

Human Trafficking and Exploitation (Scotland) Bill

Engender response to the Scottish Parliament Justice Committee call for evidence, February 2015

Introduction

1. Engender welcomes the opportunity to comment on the Human Trafficking and Exploitation (Scotland) Bill. We advocate for policy change that challenges the extreme imbalances of power between women and men in our society. Human trafficking is a particularly devastating manifestation of economic and social gender inequality, and women's lack of access to power.
2. Around 75% of people trafficked into Scotland are women, the vast majority of traffickers are men and 'sex trafficking' is the most prevalent form of abuse.¹ In 2014, across the UK, 97% referred adults trafficked for sexual exploitation were women.² It is therefore extremely disappointing that the overarching policy objectives of the Bill exclude tackling sexual exploitation whilst other forms of trafficked services are highlighted.
3. Commercial sexual exploitation (CSE) is not natural or inevitable, but exists within a spectrum of systemic gender inequality. As such, human trafficking is intrinsically bound up with other gendered power imbalances, which limit women's access to resources, decision-making and physical autonomy and safety. These include issues that the Scottish Government is committed to tackling, such as occupational segregation, women's participation in public life and violence against women.
4. However, this Bill and associated documents are gender-blind. They do not recognise any of the gender dimensions outlined above. This stands in contrast to the various European instruments cited in the policy memorandum published alongside the Bill, the EHRC *Inquiry into Human Trafficking in Scotland* and Jenny Marra MSP's proposed member's Bill. The Equality Impact Assessment finds that the legislation does not discriminate against any group, yet its disproportionate impact on women survivors is self-evident.
5. Gender issues should be recognised on the face of this Bill and any anti-trafficking strategy must be adequately gendered. This will be key to tackling the demand for women and girls trafficked into prostitution in Scotland and to establishing links with strategies that address other forms of sexual exploitation. Without addressing gender issues, the Scottish Government will be unsuccessful in its aim "to make Scotland a hostile place for traffickers".
6. Our submission highlights these structural dimensions of human trafficking and the attendant need to reflect them in related policy, programme and service initiatives. Drivers of women's economic and social inequality, and factors shaping demand for trafficked women must inform the responses prescribed by legislation.

¹ EHRC (2011) [Inquiry into Human Trafficking in Scotland](#)

² National Crime Agency (2015) [National Referral Mechanism Statistics – End of year summary 2014](#)

OVERARCHING ISSUES

Gender equality

7. This Bill can play an important role in reiterating the instrumental links between sexual exploitation across local and global scales, and the increasing commodification of women's bodies through sex trafficking. Gender analysis should be mainstreamed in development of the criminal justice response, the proposed strategy, guidelines on the prosecution of victims and the multi-agency approach, with support from relevant experts.

8. This Bill also holds potential to advance other Scottish Government objectives and commitments, including the national outcome 'we have tackled the significant inequalities in Scottish society' and the new violence against women strategy. However, the national outcome on equality is not identified alongside others in the policy memorandum, nor is any reference made to violence against women (VAW), despite the Scottish Government's definition of prostitution as a form of VAW.

9. This opportunity for enhanced policy coherence will be missed unless legislation is framed in terms of gender equality, so that obligations and reporting duties that fall to delivery agents are correspondingly fit-for-purpose. The Bill and the new violence against women strategy must be complementary and articulate a clear route to challenging the demand for human trafficking.

10. The Equality Impact Assessment of the draft legislation, and any guidance that stems from it, should take account of the gendered profile of human trafficking and this in turn should shape the final provisions of the Bill. Instead, two brief paragraphs discount any discrimination (for any of the nine protected characteristics) within the narrow parameters of proposed legislative changes.

Rights-based approach

11. We advocate a rights-based approach to tackling human trafficking, as was recommended in Jenny Marra MSP's proposed member's Bill last year. In addition, we recommend that proactive obligations to protect women's rights should be explicitly addressed.

12. Scotland has multiple international obligations to reduce demand for sex trafficking. These include the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the EU Directive on trafficking in human beings (which requires member states to act to reduce demand for trafficking) and the Convention to Eliminate All forms of Discrimination Against Women (CEDAW), which requires signatories to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

13. Common failures of the criminal justice system with regard to sexual offence cases should also be addressed in the current process and underpinned by a rights-based approach. These include the consistent failure to recognise impacts of trauma and coercive control on survivors, and inappropriate use of personal information to undermine the credibility of witnesses. This normative discrimination within the system contributes to very low conviction rates for trafficking cases. It will therefore be crucial that proposed training programmes include adequate gender components that aim to tackle this.

14. If this Bill does not set out the imperative to protect women's rights within any approach to prevent human trafficking, the potential to do so will be undermined. In order for the rights of trafficked women to be upheld, gender equality imperatives must be integrated across the strategy's objectives, including action to harness wider involvement. All actors must receive gender responsive training and be held accountable to minimum standards. This is much less likely to happen if the Bill remains blind to the gendered nature of trafficking.

15. In the policy memorandum, two paragraphs are dedicated to the rights of victims, whilst seventeen paragraphs are dedicated to the rights of offenders. Clearly this does not reflect the extent and severity of human rights violations at stake and should be rectified.

ISSUES SET OUT IN THE CALL FOR EVIDENCE AND POLICY MEMORANDUM

A single human trafficking offence for all forms of exploitation for adults and children

16. As set out in the policy memorandum for this Bill, a single human trafficking offence should help "to make Scotland a hostile environment for human traffickers". At present, lack of clarity in the law undermines prospects for the effective prosecution of traffickers.

17. A single offence can help the Scottish Government to take an unequivocal stand against human trafficking and provide much greater recourse to justice through clarity in the criminal justice system. Enslavement and human trafficking are not new phenomena, prosecution is notoriously difficult, and piecemeal attempts to deter traffickers and to support victims do not work.

18. All responsibility related to trafficking offences should also be removed from the UK immigration and asylum system. In broad terms, this places blame and onus for the crime of trafficking on victims, rather than traffickers. Specifically, the UKBA's appalling record on gender issues, despite clear operational guidance, also demonstrates the need for specialist and unified treatment of trafficking.³ Measures must be taken to ensure that the gender-blindness and the prevalent culture of disbelief within the UKBA are not replicated in the approach to anti-trafficking in Scotland.

A duty on Scottish Ministers to develop a trafficking and exploitation strategy

20. We support the proposed obligation on Scottish Ministers to develop and regularly review an anti-trafficking strategy. This will require a holistic plan to tackle demand for trafficked services that incorporates civil society and the private sector, as well as cross-departmental coordination across Scottish Government and the criminal justice system.

21. Many policy-level attempts to tackle violence against women and gender inequality fail to deliver because of a lack of political investment at the highest levels. In order for any anti-trafficking strategy to be converted into decisive action, Scottish Ministers must be collectively held to account. Without this impetus and leverage, those tasked with implementing the legislation will struggle against competing policy and resourcing priorities.

23. Substantively, tackling demand for trafficked services should be at the centre of any effective long-term strategy. Tackling demand must be part of a systems-wide approach, which includes links to gender equality and social justice strategies. The proposed multi-agency model will therefore be crucial.

³ Asylum Aid (2011) [*Unsustainable: the quality of initial decision-making in women's asylum claims*](#)

24. We welcome proposals for related non-legislative action, including initiatives to promote public awareness and training for frontline workers. In order for these to have a positive impact on trafficked women and girls, the strategy must stipulate that gender dimensions form part of awareness-raising and training.

25. Public bodies involved in design and delivery of the strategy must ensure compliance with the public sector equality duty, with a particular focus on equality impact assessments and the multiple discrimination some survivors face whilst accessing services. In addition to the diverse cultural and linguistic issues inherent to tackling human trafficking, LBT women, disabled women and young women will all experience different barriers to accessing support. Private sector contractors and third sector partners must be held to the same equalities standards.

A duty to provide support and recovery services for the victims of trafficking

26. We support a victim-centred approach to Scotland's anti-trafficking model. This would include the non-prosecution and non-penalisation of survivors, as part of a zero tolerance stance that prioritises the needs of victims and tackles the structures of human trafficking.

27. This Bill and the proposed statutory duty regarding support and recovery services provide the opportunity to ensure that survivors' rights are clearly articulated in the law and that appropriate safeguards are in place to protect those at risk of further harm.

28. However the stated aim of "[e]nsuring the rights of victims to access support and assistance" will rest on targeted support that understands survivors' complex needs. Specific support and exiting services for women and girls trafficked into prostitution will be needed and this should be reflected in the Bill and the strategy.

29. Analysis of trafficking of women and girls into prostitution in England and Wales estimates the social and economic costs of the sex-trafficking trade at £890 million annually.⁴ Whilst protection of vulnerable women must never be predicated on a cost-benefit analysis, this is a clear indication of the devastating harm of human trafficking. It is certain that the need for support and recovery services will outstrip the current 45-day period provided.

30. Women's experiences in the criminal justice and asylum systems confirm significant gaps between policy and practice related to gender-based violence and broader gender issues. Development and implementation of a new support system must therefore explicitly seek to combat this, and integrate gender analysis, anti-discrimination processes, cultural awareness and sensitivity to trauma from the outset.

Establish statutory aggravations of human trafficking

31. We support the view that statutory aggravations of human trafficking should be introduced to ensure associated offences are taken into account and to increase the prospects of successful prosecution.

32. The dynamics of trafficking incorporate many offences related to systemic gender inequality, including violence against women and commercial sexual exploitation. We recommend that sexual exploitation is included amongst any new statutory aggravators of human trafficking, on the basis of the evidence set out above.

⁴ Home Office (2013) [Understanding Organised Crime: estimating the scale and the social and economic costs](#)

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About us

Engender is a membership organisation working on feminist agendas in Scotland and Europe, to increase women's power and influence and to make visible the impact of sexism on women, men and society. We provide support to individuals, organisations and institutions who seek to achieve gender equality and justice.