GUIDANCE ON HUMAN TRAFFICKING OFFENCES

Trafficking in human beings is the illegal trade of human beings for the purposes of commercial sexual exploitation or forced labour and is a modern-day form of slavery. It is the fastest growing criminal industry in the world and is tied with the illegal arms industry as the second largest, after the drug-trade.

Victims of human trafficking are used in a variety of situations, including:

- forced labour (bonded labour or debt bondage);
- child labour (for purposes which include labour), adoptions;
- benefits applications, domestic servitude and commercialised sexual exploitation of children;
- commercialised sexual exploitation; and
- other forms of involuntary servitude.

For the purpose of these offences, a child victim of human trafficking is defined as a person up to age 18 years.

Purpose

1. This guidance aims to assist prosecutors to;

   - effectively investigate human trafficking cases;
   - effectively identify victims or potential victims of human trafficking;
   - increase knowledge of the legislation; and
   - inform prosecutors of the changes which will be introduced by the Criminal Justice and Licensing (Scotland) Act 2010.

INDEX

1. Background

1.1 Definition of human trafficking

2. Legislation

2.1 Criminal Justice (Scotland) Act 2003

2.2 Asylum and Immigration (Treatment of Claimant etc) Act 2004

2.3 Criminal Justice and Licensing Act 2010

3. Victims of Human Trafficking

3.1 Types of exploitation
3.2 Victim Indicators

4. Prosecution of Victims of Human Trafficking

4.1 Duty imposed by the Convention

4.2 Prosecution Policy

4.3 Duties of the Procurator Fiscal

5. Children

5.1 Child Trafficking

5.2 Internal Trafficking

5.3 Child and vulnerable Witnesses

5.4 Victims wishing to return home

1. Background

The Council of Europe Convention on Action Against Trafficking in Human Beings was signed by the UK on 23 March 2007. The UK Action Plan on Tackling Human Trafficking was published on the same day.

The purposes of the Convention are;

- to prevent and combat trafficking in human beings, while guaranteeing gender equality;
- to protect the human rights of the victims of trafficking, as well as to ensure effective investigation and prosecution; and
- to promote international cooperation on action against trafficking in human beings.

1.1 The Convention defines 'trafficking' as;

"The recruitment, transportation, transfer, harbouring or receipt of persons, by means of:

- threat;
- use of force or other forms of coercion;
- abduction;
- fraud;
- deception;
- abuse of power;
- abuse of a position of vulnerability; and
- giving or receiving of payments or benefits;"
to achieve the consent of a person, having control over another person, for the purpose of exploitation”.

'Exploitation' is defined to "include, at a minimum the;

- exploitation of the prostitution of others or other forms of sexual exploitation; or
- forced labour or services; or
- slavery or practices similar to slavery; or
- servitude; or
- removal of organs”.

The United Kingdom Human Trafficking Centre (UKHTC) was established in 2006 to be a central point for the development of expertise and operational co-ordination in relation to trafficking of human beings. It is a police led multi-agency organisation and is a useful source of information and advice.

The UK has two ‘Competent Authorities’, who make decisions on whether someone is a victim of trafficking.

- UK Human Trafficking Centre (UKHTC) - A central multi-agency Competent Authority; and
- UK Border Agency (UKBA) - to assess cases where trafficking is raised as part of an asylum claim or in the context of another immigration process.

2. Legislation

2.1 Criminal Justice (Scotland) Act 2003

Section 22 - Traffic in prostitution

Section 22 creates offences of trafficking for the purposes of sexual exploitation.

These offences apply both cross border, in to and out of the UK, and within the UK. The offences also cover behaviour out with the UK by British Citizens, and in that event, proceedings may be brought anywhere in Scotland.

The maximum sentence for cases prosecuted on indictment is 14 years and on summary conviction, imprisonment not exceeding 12 months, a fine or both.

Although Section 22 of the 2003 Act does not specify that force, threats or deception etc. are in fact required prosecutors should look for evidence of such. This will help to ensure the true nature of such offences is not diluted.
Section 46 of the Criminal Justice and Licensing (Scotland) Act 2010 (which is not yet in force and is expected to be commenced in April 2011) will amend section 22(1)(a) of the Criminal Justice (Scotland) Act 2003 by extending its scope so that it refers to facilitating "entry into" the UK as well as the "arrival in" the UK. The amendments will ensure that it will be an offence under Scots law where a person, regardless of his/her nationality, within or out with the UK undertakes trafficking activities and an individual is trafficked into, within or out of the UK.

The extraterritorial effect of section 22(4) of the 2003 Act is extended so that it is not limited to British Nationals and companies by providing that the offence applies to anything done whether inside or outside the UK by any person, no matter whether they are in any way connected to the UK.

Section 22(5) of the 2003 Act will be amended and will determine that proceedings can be commenced in the Sheriff Court District where the accused is arrested or in custody or as determined by the Lord Advocate.

2.2 Asylum and Immigration (Treatment of Claimants etc) Act 2004

Section 4 – Trafficking People for exploitation

Section 4 of the Act introduced criminal offences in relation to trafficking people for exploitation, making it an offence for a person to arrange or facilitate the arrival in, travel within or departure from the UK of an individual, if he intends to exploit that individual or believes that another person is likely to do so.

Exploitation covers such matters as, slavery or forced labour, unlawful organ transplant, force threats or deception in connection with acquisition of benefits and abuse of vulnerable persons.

The offences in section 4 are intended to catch all those involved in the trafficking process, including those who recruit, transport, harbour or receive the victim. The offence can be committed even where the intended exploitation has not actually taken place.

2.3 Criminal Justice and Licensing (Scotland) Act Provisions

Section 46 of The Criminal Justice and Licensing (Scotland) Act 2010 amends Sections 4 and 5 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 by;

- extending its scope so that it refers to, "entry into" the UK as well as the, "arrival in" the UK;
- making the Act apply to anything done within or out with the UK; and
allowing proceedings in the Sheriff Court District where the accused is arrested or in custody or as determined by the Lord Advocate.

Section 99 of the 2010 Act amends the Antisocial Behaviour etc. (Scotland) Act 2004 widening closure powers whereby a senior police officer may authorise the service of a closure notice in cases involving an exploitation offence.

These "exploitation offences" include trafficking offences referred to above.

Section 88 Child witnesses in proceedings for people trafficking offences

Amends 271 of the 1995 Act so that in the case of a person to give evidence in proceedings for a trafficking offence the automatic entitlement to special measures is available up to age 18 instead of 16.

3. Victims of Human Trafficking

The UK Human Trafficking Centre (UKHTC) have developed a Senior Investigating Officer Toolkit to assist with the investigation and identification of human trafficking offences. The Toolkit focuses on ensuring any operation adopts a victim centred approach and aims to ensure consistency of approach to investigations.

The SIO Toolkit is a useful guide to:

- aid prosecutors to effectively identify potential victims of trafficking in associated criminal cases; and
- ensure that where allegations of contravening human trafficking legislation are received prosecutors have an awareness of the manner in which investigations should proceed, the identity of relevant partner agencies and the support services available to victims.

3.1 Types of Exploitation identified within the Toolkit

- Sexual Exploitation

This involves taking non consensual or abusive sexual advantage of another.

- Labour Exploitation

The International Labour Organisation (ILO) Forced Labour Convention 1930 (No. 29) and the European Court of Human Rights defines labour exploitation as, "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Article 2 ILO C.29).
The ILO has set out six elements which, either individually or together, can provide an indication of forced labour:

- threats or actual physical harm;
- restriction of movement and confinement to the workplace or to a limited area;
- debt bondage;
- withholding of wages or excessive wage reductions, that violate previously made agreements;
- retention of wages and identity documents (the workers can neither leave nor prove their identity status); and
- threat of denunciation to the authorities where the worker is of illegal status.

- **Domestic servitude**

This is a form of labour exploitation but may also include sexual exploitation.

- **Organ Harvesting**

This is the illegal trade in body parts. This aspect of trafficking has not as yet been identified in the UK however that is not to say that it isn’t happening.

- **Internal Trafficking**

This relates to the movement of persons within the UK for the purpose of exploitation.

### 3.2 Victim Indicators

- The SIO Toolkit also contains list of specific indicators which apply to particular kinds of exploitation mentioned above. The presence of indicators should lead to further investigation by the police.

### 4. Prosecution of Trafficked Victims

Victims of human trafficking, including children, may commit a variety of offences whilst they are being coerced by another.

When reviewing a case, it may come to the attention of the prosecutor that the accused is a “credible” trafficked victim where the investigating officers have reason to believe that the person has been trafficked. In these circumstances, prosecutors should as in any other case where new information comes to light consider whether the public interest is best served in continuing the prosecution in respect of the offence. Prosecutors will wish to consider the seriousness of the offence the degree of coercion used and whether a defence of coercion would be likely to be successful.

### 4.1 Duty imposed on Prosecutors by the Convention
Article 26 of the Convention provides that states shall, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

The case of *R v O [2008] EWCA Crim 2835* confirms the duty of prosecutors to make full and proper enquiries in criminal prosecutions involving individuals who may be victims of trafficking and to be proactive in establishing if an accused is a potential victim of trafficking.

*R v O* involved a 16 year old girl from Nigeria, who was trafficked into the UK for the purposes of sexual exploitation. She obtained false identification which she sought to use to flee her traffickers. She disclosed to her solicitor that she attempted to leave the UK using the false documents, as she was fleeing forced prostitution. Her solicitor did not act on this information despite an approach by The POPPY Project. She pled guilty and was sentenced.

The Court of Appeal allowed the appeal against conviction. The judgment highlighted;

- It recognised the clear intention of the UK Government, in signing the Council of Europe Convention on Action against Trafficking in Human Beings to protect the rights of victims of trafficking in the UK;
- It requires that both Prosecutors and Defence lawyers are "to make proper enquiries" in criminal prosecutions involving individuals who may be victims of trafficking, in line with the findings of the Parliamentary Joint Committee on Human Rights report on Human Trafficking, that there must be co-ordinated law enforcement in protecting the rights of victims of trafficking;
- That CPS legal guidance on the prosecution of trafficked victims was recognised; the court advised that this be published more widely to ensure others are aware of it;
- The valuable role played by POPPY was acknowledged and the report prepared for this case;
- The failure by the court, defence and prosecution to recognise that O was a minor.

### 4.2 Prosecution Policy

There is a presumption against the prosecution of a credible trafficked victim for crimes that arise as a consequence of the accused being a credible trafficked victim. This presumption is rebuttable and it is likely to be rebutted where there is sufficient evidence to prove a crime which would ordinarily proceed on indictment or a crime that is remote and unconnected to the trafficking activity. Crown Counsel’s instructions should be sought in such cases. Matters that are relevant to consider are;

- is the person a "credible" trafficked victim;
- the role that the accused has in an offence;
- was the offence a direct consequence of their trafficked situation;
• were violence, threats or coercion used;
• vulnerability or considerable fear.

4.3 **Duties of the Procurator Fiscal**

Where information from whatever source comes to the notice of Procurators Fiscal leading to concerns that an accused person might be the victim of trafficking, the prosecutor should:

• contact the investigating officer and instruct further enquiries into the possibility that the suspect has been trafficked (this should be done by contacting the UK Human Trafficking Centre (UKHTC), see: [www.ukhtc.org](http://www.ukhtc.org);
• review the case in light of any fresh information or evidence;
• where new evidence obtained supports the claim that the accused has been trafficked and committed the offence(s) whilst they were coerced, give consideration to discontinuing the prosecution;
• where Crown Counsels’ instructions are already received or where an accused has been fully committed re report to Crown Counsel for further consideration;
• continuously review the case to ensure prosecution continues to be in the public interest.

5. **Children**

5.1 **Child trafficking**

This is the practice of transporting children into, within and out of the UK for the purposes of exploitation.

**Child victims are defined as children up the age of 18 years**

The exploitation can be varied and include;

• labour exploitation (e.g. construction, restaurants, etc); domestic servitude;
• criminal activity (e.g. cannabis cultivation, petty street crime, illegal street trade, etc);
• sexual exploitation (brothels, closed community, for child abuse images);
• application of residence;
• benefit fraud;
• illegal adoption; and
• forced marriage.

Child trafficking and exploitation is often accompanied by various types of control such as;

• violence;
• threat of violence;
• sexual abuse;
• alcohol and drug abuse;
• emotional abuse;
• manipulation through twisting cultural practices; and
• imprisonment to suppress victims and ensure their compliance.

5.2. Internal Trafficking

Whilst the UK is primarily a destination state for human trafficking, an emerging issue is the “internal trafficking” of children. This term is used to describe the trafficking of children born, or normally resident in the UK. Internal trafficking is characterised by the recruitment, grooming and sexual exploitation of young teenage girls in the UK by organised crime gangs. Investigations may arise in circumstances where a child has gone missing (often, but not limited to, children in local authority care). They may be sexually abused before being taken to other towns and cities where the sexual exploitation (prostitution) continues.

The Scottish Government published guidance in February 2009 “Safeguarding Children in Scotland who may have been Trafficked” which provides guidance on the roles and functions of relevant agencies.

5.3. Vulnerable and Child Witnesses

Trafficked victims often face barriers in coming forward and giving evidence. They may not always co-operate with the authorities. Often they may fear the consequences of giving evidence against their traffickers. It is particularly difficult to encourage victims from certain regions to engage which may be due to the types of coercion used, cultural issues; and/or the types of criminal networks involved.

Maintaining contact with victims and keeping them informed of hearings, case developments and trial dates therefore requires sensitivity and consideration. Contact is often made through local police or Non-Governmental Organisations to avoid written notification.

5.4. Victims wishing to return home

Where a victim has chosen to be repatriated to their home country and does not wish to return to the UK, the provisions for evidence to be given by television link under section 273 of the Criminal Procedure (Scotland) Act should be considered. This provision only applies to solemn proceedings. The procedure for application can be found in section 273(2).