

Report on the Internal Review of Human Trafficking Legislation

May 2012

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Foreword by the Minister of State for Immigration

Human trafficking is an abhorrent crime which affects communities throughout the world. The international nature of human trafficking means that it knows no boundaries. The UK Government recognises the importance of working collaboratively with partners both in the UK and overseas, and of using all the available tools in the fight against organised criminals who seek to exploit others.

However, tough legislation in itself is not the answer. To rely solely on prosecuting and convicting the perpetrators means that we have failed to tackle the core issue, protecting the vulnerable people who are susceptible to traffickers in the first place. Stopping traffickers by deterring and disrupting their activities will help to protect the men, women and children who may fall prey to these despicable acts.

The UK already works with international partners to ensure that, where possible, the threat of trafficking is reduced. Law enforcement agencies in the UK work with their counterparts in other countries to pool resources to tackle trafficking and to bring the perpetrators of this terrible crime to justice, often through joint investigations. It is this kind of collaborative action that will improve our national and international response to human trafficking. From 2013, the new National Crime Agency will also play a key role in the fight against traffickers through its enhanced intelligence capabilities and its coordination and tasking functions.

By opting into the EU Directive on human trafficking this Government has already taken steps to strengthen our response. The legislative changes we are making mean that in future we will be able to prosecute UK nationals who commit trafficking offences even where the trafficking has no connection with the UK. We will also have the power to prosecute traffickers for non-sexual trafficking offences which occur wholly within the UK.

The human trafficking legislation we already have in place in England and Wales is effective, and supports and complements other legislation used to convict perpetrators of similar serious offences. Introducing a bespoke human trafficking bill is, therefore, not required because it would simply reinvent existing legislation.

I am confident that, the changes we are making to comply with the criminal aspects of the EU Directive, together with the change we intend to make to the unduly lenient sentences regime as part of this review, will further strengthen our response to human trafficking and provide the necessary deterrent to the organised criminals responsible for these appalling crimes.



A handwritten signature in blue ink that reads "Damian Green". The signature is written in a cursive style.

Damian Green MP
Minister of State for Immigration

Summary

In its Human Trafficking Strategy, published in July 2011, the UK Government undertook to review legislation to ensure the effective prosecution of traffickers. An internal review was conducted between September and December 2011, which considered the effectiveness of existing human trafficking legislation in relation to the range of other complementary activities underway to deter and disrupt traffickers.

The review identified three areas where legislation in England and Wales could be strengthened. New legislation is already being introduced in two of these areas, to comply with the EU Directive on Trafficking in Human Beings: to criminalise acts of human trafficking committed by UK nationals anywhere in the world where the trafficking has no connection with the UK; and to criminalise trafficking for non-sexual exploitation which takes place wholly within the UK.

The third area identified relates to the unduly lenient sentence regime. At present only offences of trafficking for sexual exploitation can be referred by the Attorney General to the Court of Appeal for consideration, where it appears to him that the Crown Court has passed an unduly lenient sentence. We intend to correct this anomaly so that sentences for non-sexual exploitation also come within the scope of this regime. This will ensure that, across the range of human trafficking offences in England and Wales, the Attorney General can seek to increase the sentence of a convicted trafficker where it appears to him that the Crown Court's sentencing has been unduly lenient. The Northern Ireland Executive will look to introduce similar provisions.

Introduction

1. The Human Trafficking Strategy, published by the UK Government last July, set out four core principles in the fight against human trafficking: to improve identification and care for victims in England and Wales; to reduce the threat early; smarter action at the border; and better coordination of law enforcement efforts in the UK. Recognising the seriousness of the damage that can be caused to those who are exploited, the UK Government placed the victims of this terrible crime at the heart of its Strategy. By stopping the threat early and raising awareness of trafficking, here and overseas, the Government seeks to prevent people from becoming victims in the first place. To strengthen our response further, the National Crime Agency, from 2013, will play a vital role in gathering intelligence and coordinating efforts against serious, organised and complex crimes, including groups involved in trafficking.
2. However, we know all too well that vulnerable people continue to fall prey to traffickers, both internationally and within the UK. That is why, intercepting and disrupting the criminals responsible for these crimes remains a priority for the UK. It is not simply enough to have tough criminal laws to prosecute human traffickers. It is imperative that we have all the relevant agencies working together, sharing information and, where appropriate, intelligence so that traffickers can be brought to justice and their despicable acts brought to an end. Disrupting the activities of organised crime groups is just as important as having in place the appropriate legislative framework.
3. To strengthen our overall response to human trafficking, the UK Government undertook, in its Strategy published in July 2011 “to review human trafficking legislation to ensure the effective prosecution of traffickers”. We recognise the need not only to prevent people from falling victim to those who seek to exploit them, but to ensure that the perpetrators can be punished and that appropriate deterrents are in place.

Complying with our EU and international Obligations

4. The Government is committed to tackling human trafficking and is determined to build on the UK’s strong track record in supporting victims and fighting traffickers.
5. The UK has implemented key international agreements aimed at improving anti-trafficking efforts across the world. This includes the UN’s Palermo Protocol and the Council of Europe Convention. Following the introduction of the Council of Europe Convention on trafficking in human beings in 2009, the UK developed a National Referral Mechanism (NRM). The NRM is a framework for victim identification and support which captures data on potential human trafficking victims and ensures they are directed towards the most appropriate support services.
6. Last July the UK, as a Member State of the European Union, opted into the EU Directive on trafficking in human beings¹. Work is already underway to ensure the UK is compliant with the Directive by the deadline of April 2013. To comply with the criminal law aspects of the Directive the UK Government has introduced new primary legislation in England and Wales to enable prosecution of a UK national for human trafficking offences, regardless of where in the world the arrangement or facilitation of the trafficking takes place, and regardless of where in the world the trafficking occurs or is intended to occur. This goes further than the current trafficking legislation, where the offences

¹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

only apply where a person trafficks another into, or out of the UK for the purposes of exploitation. The changes to primary legislation will also criminalise trafficking for non-sexual exploitation which takes place wholly within the UK. The Northern Ireland Executive is consulting on introducing similar legislation to mirror these provisions. The Scottish Government already has legislation in place which complies with the requirements of the EU Directive in this area.

The Review

7. An internal review of human trafficking legislation, with other relevant Government Departments, was conducted between September and December 2011. The review considered existing UK human trafficking legislation in England and Wales including: the current maximum sentence length; alternative approaches used to prevent human trafficking and deter criminals; and the numbers of prosecutions for human trafficking offences in the UK.

Current Legislation

8. Within each of the UK jurisdictions, human trafficking offences are not contained within one single Act. This is an issue highlighted by Baroness Kennedy in her recent Equality and Human Rights Commission inquiry into human trafficking in Scotland. This internal review of legislation considered whether introducing a bespoke Human Trafficking Bill would better support prosecutions and convictions for human trafficking offences in England and Wales. Although it would be administratively neater, the Crown Prosecution Service does not believe that a bespoke Human Trafficking Bill would increase the number of successful human trafficking prosecutions as the legislation currently in place is already being effectively used to prosecute and convict offenders of these offences. What is more important is the provision of effective training and guidance for the Judiciary to ensure the full range of legislative powers for trafficking and other similar offences are utilised. The Crown Prosecution Service already provides this guidance to prosecutors.

England, Wales and Northern Ireland

9. In England, Wales and Northern Ireland human trafficking offences are contained in two separate Acts: the Sexual Offences Act 2003 which criminalises trafficking for the purposes of sexual exploitation and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 which criminalises trafficking for forms of non-sexual exploitation.

10. A further offence which criminalises holding another person in slavery or servitude or requiring them to perform forced or compulsory labour without the need to prove trafficking was introduced more recently under the Coroners and Justice Act 2009. This offence extends to England and Wales and Northern Ireland. Since its introduction in 2010 there have been 15 offences charged and prosecuted under this legislation in England and Wales.

Scotland

11. The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 also extends to Scotland, but was amended by the Criminal Justice and Licensing (Scotland) Act 2010, which came into force on 28 March 2011. The amendments mean that a victim does not need to have previously been trafficked into the UK, in relation to the offence of trafficking within the UK. It also expanded the provisions to include exploitation involving the removal of body parts which would amount to an offence other than under the Human Organ Transplants legislation and introduced a new criminal offence in respect of

those who traffick persons into, within or out of a country other than the UK regardless of where the exploitation is to occur:

12. Section 22 of the Criminal Justice (Scotland) Act 2003 created offences of trafficking for the purposes of sexual exploitation, and apply into, out of and within the UK. Section 46 of the Criminal Justice and Licensing (Scotland) Act 2010 amended s22 to extend its scope so that it refers to facilitating 'entry into' the UK as well as the 'arrival in' the UK. A new offence was created under s22(1A) to criminalise those who traffic persons into, within or out of a country other than the UK.

13. The Criminal Justice and Licensing (Scotland) Act 2010 creates a new statutory offence of holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour and amends the Antisocial Behaviour etc. (Scotland) Act 2004 to provide a new set of circumstances where notices and orders may be invoked for the closure of premises associated with the commission of human exploitation offences including premises used for certain immigration offences such as the falsification of documents, the housing of victims of trafficking and to house individuals being exploited by way of forced or compulsory labour, slavery and servitude. The Act also raises the age of automatic entitlement to standard special measures from under the age of 16 years to under the age of 18 years when giving evidence in trafficking cases, such as allowing victims to give evidence via video link.

Prosecutions in the UK

14. We always want to improve and strengthen our approach to tackling human trafficking and, in particular, capturing and punishing those who profit from the exploitation and misery of others. Although the number of prosecutions in the UK may appear low in comparison with some other EU Member States it must be remembered that prosecutions, specifically under human trafficking legislation, are only one part of a much wider portfolio of activity designed to disrupt, deter and prevent human trafficking.

15. The covert nature of human trafficking makes it particularly difficult to identify victims and secure convictions. Many victims, given their traumatic experience, may be unable or unwilling to support criminal proceedings as they may be too scared to talk to the police for fear of reprisals against themselves or their families. Or they may have been led to believe that corruption in law enforcement could lead to their re-trafficking, or detention and deportation because of their immigration status.

16. In prosecuting suspected traffickers, the prosecution authorities in the UK (the Crown Prosecution Service, and the Crown Office and Procurator Fiscal Service) will consider all available evidence and the full range of options in any particular case. The figures on human trafficking convictions therefore do not tell the whole story. Indeed, traffickers who are brought before the courts are often prosecuted for one of a number of possible offences and not just trafficking offences. In England and Wales examples include prosecutions for assisting unlawful immigration to a member state (facilitation), and serious criminal offences such as rape, kidnapping, false imprisonment, threats to kill, and causing, inciting or controlling prostitution for gain. This is similar to the approach taken in Scotland in respect of corresponding statutory and common law offences. These offences are not necessarily less serious than trafficking offences, as they may carry similar or more serious penalties than human trafficking charges. These offences may be used in circumstances where evidence obtained does not support charges of trafficking, or where it is not in a form that is reliable and admissible in court. Nor do the figures reflect cases where conspiracy to traffick has been charged, in circumstances where the substantive offence has not been committed or where the degree of involvement of others shows equal culpability but where it is difficult to attribute specific actions to an individual.

17. These prosecutions and convictions will not appear on national statistics as convictions for human trafficking offences. So, whilst the number of prosecutions and convictions for trafficking offences may appear low, compared to the number of potential victims identified, there are many more convictions of persons involved in trafficking on other related offences. The figures therefore do not take account of the number of cases prosecuted under other legislation, prosecutions for conspiracy to traffick, and cases where UK law enforcement and prosecutors work to support prosecutions in other jurisdictions.

18. For example, in England and Wales, a recent joint investigation culminated in the arrest and prosecution of 26 Romanian traffickers in Romania for trafficking children into the UK. Although the UK authorities played an important role in prosecuting these offenders and bringing them to justice, their successful convictions will not appear on UK statistics. We believe that the importance of securing a conviction and ensuring the offender is prevented from committing similar offences in the future, whether that is here in the UK or in another country, is vital, and second only to preventing further vulnerable people from becoming victims of trafficking.

Case statistics for prosecutions

19. The following offences have been charged and prosecutions commenced for trafficking, in England and Wales, during the period 2005 – 2012.

Table 1 – Trafficking offences 2005-12

| Year | Trafficking for sexual exploitation (Sections 57, 58 and 59 Sexual offences Act 2003) | Trafficking for other exploitative purposes (Section 4 Asylum and Immigration (ToC) Act 2004) | Offence of forced labour and servitude (Section 71 Coroners and Justice Act 2009) | Total |
|--------------|--|--|--|------------|
| 2005-06 | 18 | 0 | - | 18 |
| 2006-07 | 40 | 0 | - | 40 |
| 2007-08 | 87 | 3 | - | 90 |
| 2008-09 | 114 | 10 | - | 124 |
| 2009-10 | 102 | 20 | - | 122 |
| 2010-11 | 96 | 21 | - | 117 |
| 2011-12 | 113 | 37 | 15 | 165 |
| Total | 570 | 91 | 15 | 676 |

Convictions in the UK

20. The table below shows the number of successful convictions, specifically for trafficking offences, within England and Wales between 2009 and 2011. During the same period Scotland had two successful convictions for sexual exploitation. Northern Ireland had no convictions for sexual or non-sexual exploitation under trafficking legislation.

Table 2 – Number of Human Trafficking convictions in England and Wales

| Year | No of convictions for sexual exploitation | No of convictions for non sexual exploitation | Total |
|--------------|---|---|-----------|
| 2009 | 23 | 2 | 25 |
| 2010 | 10 | 6 | 16 |
| 2011 | 8 | 0 | 8 |
| Total | 41 | 8 | 49 |

The number of human trafficking convictions recorded are on a principal offence basis only. They do not include human trafficking convictions on an all offences basis.

Working with other EU and International Partners

21. The UK works with a range of international partners to combat and prevent human trafficking. For example, the Crown Prosecution Service is working to strengthen legislation, investigation and prosecution in source countries, such as Nigeria. Work with Vietnam is also underway to develop legislation to improve their ability to prosecute traffickers.

22. Joint investigations, such as Operation Golf, have also helped to improve the UK's response to targeting traffickers and bringing them to justice. Many of the prosecutions and convictions resulting from operations such as these are undertaken in other countries. This means that although the perpetrators have been handed a custodial sentence for trafficking, potentially into and out of the UK, their convictions will not be recorded by the UK authorities.

Using other non-legislative options to tackle human trafficking

23. Introducing additional legislation is not always the right solution. Deploying effective intervention and disruption strategies, which prevent vulnerable people from being exploited by often serious and organised criminals, are generally far more effective in the long run. A key focus of the UK Government's Strategy is to prevent people from becoming victims in the first place. We can only do that by using the intelligence and information that is available to effectively target traffickers and disrupt their criminal activities. This work must begin at source and involves significant overseas cooperation among the relevant agencies.

24. The Serious and Organised Crime Agency (SOCA) in the UK also uses a wide range of criminal justice and non-criminal justice tools at their disposal to bring perpetrators of serious and organised crime to justice. For example, the SOCA compendium provides a range of tactical options, intervention capabilities, administrative tools and techniques for investigators which can support other more traditional methods of investigation.

25. Strengthening our approach to tackling human trafficking will continue with the establishment of the National Crime Agency in 2013. As an intrinsic part of the NCA, the Border Policing Command will take the lead in tackling trafficking through the UK border – driving agencies to work together to clear and mutually-agreed priorities, in order to stop organised crime groups who seek to exploit or evade the border. Even before the establishment of the NCA, the Organised Crime Coordination Centre will improve the coordination of our response to organised crime and improve our understanding of the threat from organised crime through the coordination of multiple intelligence sources.

Other complementary activity

26. Prosecution for criminal offences of trafficking is not the only means of tackling those who traffic and exploit their victims. In cases where criminal activity is more difficult to prove, the 'Al Capone approach' can be just as effective by pursuing traffickers through taxation or disrupting their activity by seizing their assets.

27. The principal prosecution service for England and Wales is the Crown Prosecution Service while in Scotland it is the Crown Office and Procurator Fiscal Service, but they are not the only public prosecuting authorities in the UK. There are a wide range of other prosecuting agencies that prosecute on behalf of government departments and other public bodies throughout the UK. These include the Department for Environment, Food and Rural Affairs; the Department for Work and Pensions; Health and Safety Executive and many others. So, in disrupting the range of criminality associated with human trafficking, if the police or SOCA are unable to evidence a criminal offence under human trafficking or other legislation, then other means of disruption can be and is deployed.

28. Other agencies have civil powers. For example, in Her Majesty's Revenue and Customs (HMRC) – hidden economy and tax evasion teams target venues where there may be trafficking / exploitation such as adult entertainment or nail bars. The HMRC works with other law enforcement agencies undertaking criminal investigations to identify any tax intervention opportunities, both civil and criminal, which may be used against human traffickers, their businesses and associates.

29. Through their regulatory powers, the Gangmasters Licensing Authority (GLA) police and license gangmasters and can disrupt, those gangmasters who may exploit migrant labour but where evidence may not support a criminal offence. Additionally, the Health and Safety Executive (HSE) investigates and prosecutes those who put employees in danger of injury.

30. Serious organised crime, which includes human trafficking, often has a money laundering element. The UK has strong and wide money laundering offences under the Proceeds of Crime Act 2002 (POCA) that can be used to disrupt criminal finances. There are also separate regulations that protect the financial sector and other related businesses from being used for money laundering and identify suspicious financial activity. There is no requirement to prove a predicate offence, such as human trafficking, in order to obtain a money laundering prosecution. POCA also has various means to recover the financial benefits made through any crime; namely confiscation following any criminal conviction, civil recovery in the High Court, cash forfeiture in the magistrates' courts and taxation. The legislation also provides specific investigation powers to ascertain the extent and whereabouts of the proceeds of crime.

Ancillary Orders Toolkit

31. The Crown Prosecution Service and Crown Office and Procurator Fiscal Service, working with law enforcement, have a wide range of additional options available to them to consider pursuing at the point of sentencing, including a number of ancillary orders, which seek to prevent certain future activity by convicted defendants. The main orders utilised are: Financial Reporting Orders; Travel Restriction Orders and Serious Crime Prevention Orders. These can be used to place restrictions on defendants post sentence in terms of restricting travel, communications, business dealings or associations and can monitor their financial affairs.

32. Using the powers under section 73 of the Serious Organised Crime and Policing Act, which provides for a reduction in sentence for co-operating defendants, CPS prosecutors and SOCA collaborated with authorities in Lithuania to take a defendant convicted in Cardiff Crown Court and sentenced to 7 years imprisonment for human trafficking, to Lithuania to give evidence against 15 traffickers who were responsible for recruiting victims to traffick to the UK for sexual exploitation. As a result of his evidence, the 15 traffickers were convicted in Lithuania. The CPS made representations at Cardiff Crown Court on behalf of the convicted trafficker, to have his sentence reduced for his co-operation.

Comparisons with other EU Countries

33. The UK law on human trafficking compares favourably with other EU countries. For example, the UK can impose a maximum sentence of 14 years for trafficking offences under the Sexual Offences Act 2003, the Criminal Justice (Scotland) Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This compares with maximum sentences of 10 years in Germany and Sweden, 15 years in Romania, and 18 years in the Netherlands. The EU Directive on Trafficking in Human Beings stipulates that Member States should have as a maximum penalty, a potential sentence of at least 10 years for trafficking offences committed in aggravating circumstances.

34. The length of average custodial sentences handed down in the UK is also comparable or better than a number of EU countries. According to the US Trafficking In Persons Report 2011 the average custodial sentence for trafficking offenders in the Netherlands in 2009 was 21 months. For England and Wales, this was 62 months for sexual exploitation and 24 months for non sexual exploitation.

Conclusion

35. In consultation with the Crown Prosecution Service, the Attorney General's Office, the Police, and the Devolved Administrations, the UK Government does not believe that wholesale change to legislation is required, given the changes already being made to domestic legislation to comply with the EU Directive on trafficking in human beings and the minor amendment being proposed as part of this internal review. Whilst introducing a new human trafficking bill to consolidate existing legislation into one Act would be administratively neater, the UK Government does not consider it necessary or proportionate to effectively bring to justice those who seek to exploit others.

36. The UK Government, therefore, intends to expand the unduly lenient sentences regime in England and Wales to include non-sexual exploitation offences as one of the offences referable by the Attorney General to the Court of Appeal, under the regime. The Northern Ireland Executive will consider introducing a similar provision. The equivalent Scottish provisions are contained in section 108 (solemn proceedings) and section 175 (summary proceedings) of the Criminal Procedure (Scotland) Act

1995 which allow the Lord Advocate to appeal against any disposal where it appears that a sentence passed is unduly lenient. Legislation to effect the required change to the unduly lenient sentences regime will be taken forward in due course.

37. We believe that this change, together with changes we are making to legislation, and those already made by the Scottish Government to comply with the EU Directive on Trafficking in Human Beings, will send out a strong signal that the UK is not a soft touch on traffickers and will ensure traffickers receive the serious penalties they quite rightly deserve.

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