



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

8th Meeting, 2015 (Session 4)

Tuesday 10 March 2015

The Committee will meet at 10.30 am in the David Livingstone Room (CR6).

1. **Human Trafficking and Exploitation (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Dr Maria O'Neill, Senior Lecturer, Dundee Business School - Law Division, University of Abertay;

Dr Paul Rigby, Lecturer Social Work, University of Stirling;

and then from—

Lorraine Cook, Migration, Population and Diversity Team, Convention of Scottish Local Authorities;

Katie Cosgrove, Gender based violence programme, NHS Health Scotland.

2. **Subordinate legislation:** The Committee will take evidence on the Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2015 [draft] from—

Paul Wheelhouse, Minister for Community Safety and Legal Affairs, Hazel Dalgard, Bill Manager, and Alastair Smith, Directorate for Legal Services, Scottish Government.

3. **Subordinate legislation:** Paul Wheelhouse (Minister for Community Safety and Legal Affairs) to move—

S4M-12522—That the Justice Committee recommends that the Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2015 [draft] be approved.

4. **Subordinate legislation:** The Committee will take evidence on the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2015 [draft] from—

Paul Wheelhouse, Minister for Community Safety and Legal Affairs, Catriona Mackenzie, Legal Aid Policy Manager, and Alastair Smith, Directorate for Legal Services, Scottish Government.

5. **Subordinate legislation:** Paul Wheelhouse (Minister for Community Safety and Legal Affairs) to move—

S4M-12524—That the Justice Committee recommends that the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2015 [draft] be approved.

Joanne Clinton
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 01313485220
Email: Joanne.Clinton@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 1

Paper by the clerk	J/S4/15/8/1
Private paper	J/S4/15/8/2 (P)

[Human Trafficking and Exploitation \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Agenda items 2 and 3

Paper by the clerk	J/S4/15/8/3
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[Courts Reform \(Scotland\) Act 2014 \(Consequential Provisions\) Order 2015](#)

Agenda item 4 and 5

Paper by the clerk	J/S4/15/8/4
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[Advice and Assistance \(Assistance by Way of Representation\) \(Scotland\) Amendment \(No. 2\) Regulations 2015](#)

The Identification and Support of Child Victims of Trafficking in Scotland: A Child Protection Model, September 2014

(Submitted to the National Referral Mechanism review as an alternative process possible for child trafficking in Scotland, produced by Dr Paul Rigby, University of Stirling; Kirsty Thomson, Legal Services Agency; Catriona Macsween, Scottish Guardianship Service, and Clare Tudor, Independent Consultant)

Introduction

In February 2013 an earlier version of this paper was presented to a stakeholder group, proposing a child-rights approach to the identification and protection of child victims of trafficking in Scotland; an approach that sought to prioritise the protection of children being a higher policy and practice importance than immigration control.¹⁰³

This updated paper, taking account of recent developments, proposes a model of child protection focused practice for child victims of trafficking in Scotland, underpinned by multiagency practice experience and research developed over the last 10 years. The proposal seeks to locate child trafficking practice firmly within existing devolved powers and legislation; any decisions regarding immigration control and residency remain firmly within the powers of the UK Government. This proposal does not necessitate any legislative changes and can be accommodated in existing child protection policy and practice in Scotland.

International, European and Domestic Responses

The issue of trafficking has received considerable attention from politicians, policy-makers, academics and practitioners in the past 10-15 years, with significant efforts being made at various levels – international, European and domestic –to establish legal and policy frameworks capable of dealing with this complex and multi-faceted issue. While these efforts have resulted in the development of legal, policy and practical measures to identify and address the needs of victims of trafficking, they have so far fallen short of creating a system that recognises the particular vulnerability of child victims of trafficking and treating them as children first and foremost.

Recognising that child trafficking is child abuse and should be treated as such, this paper proposes a multi-agency, holistic, child-friendly, rights based approach to the identification and care of child victims of trafficking, in line with the original OSCE model of a National Referral Mechanism. The model is located within the area of child protection, led by child protection professionals, and following a GIRFEC child protection process and multi-agency response.

While defining and quantifying the phenomenon of human trafficking is a complex, and often controversial, task, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)¹⁰⁴ provided a definition which has been widely adopted internationally. There have been significant efforts to deal with human trafficking and ensure the protection of victims at EU level. Directive

¹⁰³ McLeigh JD (2013) 'Protecting children in the context of international child migration' *Child Abuse and Neglect* 37, 1056-1068).

¹⁰⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted on 5 November 2000.

2011/36/EU transposed into UK law in April 2013 (EU Anti-trafficking Directive)¹⁰⁵ provides a definition directly applicable to UK responses:

1. The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of 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 or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.
4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.
5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.
6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age

The Directive obliges states to undertake measures to identify and provide assistance to victims, grant a recovery and reflection period of at least 30 days, issue residence permits if required, provide access to compensation and legal assistance, and observe guarantees in the context of return. While these rights are granted to all victims of trafficking, the particular vulnerability of children and the need to safeguard and promote their well-being is recognised through the introduction of child-specific provisions and explicit references to the best interest of the child. Urging Member States to adopt a child-rights approach, the Directive stipulates that the child's best interest should be the primary consideration and introduced additional provisions specifically directed at child victims of trafficking. These include the appointment of a guardian, an individual assessment of the special circumstances of each child with the obligation to take due account of the child's views, needs and concerns when providing support and assistance, as well as ensuring the protection of child victims of trafficking in criminal investigations.

Both the UK and Scottish government have taken important steps to tackle the issue of human trafficking and ensure they provide adequate protection to victims of trafficking, including identification and care. In line with the approach adopted at the international and European level, domestic policy documents have acknowledged the vulnerability of child victims of trafficking and emphasised the significant harm which exploitation causes them. The UK Government Human Trafficking Strategy, published in 2011¹⁰⁶¹⁰⁷, builds upon the initial experience of developing a formal mechanism for identifying victims – the National Referral Mechanism (NRM) – and includes a commitment to improve victim care arrangements. It has been supplemented by specific guidance on *Safeguarding Children Who May Have Been Trafficked* aimed at helping agencies that encounter, or have referred to them potential victims of child trafficking, to safeguard

¹⁰⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

¹⁰⁶ UK Government (2011) Human Trafficking: the Government's Strategy

and promote their welfare. Recognising the need for embedding the approach to child victims of trafficking within general child protection procedures, the guidance requires that all procedures developed for trafficked children should be consistent with the UK Government's statutory guidance on Working together to Safeguard Children.

Child Trafficking in Scotland

There is now a broad consensus that human trafficking is an issue in Scotland, although there is no reliable data to quantify the prevalence of the phenomenon. The Scottish Government have responded by holding a high level summit on human trafficking and developing a strategic action plan and sub-groups to develop understanding and responses; a cross party parliamentary group is also engaging with agencies across the country to begin identifying and implementing appropriate responses. A Human Trafficking Bill is also presently going through the parliamentary process.

With regard to children, the difficulties of obtaining reliable data are compounded by the existence of child-specific forms of exploitation such as illegal intercountry adoption. Based on a questionnaire, distributed to various professionals dealing with child victims of trafficking, the Scottish Commissioner for Children and Young People estimated that between 2009-2011 concerns about trafficking had arisen in relation to 83 children across Scotland¹⁰⁸.

From September 2010 until September 2014, the Scottish Guardianship Service has dealt with 48 children for whom there were concerns about trafficking. Glasgow City Council's social work Child Protection Team have had over 200 referrals regarding concerns about trafficking over the last six years. Since 2012 there have been 60 child referrals to the Competent Authorities from Scotland, as recorded by the National Referral Mechanism official statistics.¹⁰⁹ Children referred to the NRM have been victims of various types of exploitation and abuse including sexual abuse, commercial sexual exploitation, domestic servitude, forced marriage, physical abuse, criminality, benefits fraud and female genital mutilation. Research in Glasgow has indicated that for nearly half of the children identified as trafficked there is evidence of multiple exploitative situations.¹¹⁰

Getting it right for every child - GIRFEC

The Scottish government has demonstrated its commitment to developing policies promoting the well-being of all children in Scotland, based on the values and principles of *Getting it Right for Every Child (GIRFEC)*. Concerning trafficked children, it has published specific guidance on *Safeguarding Children in Scotland Who May Have Been Trafficked*,¹¹¹ which firmly places the primary responsibility for child trafficking victims within the child protection framework and delineates the responsibilities of various agencies. A subsequent document provides detailed guidance regarding the assessment of children suspected of having been trafficked.¹¹² The guidance states that it is the responsibility of everyone who works with, or is in contact with children, to

¹⁰⁸ SCCYP (2011) *Scotland: A Safe Place for Child Traffickers – A Scoping Study into the Nature and Extent of Child Trafficking in Scotland* Edinburgh, Scotland's Commissioner for Children and Young People / University of Highlands and Islands www.sccyp.org.uk

¹⁰⁹ www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism Prior to 2012 referrals were not routinely broken down into countries of the UK

¹¹⁰ Rigby P, Murie S, Ball, M (2012) *Child Trafficking in Glasgow: The Journey so Far*. Glasgow Child Protection Committee www.glasgow.gov.uk/CHttpHandler.ashx?id=14223&p=0

¹¹¹ Scottish Government (2009) www.scotland.gov.uk/Publications/2009/02/18092546/0

¹¹² Scottish Government (2013) *Inter-Agency Guidance for Child Trafficking* <http://www.scotland.gov.uk/Resource/0043/00437636.pdf>

work together to safeguard and promote the welfare and rights of all children, including trafficking victims. Due to the complex nature of trafficking and the multiple needs of child victims, which require coordinated responses from a number of agencies, the guidance urges local child protection committees to consider develop inter-agency protocols to guide actions of professionals when faced with concerns that a child may be a victim of trafficking.

The government has also supported the establishment of a Guardianship Service for all separated young children, including victims of trafficking. The Service has been shown to be effective in a number of areas that safeguard and promote the well-being of young people. Concerning trafficked children, guardians have been instrumental in identifying potential victims and facilitating disclosure.

The measures adopted by the Scottish Government have the potential to ensure that trafficked children in Scotland are safeguarded. However, while the Scottish Government has the protection framework and policy guidance in place, the shortcomings (detailed below) of the current NRM process through which child victims are identified may prevent the realisation of the potential of these measures. Without a child-rights based mechanism for the identification and care of child trafficking victims, led by child protection experts coordinating a multi-agency response, commitment to 'get it right for every child' may be compromised in respect of trafficked children.

National reports on human trafficking in Scotland¹¹³ have recommended that the Scottish government should demonstrate leadership and be more proactive in developing a strategy to tackle human trafficking. With regard to children in particular, the Equal Opportunities Committee (2010) recommended the government consider restructuring the NRM process and giving services responsible for child protection the authority to identify victims of trafficking. It also recommended the establishment of an integrated approach to child trafficking in Scotland. The 2011 SCCYP report emphasises the need to review the application of NRM to children and urges the Scottish Government to act as a lead regarding the efforts of local authorities across Scotland to combat child trafficking.

Under the EU Anti-trafficking Directive Scotland is required to ensure compliance with international conventions regarding the situation of child victims of trafficking in order to ensure that the treatment of these children is in line with the obligations enshrined in the Directive. For those areas of devolved policy and law, mainly that of the protection and support of children, the Directive applies directly to Scotland, allowing individuals to bring up cases in Scottish courts relying directly on its provisions.

The existing NRM process, its shortcomings and impact on children

Following the ratification of the Council of Europe Convention on Action Against Trafficking in Human Beings, a formal mechanism for identifying and protecting victims of trafficking including children - a National Referral Mechanism - was introduced in the UK in April 2009. Once there is a suspicion, based initially on certain indicators, that a child may be a victim of trafficking or a child discloses that they have been trafficked, designated agencies - First Responders¹¹⁴ - may submit a referral to a Competent

¹¹³ Scottish Parliament Equal Opportunities Committee (EOC) (2010) Inquiry into Migration and Trafficking; Equality and Human Rights Commission (EHRC) (2011) Inquiry into Human Trafficking in Scotland; (SCCYP) (2011)

¹¹⁴ A list of all 'First Responders' can be found here: <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

Authority for assessment. The Competent Authority is either the UK Human Trafficking Centre or, in cases where there are immigration issues, UK Visas and Immigration.

Scottish guidance indicates that if an agency, a practitioner or a volunteer suspects a child may be a victim of trafficking they should make a referral to social work or the police, as per existing child protection guidance. The inter-agency guidance establishes the procedures to be followed in such cases and indicates a multi-agency child protection meeting is convened and a decision made whether to make a referral to the Competent Authority. The starting point for most professionals is usually the “risk indicator matrix” containing a number of indicators whose presence may indicate that a child is a potential victim of trafficking, supported if necessary by a comprehensive Child Trafficking Assessment (CTA), which will determine whether a NRM referral is required.

If a decision to refer the case to the NRM is made at the child protection meeting, a NRM report is submitted to the Competent Authority along with the completed indicator matrix. Within a relatively short period – usually five days - the Competent Authority issues a Reasonable Grounds decision as to whether the child may have been trafficked. The decision is based on a reasonable grounds test, which has a low threshold, *reasonable grounds to believe*¹¹⁵.

If the decision is positive, a 45-day recovery and reflection period is granted. This period is to allow the person to recover and escape the influence of traffickers and/or to take an informed decision regarding co-operation with the authorities (primarily law enforcement authorities). Where there are immigration issues, a potential victim cannot be removed from the UK. The period may be extended subject to the discretion of the Competent Authority. Following evidence gathering and further inquiries by the Competent Authority undertaken during the 45-day period, a Conclusive Grounds decision on whether the person is a victim of trafficking is issued. The standard of proof on which the decision is based is the one applied in civil cases, *the balance of probabilities*¹¹⁶.

A positive Conclusive Grounds decision may lead to the granting of a renewable one-year residence permit. This is in line with Home Office policy on discretionary leave. It can be on the basis of the personal circumstances of the victim, where a compensation claim against the trafficker has been lodged or if the victim agrees to cooperate with the police.

While the introduction of the NRM has been welcomed as a positive step towards ensuring professionals identify and protect victims of trafficking, its relevance and appropriateness to child victims has been questioned. Although the UK and Scottish Governments have recognised that all forms of child trafficking are abuse, and despite calls not to treat child trafficking as merely a sub-category of human trafficking, the NRM does not always reflect this.¹¹⁷ Often, instead of treating them as children first and

¹¹⁵ The test that should be applied is whether the statement “I suspect but cannot prove” would be true and whether a reasonable person would be of the opinion that, having regard to the information in the mind of the decision maker, there were reasonable grounds to believe the individual concerned had been trafficked. (UKBA, “Guidance for Competent Authorities”).

¹¹⁶ Balance of probabilities essentially means trafficking as defined by the Directive is more likely than not to have happened. Decision makers should be satisfied that on the evidence available, the event is more likely to have happened than not. This standard of proof does not require the decision maker to be certain that the event did occur (UKBA, “Guidance for Competent Authorities”).

¹¹⁷ ECPAT (2010) *Child Trafficking in the UK: A Snapshot* London, End Child Prostitution and Trafficking UK www.ecpat.org.uk; Wallace, MM., and Wylie, K. (2011) Child Trafficking: A Scottish Perspective *Commonwealth Judicial Journal* 19, 1, June.

foremost, the NRM deals with child victims of trafficking as ‘mini-adults’ as the system was designed for adults and geared towards their needs. Given the well-developed child protection framework, the international and domestic legal obligations to safeguard and promote the welfare of children and the Scottish Government’s commitment to ‘get it right for every child’, the compliance of the present NRM system with a child’s best interest and rights is debateable. This is especially so if the NRM fails to reflect the recognition of child trafficking as child abuse, and does not recognise the primacy of safeguarding children over any other concerns, including immigration.¹¹⁸

It has been stated that placing the responsibility for identifying child victims of trafficking with an agency whose primary function is border control creates a conflict of interest and leads to overly bureaucratic decision making with little regard for its impact on the child.¹¹⁹ UKVI is under statutory obligation to safeguard and promote the welfare of children in discharging its duties under Section 55 of the Borders, Citizenship and Immigration Act 2009 and considerable efforts have been made to comply with this requirement. However, there can be no doubt those child protection authorities, whose primary duty is the protection of children and who have the experience, training and expertise required to identify and provide care to child victims of trafficking, are in a better position to ensure that both reasonable and conclusive grounds decisions, and subsequent interventions, are in the child’s best interest.

There is evidence that local authorities in the UK do not always believe a referral to the NRM is in the child’s best interest and have decided not to refer cases due to concerns about its ability to adequately support and protect children.¹²⁰ The experience of practitioners also suggests that while a positive conclusive grounds decision is of little practical benefit to children in terms of an asylum claim, a negative one could have an adverse effect on the credibility of their claim¹²¹. An obvious solution to this would be the separation of decision-making on the issue of child trafficking / child abuse from that on asylum claims and immigration status, allowing the authorities who are best equipped for each task, local child protection systems and the Home Office, to deal with their own areas of practice respectively.

New Procedure for Identifying Child Victims of Trafficking in Scotland (Glasgow Model)

To improve the current NRM process in Scotland with regard to children this section outlines a child-rights based, multi-agency approach to the identification of child victims of trafficking, led by local Child Protection Committees in line with national and local child protection guidance.

The new model (please read in conjunction with flow chart attached) envisages that the responsibility for both identification and care of trafficked children will lie with child protection authorities consistent with everyday child protection practice. Under the new procedure, as soon as there is a suspicion or disclosure that a child may have been a

¹¹⁸ As the EOC Report states: *One of the main general concerns of those who provided evidence on the NRM is that the process of identifying whether or not someone is a victim of trafficking is too heavily intertwined with the process of determining a person’s immigration status.*

¹¹⁹ ECPAT (2010), EOC (2010); ATMG (2010) *Wrong Kind of Victim? One Year On: An Analysis of UK Measures to Protect Trafficked Persons* London, Anti-Trafficking Monitoring Group www.antislavery.org

¹²⁰ ECPAT 2010; London SCB (2011c) *Final Monitoring Report Local Authority Pilots of the London Safeguarding Trafficked Children Guidance and Toolkit* London Safeguarding Children Board www.londonscb.gov.uk/trafficking

¹²¹ Sometimes the decision is written by the same case owner (Chandran 2012: 34) and there are cases in which an asylum decision has been cut and pasted into the trafficking decision, or vice versa (EOC 2011)

victim of trafficking, a referral will be made to social work and police in line with local child protection procedures. There should be at least two nominated, specifically trained social work leads in each Child Protection Committee area – registered social workers at Senior Manager or Team Leader level, or the equivalent in Police Scotland - to oversee the process until such a time that all relevant professionals are appropriately trained.

An initial multi-agency child protection case discussion (meeting or virtual) will be convened as soon as possible if the initial screening by the leads (and in discussion with other agencies) considers the young person is a potential victim of trafficking. Contributions to the case discussion will be sought from police, social workers, residential workers, education, health and the third sector as per existing child protection guidance (and any other professionals who have contact with the young person, including UKVI if there are immigration issues).

The decision from this discussion is in effect the current “reasonable grounds” decision and will lead to a child protection case conference if there are concerns about trafficking. Therefore, the decision from this discussion would be ‘notified’ to UKVI if there are immigration issues, so ensuring that any potential child victim is not removed from the UK in line with the aim behind the recovery and reflection period (under child protection practice ‘recovery and reflection’ continues for as long as a child requires protection and support). In terms of present child protection practice in Scotland any co-operation, or not, with law enforcement agencies would be contingent on the circumstances of each case and decisions of the child (where appropriate) and will not impact on any support and protection plans.

Following a case discussion and recognition of a potential trafficking victim, a date should be set for a child protection case conference in line with local and national child protection guidance (this should be 21 calendar days from the initial referral). This initial child protection case conference should include all the relevant agencies working with the young person, including UKVI where there are immigration issues. The young person and / or carer need not attend the meeting (indeed it may not be appropriate at this stage if the young person does not know they are a victim of trafficking or there are concerns about the accompanying adults). However, the young person will be given an opportunity to pre-record a statement on video or other form of recording, or have their views heard at the conference via other means.

On the basis of all available evidence the initial child protection case conference will make a multi-agency decision as to whether the child has been trafficked (same status as current conclusive grounds decision). In the case of absence of overall consensus, there should be a majority decision, or the chair (usually social work) should have the defining responsibility to reach a decision. The conference meeting minutes will contain a clear decision outlining the reasons why there is a belief the child has, or has not been, trafficked. The decision would again be ‘notified’ to UKHTC (statistical purposes) and to the Home Office UKVI where there are immigration issues. The present child protection system allows for ongoing feedback and review of progress, with regular written reports to monitor developments.

The Home Office are responsible for immigration control and for claims related to international humanitarian protection and residency. This model does not propose to interfere with the powers or role of the Home Office in this regard. It would be envisaged that in most cases the Home Office will accept the above child protection decision. Unless there are compelling reasons not to (which should have been shared with the

multi-agency case conference) the Home Office will accept the multi-agency child protection decision and make any future immigration / humanitarian protection decisions taking into account whether or not the child has been identified as a victim of human trafficking. This is similar to how the Home Office currently operate in respect of decisions on the age of individuals where local authorities carry out the age assessment.

In recognition of the difficulties faced in assessing and identifying trafficked children, especially those who have arrived in the country as non UK nationals, if a conclusive decision cannot be made at the initial case conference the decision can be postponed for further assessment and information gathering for six weeks. During the six-week period, a child protection core group, overseen by the trafficking lead (nominated child protection team manager / senior social work manager or Police Officer), should collect the relevant information liaising with a variety of sources (eg NGOs; housing authorities; international aid agencies; Home Office; UKHTC; Red Cross). A reconvened case conference will include all the practitioners invited to the initial one and any other professional or support worker who has become involved with the young person.

The above noted process as well as identifying whether a child is a victim of human trafficking or not has the dual purpose of assessing each child's particular needs and ensuring access to safe accommodation, education, health, appropriate legal assistance etc in line with international and domestic standards, and similar to other child protection / safeguarding cases.

As with any child protection case, decisions made at the child protection case conference can be challenged by the young person (or relevant adult) through internal review processes; any agency can also register dissent to the decision. If any internal challenge fails, the young person in conjunction with his/her legal representative may investigate whether a Judicial Review may have any merit as with any other decision of a local authority in this regard. However, this would arguably be very difficult if the process laid out above was fully adhered to and the decision had been made in a holistic manner by a multi-agency decision making body in line with article 10 of the Council of Europe Convention.

Children's Hearing System

After decision by a child protection case conference, and in line with existing child protection provisions, the case will be referred to the Children's Reporter if it is considered that compulsory measures of care are required. Such a referral, and acceptance of grounds, would give a legal footing to all trafficking cases, especially for conditions of residence if the child is looked after and accommodated by the local authority. Subject to a decision by the Children's Panel a supervision requirement, with a condition of residence, may be imposed, providing additional legal safeguards. Due to the risks associated with child trafficking a referral to the Children's Hearing System should be the default practice.

Currently, the Children's Hearing System would generally not be able to deal with those young people aged above 16 and not previously known; the majority of trafficking victims identified to date in Scotland appear to be between 16-17 years old. In order to meet the requirements of the EU Anti-trafficking Directive, there should be a legal provision enabling the referral of child victims of trafficking above 16 years old to the Children's Panel. As with any other Children's Hearing the grounds of referral can be challenged by an appeal to the Sheriff Court, another advantage of the proposed system for dealing with child victims of trafficking.

Benefits of the Proposed Model

There are a number of features of the proposed model that overcome the shortcomings of the current NRM model. Adopting it would reflect a child-rights approach to child trafficking, enhance the quality of decisions and ensure the primacy of a child's best interest, with direct input from the children. Most members of the multi-agency meeting making decisions will also have met, or be working with, the child and will continue to work with them following any decision, therefore the process will not be a paper based exercise and should improve decision making. As with any child welfare and protection cases the decisions will form part of a longer term child's plan and will ensure continuity of care and benefits to the child's wellbeing. There will also be less red tape and delays in decision making for the child as the local child protection agencies will have more control over when they can make a decision and this can be communicated immediately to the child

A multi-agency decision-making procedure led by child protection professionals will ensure that Scotland develops practice in line with international obligations, and directly answers the recommendations of leading anti-trafficking experts. It improves the co-ordinated identification, protection and support of child victims of trafficking, where those making decisions will be those professionals working with the child. Rather than relying on a limited number of First Responders, the new system would enable everyone, including members of the public, to bring a case for consideration by child protection authorities, as per any other child protection concerns.

The proposed system will be GIRFEC compliant and child centred, not least because it avoids potentially traumatic, multiple trafficking interviews, and as it is needs focussed it allows for a non-time limited recovery and reflection safeguarding period. It ensures the child's needs are met on the basis of risk and need, and offers sufficient time to find a durable solution based on those needs, rather than any asylum/immigration issues. Needs will be determined for each child, giving due consideration to his or her views, in line with the requirements of Article 12 UNCRC.

While concerns have been expressed by the UK Government regarding immigration being a reserved matter, this model does not encroach on their prerogatives re immigration / asylum issues. No changes are needed to primary UK legislation as decisions made in Scotland relate purely to devolved powers, to determine if a child has been exploited / abused through trafficking, and to identify subsequent support needs. Local authorities, under the Children Scotland Act (1995) and in line with Article 4 of the European Convention of Human Rights and the EU Anti-trafficking Directive, should already be identifying child victims of human trafficking and ensuring that their basic protection needs are met. These duties exist regardless of any decision from the UKVI under present NRM protocols.

UKVI would only need to look at the immigration matters of a case rather than making the trafficking decision resulting in case owners spending less time on a case, saving time and money for UKVI. There will also be a reduction in delays in decision making, potentially reducing additional stresses for children, if UKVI can focus on immigration issues and child protection services can focus on protection and needs.

The model set out in this paper clarifies the policy and practice position and provides a framework under which obligations can be met. It places the child protection interest as the primary decision-making principle and permits Scotland to develop a mechanism that protects children who have been trafficked, achieving the best possible policy and practice outcomes for children within the devolved powers on child protection. The

Home Office has already recognised that local authorities have acquired considerable expertise in working with children and they normally accept their findings on age assessment¹²². Child protection professionals making decisions about whether a child has been exploited would constitute recognition of their expertise in child related matters and would allow the Home Office and UKVI to focus on their core activities.

A major problem for child victims of trafficking is the discrepancy in the definition of a child under Scottish, international, and EU law. In Scotland, a child is usually defined as someone below the age of 16, while international and EU trafficking legislation defines a child as a person below 18 years of age. This has particular implications regarding the difficulty in referring children above age 16 to the Children's Hearing system, who were previously not known. Currently, many trafficked children arriving in Scotland would find it difficult to receive additional compulsory measure of supervision under the Children's Hearing legislation. This is an area that requires immediate attention.

Identifying and rolling out best practice - The Glasgow Model

The majority of trafficked children identified to date in Scotland presented in the Glasgow area. Nearly ten years of experience has been gained in working with trafficked children in the city and a key component of best practice development has been a commitment by various professionals and agencies to work together in the best interests of children and young people. New and established services have learned as they work together with young people and in some instances young trafficked people have informed the creation of the services that are responsible for protecting them.

Glasgow Child Protection Committee has commissioned research in the form of cold case reviews and empirical research¹²³ that has provided an evidence base for responses and now for this proposed national model.

The Scottish Guardianship Service¹²⁴ was launched as a pilot project and became fully operational in September 2010. The service is designed to support all separated young people through the complex myriad of immigration, socio-welfare and legal processes they are faced with on first arrival in Scotland by allocating a Guardian to each young person. Approximately 32% of their current cases are young people who have indicators suggesting they may be the victims of trafficking. It was envisaged that the combination of an entirely independent advocacy worker who is a consistent support to the young person and works intensively with them from first point of arrival to integration or removal may engender trust and encourage quicker disclosure. There are two outcomes for the project relating to the young persons' better experience of the asylum and immigration processes, systemic improvement and improvement in decision making. An independent evaluation monitored and evaluated the service, reporting success is achieving, or moving towards these outcomes progress one each outcome.¹²⁵

¹²² UKBA's guidance on age assessment states that: "in cases where the local authority's assessment is the only source of information about the applicant's age – their assessment will normally be accepted as decisive evidence". Only in certain circumstances are case workers expected to discuss the findings with the local authority or challenge their assessment (e.g. unclear or unsupported findings or assessment not based on Merton principles). See "Assessing Age", p. 10-11.

¹²³ Rigby, P. (2009) *Child Trafficking in Glasgow: Report of a Case File Analysis of Unaccompanied Asylum Seeking Children* – Glasgow Child Protection Committee www.glasgowchildprotection.org.uk; Rigby 2010; Rigby et al 2012

¹²⁴ <http://www.aberlour.org.uk/scottishguardianshipservice.aspx>

¹²⁵ <http://www.scottishrefugeecouncil.org.uk/guardianship>

The service has developed relationships with, and straddles both the child protection and asylum sectors and collaborates with several key agencies. Part of their remit is ensuring appropriate information flows and that the young people understand what is happening at each stage and that their voice is heard in all the processes. This is particularly relevant in trafficking related cases where more professionals become involved with young people and they are currently dual processed through both the trafficking identification and asylum system.

The combination of these services and commitment of professionals therein have led to the “*Glasgow Model*” in its widest form developing into a best practice model. Policy leads across the UK, and indeed in Europe, have been interested in the model, as it is one of the few based on empirical research. This has included ongoing monitoring and evaluating of services, continued profiling of young trafficked people, and policy, practice and research professionals working collaboratively across agencies, with dedicated police and social work staff leading in policy and practice advice.

Training and awareness raising

Identification, in addition to the provision of support and protection to child trafficking victims, will require a broad training and awareness raising programme. It is essential that front line service personnel are trained by expert practitioners who can provide detailed case studies and insightful examples from direct experience of working with trafficked children and research within child protection and asylum systems. Training will be provided by professionals immersed in child trafficking practice within a Scottish system, who are also able to locate a child’s experience within the global and local contexts which contribute to the exploitation and abuse of a particularly vulnerable group of children.

Awareness raising is also crucial, although this will be provided on a larger scale, using creative methods such as social media, advertisements in public places, on public transport and crucially in schools. Police Scotland have been instrumental in developing awareness raising campaigns and publicity across the country.

The future

There is little doubt that the implementation of the NRM in the UK as a national policy response to the EU Anti-trafficking directive exhibits some serious shortcomings in relation to the recognition of the specific vulnerabilities, needs and best interests of children. Scotland has contributed much good practice and models of care, supported by a robust evidence base, in relation to the identification of children who have been trafficked. The proposed model builds on this and details a child centred solution that is located within the existing child protection process. Adopting a model that does not view children as ‘mini-adults’ in an adult focused NRM process, will ensure that children who may have been trafficked receive the same care and attention as any abused or exploited child.