



**Scotland Human Trafficking and Exploitation Strategy
Joint consultation response**

December 2016

Children in Scotland

Children in Scotland is the collective voice for children, young people and families in Scotland as well as the organisations and businesses that have a significant impact on children's lives throughout the country. We are a membership organisation, comprised of more than 550 representatives from the voluntary, public and private sectors.

We aim to identify and promote the interests of children and their families, influencing the development of policy and services in order to ensure that they are of the best possible quality, capable of meeting the needs of children and young people living in Scotland.

Together (Scottish Alliance for Children's Rights)

Together is an alliance of children's organisations that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have over 340 members including large international and national non-governmental organisations through to volunteer-led playgroups and after school clubs.

Every year, we research and publish an annual State of Children's Rights report to set out the progress made to implement the UNCRC in Scotland. We worked closely with the UN Committee on the Rights of the Child in relation to its 2016 examination of the UK. The resulting recommendations to the UK and devolved governments reflect very many of the concerns of Together's members.

1. Introduction

We welcome the Scottish Government's commitment to tackle human trafficking and exploitation and the promise held within the strategy to accompany the Human Trafficking and Exploitation (Scotland) Act 2015. While there is much to be welcomed in this development, our response specifically focuses on how the provisions in the draft strategy might be strengthened to ensure a consistent and strong child-rights approach to combating trafficking in Scotland.

2. Child rights and Wellbeing Impact Assessment

We would welcome the Scottish Government to publish the draft Child Rights and Wellbeing Impact Assessment (CRWIA) that they have carried out on the development of the Human Trafficking and Exploitation Strategy in line with their duties under part 1 of the Children and Young People (Scotland) Act 2014, *in advance* of the strategy being finalised. A CRWIA is most effective when it is developed alongside policy formulation. In this way, it ensures the systematic consideration of the Scottish Government's obligations under the UNCRC from the outset of the policy development process. Sharing the draft CRWIA at this stage would allow wider stakeholders to share their expertise, and ensure that the Human Trafficking Strategy progresses children's rights and that any potentially negative impacts for children are taken into account and mitigated.

3. Training and Awareness Raising

We welcome the adoption of an integrated and holistic approach to the fight against human trafficking, which will in turn, promote better coherence at all levels through partnership working. We agree with Unicef UK's response that the partner organisations must be explicitly named where possible so that there is a clarity of roles and responsibilities across public body organisations from the start.

Along with UNICEF UK, we call for more awareness raising of the Lord Advocate's instruction in the strategy regarding the non punishment principle. This is essential if the Scottish Government is to progress the UN Committee's 2016 recommendation to establish a 'clear obligation of non-prosecution' and ensure that

children who have been trafficked are ‘treated as victims rather than criminals’¹.

Awareness-raising should be understood beyond the prosecutors and should be incorporated in training for NGOs, Police Scotland, the judiciary, lawyers through the Law Society and others. The need for training and awareness raising goes beyond this principle to the full range of implications of human trafficking in Scotland in order to support the effective multi- agency cooperation required which should be child-centred. The strategy should include reference to this to strengthen the safeguards for children. Training and awareness raising should be underpinned by the Scottish Government’s Common Core of Skills, Knowledge, Understanding and Values for the Children’s Workforce² to help promote a children’s rights culture among all those with a responsibility for taking forward the Human Trafficking Strategy.

4. National Referral Mechanism

The National Referral Mechanism does not embed the identification and safeguarding of trafficked and exploited children into existing child protection processes. In 2016, the UN Committee on the Rights of the Child advised that the National Referral Mechanism should be ‘strengthened’ in relation to identifying trafficked and exploited children and called for it to be ‘embedded in existing child protection procedures’.³

In line with the State of Children’s Rights Report 2016 and Unicef’s recent research *Achieving a durable solution for trafficked children*, the strategy should include a principled statement of intent regarding the necessary reform of the National Referral Mechanism (NRM) to identify trafficked and exploited children, embedded within existing child protection procedures. ‘It should be a multi-agency model requiring mandatory, accredited and specialist training for all social

¹ (CRC/C/GBR/CO/5: Para: 83(c) - http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En)

² Common Core of Skills, Knowledge, Understanding and Values for the Children’s Workforce - <http://www.gov.scot/Resource/0039/00395179.pdf>

³ (CRC/C/GBR/CO/5: Para: 83(b) - http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En)

workers, police and front line professionals and rights of appeal for children'.⁴

5. Human Rights

The strategy clearly lays out that the Scottish Government considers human trafficking to be a human rights issue, and we welcome the fact that a child-rights approach has been specifically adopted, as recommended by child rights advocacy organisations at the consultation stage when drafting the Bill. We further recommend that particular attention is paid to the consistency of this approach throughout.

The Human Trafficking and Exploitation Strategy should make consistent reference to all supporting human rights mechanisms throughout the strategy, including the UNCRC, the Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography, the General Comment no.6 (2005) on the CRC *Treatment of unaccompanied and separated children outside their country of origin* and the EU Human Trafficking Directive. It should also address wider recommendations made by CEDAW in 2013⁵ and the Universal Periodic review in 2012.⁶

We would like to see the human rights approach more fully embedded by explicitly incorporating the Best Interest of the Child (UNCRC art 3) principle throughout and instruction that trafficked persons should be first and foremost seen as rights holders, with due consideration for their human rights at every stage of the process they go through as a victim of human trafficking.

We welcome that the inherent vulnerability of children is recognised within the strategy and that the risk they are exposed to is greater than that of adults. Furthermore, we are pleased to see that the safety of child victims is paramount and instructed

⁴ Together: State of Children's Rights in Scotland Report, 2016 p148

⁵ CEDAW/C/GBR/CO/7: Para: 39, 41 and 55(e)

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GBR/CO/7&Lang=En

⁶ A/HRC/21/9: Para: 110.72-7

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-9_en.pdf

to be dealt with through the universal GIRFEC approach in order to streamline child protection measures.

6. Additional support for child victims of trafficking

We are supportive of the commitment within the strategy to bring forward guidance on the use of Sections 22 and 25 of the Children (Scotland) Act 1995 in order to address the concern, which we share, that if a child victim of trafficking or exploitation goes into supported accommodation, this leaves them vulnerable to being re-trafficked. To this end, the guidance should be brought forward urgently, in consultation with experts working directly with child victims of trafficking.

Furthermore we recommend that the strategy instruct that child victims of trafficking be guaranteed the rights associated with having a looked after and accommodated status, including being able to request support from their local authority area up to and including the age of 26 in line with the Children and Young People (Scotland) Act 2014⁷.

We welcome the reference to child trafficking guardians (section 11) and presumption of age (section 12) as additional support measures for unaccompanied child victims of human trafficking, but feel explicit mention is required of the other additional supports that must be in place for them, including access to basic services. In line with the State of Children's Rights in Scotland 2016 report recommendation, the Scottish Government should ensure that sufficient support is provided to migrant, refugee and asylum -seeking children to ensure they are able to access basic services, including suitable accommodation and adequate healthcare and education⁸ and this should be referred to within section 4 of the strategy.

We also recommend that the regulations under section 11 within the strategy be brought forward as a matter of urgency in order to make clear the specific entitlements regarding timely access to an independent child trafficking guardian. This must be matched with adequate resources to ensure sufficient services are in place to meet these entitlements.

⁷ <http://www.gov.scot/Topics/People/Young-People/legislation>

⁸ Together: State of Children's Rights in Scotland Report, 2016 p 138

We welcome that the mental health of trafficked children is acknowledged within the strategy but reiterate our calls for the Scottish Government to urgently address the lack of appropriate and timely access to CAMHS provision and specialist trauma support across Scotland and for the upper age limit for this to be extended up to 26 years old. We also call for opportunities to support overall wellbeing of child victims of trafficking to be included in the strategy.⁹

Furthermore, regarding the presumption of age, it is important that ‘all meetings, including initial assessment meetings, should be regarded as part of the age assessment, and therefore conducted and reported on in a transparent, clear and appropriate manner with an interpreter and an appropriate and responsible adult present to safeguard the rights and welfare of the child’.¹⁰ This should be clear in the strategy to remove any doubt about the procedures surrounding presumption of age.

7. Long term planning and support for child victims of trafficking

There is no mention within section 4 of the strategy regarding long term planning for child victims, which is highlighted in Unicef’s research in this area as essential¹¹. Planning currently focuses on the short term with insufficient consideration about the child’s future and long-term outcomes. There are also no monitoring systems currently in place to track outcomes for children once they leave care, for child victims of trafficking whose appeal rights are exhausted and face deportation, or young people who have been returned to their country of origin, which makes it almost impossible to analyse long term outcomes and assess whether plans have indeed been durable.

The strategy should include a duty on local authorities to track and monitor progress for child trafficking victims in order to assess whether a durable solution is being achieved.

⁹ Children in Scotland: Mental Health in Scotland - a 10 year vision consultation response, 2016
<http://www.childreninscotland.org.uk/sites/default/files/MH%20Strategy%20CIS%20response.pdf> and Together: State of Children’s Rights in Scotland Report, 2016 p 96

¹⁰ Together: State of Children’s Rights in Scotland Report, 2016 p 135

¹¹ Unicef: Achieving a Durable Solution for Trafficked Children, 2016 p6

8. Child victims missing from the strategy

We welcome the intention to undertake research into international alternative routes of arrival into Scotland as we are alarmed that there does not appear to be provision within the strategy for accompanied child migrants, including EU citizens, and those children who are trafficked domestically within the UK as highlighted in Barnardo's CSE report (2013).¹²

We echo the call from the Anti Trafficking Monitoring Group for Scotland to expand the guardianship scheme to 'include all trafficked children, including British nationals, and clarifies what it means about a child being 'vulnerable' to trafficking. The Scottish Government should also clarify that if a child is trafficked into the UK by a person with parental responsibility rights, or that the person with parental responsibility rights in the UK is an associate of the trafficker, the child is entitled to support from the child trafficking guardianship service'.¹³

9. Voice of the child

The strategy should emphasise the importance of the voice of the child and for this to be paramount in any decisions that are made about their care and protection via their Guardian or otherwise. This is supported by Article 12 of the UNCRC and Article 8c of the Optional Protocol on the CRC *Treatment of unaccompanied and separated children outside their country of origin*.

10. Immigration Act (2016)

The Human Trafficking Strategy needs to take account of the impact of the Immigration Act 2016, which the UN Committee stated as being in need of review 'to ensure its compatibility with the UNCRC'.¹⁴ There are widely documented concerns that the 2016 Act regresses from the UK's UNCRC obligations and does

¹² Barnardos: Running from hate to what you think is love: The relationship between running away and child sexual exploitation, 2013

https://www.barnardos.org.uk/15505_cse_running_from_hate_2l_web.pdf

¹³ Anti Trafficking Monitoring Group: Class Acts? Examining modern slavery legislation across the UK, 2016 p63

¹⁴ CRC/C/GBR/CO/5: Para: 77(g)

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En

not provide a child-rights based system to support unaccompanied children and young people.¹⁵ For example, it includes provisions that enable the deportation of a young person under immigration control before any judicial scrutiny of the Home Office decision and without adequate consideration of the best interests of the child (Section 63 of the Immigration Act 2016 removes an existing restriction on the Secretary of State's power under section 94B of the Nationality, Immigration and Asylum Act 2002). The young person would be expected to appeal against any wrong decision from outside the UK. This could mean that young people are returned into places of danger or into the hands of traffickers.¹⁶ While the Immigration Act 2016 itself is reserved to the UK Government, the Scottish Government should take full account of its implications in developing the Human Trafficking and Exploitation Strategy.

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¹⁵ Together: State of Children's Rights in Scotland Report, 2016 p 141

¹⁶ Together: State of Children's Rights in Scotland Report, 2016 p 141