification as a welcome and very important step forward in preventing and tackling human trafficking as it relates to the UK. Further we welcome the efforts made by the UK and Scottish Governments, and others, towards national coordinated action against human trafficking, as exemplified by the three joint UK – Scottish Government action plans that have been introduced since March 2009, with the most recent update being published in October 2009. That said we think that as is always the case with the ratification of any international legal instrument that the test of its effectiveness lies in the quality of its implementation.

Article 4(a) of the CoE Convention, and 3(a) of the Trafficking Protocol, both expressly define exploitation as but don’t limit it to the following purposes: ‘the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’. 
The range of means in the UN’s and the CoE’s definition of human trafficking reflect the
complexity and breadth of the techniques used by traffickers to control victims. The means
listed are: ‘the threat or use of force or other forms of coercion, of abduction, of fraud, of
deception, of the abuse of power or of a position of vulnerability’. These means rely on
employment of a range of control techniques, some of which (i) associate most with,
respectively, deception or coercion or the abuse of vulnerability, (ii) some of which can be
found across all means, and (iii) noting always that these different means – deception,
coercion and abusing vulnerability – can overlap at different parts of victims’ trafficking
experiences. The range of control techniques employed in trafficking are outlined in
‘Indicators of Trafficking for Exploitation’, published in 2009 and produced jointly by the
European Commission and the International Labour Organisation.

This strength of this relationship is (i) reflected in international legal instrument by the
Trafficking Protocol being to the UN’s Convention against Transnational Organised Crime; (ii)
demonstrated in monetary terms at the global level by the International Labour Organization’s
estimate published in 2008 that annual profits from trafficking in human beings may be as
high as €32 billion; and (iii) is evident in Scotland through, amongst other things, first the
findings from the Scottish Serious Organised Crime Group’s mapping project, published in
June 2009, that from November 2008 to April 2009, there were 10 serious organised crime
groups for human trafficking identified and 17 for prostitution, out of a total of 367 such
groups, and second an opinion of the author at p.15 of the Scottish Government published
‘Human Trafficking in Scotland 2007/08’ (2009) that that study had ‘drawn clear links between
human trafficking, facilitated illegal immigration, smuggling, organised prostitution and other
forms of organised crime, including Class A drugs trafficking and distribution, cannabis
cultivation, money laundering, and serious fraud’.

The relatively high profits involved in human trafficking is increasingly being recognised
itself as a significant cause of the phenomenon, as stated by the European Commission at
point 1.2 of the Explanatory Memorandum to its ‘Proposal for a Council Framework Decision
on preventing and combating trafficking in human beings and protecting victims’ of 26th
March 2009, that in their opinion ‘the high level of profits generated is a major underlying driver’
for trafficking in human beings.

This importance of vulnerability is reflected, amongst other things, by (i) the centrality of
‘abuse of power or of a position of vulnerability’ as acts that negate consent and which are
characteristic and constitutive of exploitation, which we emphasise is the concept, more than
any other, at the core of the definitions of human trafficking at Article 3 of the Trafficking
Protocol and at Article 4 of the CoE Convention; (ii) its explicit status in Guideline 7 of the
UN’s ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’;
and (iii) the primacy given by the European Commission to a ‘position of vulnerability’ at
Articles 1(1) and 1(2) in its ‘Proposal for a Council Framework Decision on preventing and
combating trafficking in human beings and protecting victims’ of March 2009, as well as the
emphasis placed on ‘social vulnerability’ as ‘arguably the principal root cause of trafficking in
human beings’ at point 1.2 in the Explanatory Memorandum to this proposal.

Demand for the services, products and goods that foster all forms of exploitation leading to,
amongst other things, people trafficking, is cited in the main current and proposed
international legal instruments as probably the main cause of human trafficking itself, as
evidenced by (i) the fact that the CoE devoted a free-standing Article to it at Article 6 of the
CoE Convention; (ii) the UN explicitly mentioned the need for States to ‘discourage the
demand that fosters all forms of exploitation of persons’ at Article 9(5) of the Trafficking
Protocol, with Principle 4 and Guideline 7(1) of the ‘Recommended Principles and Guidelines
on Human Rights and Human Trafficking’ also stating, respectively, that ‘strategies aimed at
preventing trafficking shall address demand as a root cause of trafficking’ and that States in
partnership with others should consider ‘analysing the factors that generate demand for
exploitative commercial sexual services and exploitative labour and taking strong legislative,
policy and other measures to address these issues’; and (iii) that draft Article 12(1) of the
European Commission’s ‘Proposal for a Council Framework Decision on preventing and
combating trafficking in human beings and protecting victims’ would if adopted require
Member States to ‘discourage the demand that fosters all forms of exploitation’.

Human trafficking is a gendered phenomenon in that women tend to be both especially
vulnerable to traffickers and then actually account for the bulk of victims particularly in respect
of trafficking for sexual exploitation; this vulnerability being inseparable from a deeper
gendering of poverty and opportunity in especially ‘source’ states and regions. Recognition of the gendered nature of human trafficking is reflected at the global, regional, and national levels both in terms of estimates of victims, recommended policy approaches against trafficking, as well as in the leading relevant international legal instruments.

First at the global level the UN’s Office on Drugs and Crime estimated in February 2009 in its ‘Global Report on Trafficking in Persons’ report that the most commonly identified form of human trafficking is sexual exploitation (79%) with women and girls being the predominant victims of this, with this gendered vulnerability being reflected in (i) Article 2(a) of the Trafficking Protocol, (ii) in Article 6 of the UN’s Convention on the Elimination of All Forms of Discrimination against Women (1979), and (iii) in Article 2(b) of the UN’s Declaration on the Elimination of Violence against Women that expressly recognises ‘trafficking and forced prostitution’ as forms of violence against women.

Second at the European level in June 2009 Europol estimated that most victims are women and children and that sexual exploitation is the most common form of trafficking in the European Union, and this gendered experience of trafficking is reflected in Articles 1(a), 6, and especially Article 17 of the CoE Convention, recommending the centrality of gender equality in work to prevent, combat, and empower and protect the victims of human trafficking, with paragraph 210 of the Explanatory Report to the CoE Convention clarifying the main aim of Article 17 as ‘to draw the attention to the fact that women, according to existing data, are the main target group of trafficking in human beings and to the fact that women, who are susceptible to being victims, are often marginalised even before becoming victims of trafficking and find themselves victims of poverty and unemployment more often than men. Therefore, measures to protect and promote the rights of women victims of trafficking must take into account this double marginalisation, as women and as victims’.

Third not surprisingly the same phenomenon seems to play out in the UK and in Scotland although we recognise that it is understandably very difficult to ever get relatively precise figures of the numbers of victims of trafficking across its various purposes at any one time and that from a human rights perspective it is inappropriate to tie one’s anti-trafficking work too firmly to numbers. That said we note that various estimates from public bodies, NGOs and others over the past decade have pointed to the existence of significant levels of trafficking in the UK for sexual and labour exploitation and for other purposes such as domestic servitude – see for instance some of the estimates mentioned in the ‘key facts’ section at p.3 of the House of Commons’ Home Affairs Committee’s report ‘The Trade in Human Beings: Human Trafficking in the UK’ published in May 2009. We have noted further that women and children tend to be the predominant victims in most these estimates.

Fourth we welcome the recent recognition that UK citizens are also victims of trafficking. This is important as it keep the anti-trafficking focus where it should be that is on exploitation and not cross-border movement only, and in so doing it helpfully debunks any misperceptions that trafficking is purely transnational that is it is suffered and practiced only by persons from outside the UK, The abuse of, for instance, Scottish prostitutes’ vulnerability in Glasgow that enables their being moved across the city, or to other parts of the UK, from say one private sex flat to another may also, amongst other things, be regarded as sex trafficking as all of the elements of trafficking could be present, especially the most important of the intention to exploit. We will explore this in our current Inquiry into human trafficking in Scotland that has a focus on trafficking into commercial sexual exploitation.

Finally in terms of the criminalisation of the (gendered) exploitation in the bulk of sex trafficking within the UK - be it of non-UK nationals (smuggled or otherwise) and / or of UK nationals - the existence of the criminal law in Scotland at s.22(1)(a) of the Criminal Justice (Scotland) Act 2003, and in England and Wales at s.58(1) of the Sexual Offences Act 2003, are both positive, in that they criminalise the intentional arranging or facilitation of travel within the UK for, in Scotland, only for the purpose of controlled prostitution of an individual, and in England and Wales, for this purpose but also, very positively, for other sexual offences.

It is well established that human trafficking involves movement of exploited persons not only within borders but across borders. We think it uncontroversial to say that migration policies and their implementation at both the regional and at the national level have an impact on human trafficking. We note for instance the agreement of the UN’s Special Rapporteur on Trafficking in Persons especially Women and Children at p.17 in her report of February 2009 to the UN’s Human Rights Council, with the opinion of the Commonwealth Secretariat that ‘Restrictive immigration laws and policies are obstacles to a large supply of human power
from source countries to meet the high demand for cheap labour in host countries. This helps generate a lucrative market for traffickers’. Further we are concerned to ensure that the main human rights based anti trafficking goals of preventing and prohibiting trafficking, prosecuting traffickers, and protecting its victims, influence the development of and have clout within migration policy. We continue to agree then with the one of the conclusions (no.13 at p.69) in the report by the UK Parliament’s Joint Committee on Human Rights, ‘Human Trafficking’ published in October 2006, that ‘the protection of victims of trafficking should be incorporated into and placed at the heart of, the legislative framework’ and, further, we note the progress made on this goal through, amongst other things, the ratification of the CoE Convention and the introduction and updating of the joint UK-Scottish Government action plans for tackling human trafficking. That said the Commission as a national human rights institution has a continuing interest that the human rights based anti-trafficking goals are at the centre of other relevant policies, including in the development, implementation, and monitoring the impact of asylum and of immigration policies.

xxv The Equality Act (2006) created the Commission and, amongst other things, set out its duties and powers. Some of these relate, as one would expect, to human rights, most notably at (i) s.3(b) that as part of the Commission’s general duty requires it to exercise its functions to promote a society where there is ‘respect for and protection of each individual’s human rights’; and (ii) at s.9 that requires the Commission to promote awareness, understanding and protection of human rights particularly with regard to those rights from the European Convention on Human Rights that are incorporated in the Human Rights Act (1998), including its Article 4 that is in Schedule 1 to that Act which is an absolute (not a qualified) right, that prohibits slavery, servitude, and forced or compulsory labour.

xxvi The Commission has responsibilities as a national human rights institution with accreditation from the United Nations to promote and protect human rights and to monitor and report on compliance in Britain and in Scotland with international obligations including those relating to human trafficking.

xxvii For more information relating to the Equality Measurement Framework please visit: www.equalityhumanrights.com/fairer-britain/equality-measurement-framework/.

xxviii This Inquiry taken under s.16 of the Equality Act (2006) will be led by Baroness Helena Kennedy QC, is due to report findings in late 2010 followed by its final report with recommendations in summer 2011. Terms of reference for the inquiry can be found at: www.equalityhumanrights.com/media-centre/2010/february/formal-inquiry-opened-into-human-trafficking-in-scotland/.
