

# Scotland: A safe place for child traffickers?

A scoping study into the nature and extent of child trafficking in Scotland

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## Appendices

Appendix 7: Legislative Framework dealing with Human Trafficking and Related Exploitation

Appendix 8: Overview of Child Protection in Scotland

## Appendix 7: Legislative Framework dealing with Human Trafficking and Related Exploitation

The below are supplementary pieces of the legislative framework dealing with human trafficking and related exploitation. The primary tools, the UN Convention on Transnational Organized Crime and its Protocols and the Council of Europe Convention on Action against Trafficking in Human Beings are dealt with at greater length in the literature review (Chapter 2).

### **Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR)),**

particularly:

Art. 1 - All human beings are born free and equal in dignity and rights.

Art. 4 - No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Art. 23 –

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests

### **UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others**

(adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271. The United Kingdom (UK) was not a signatory to this Treaty.

### **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),**

(adopted on 21 December 1965, entered into force 4 January 1969) 60 UNTS 195. The UK ratified this Treaty 7 March 1969.

Particularly:

Art. 5 (e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions.

### **International Covenant on Civil and Political Rights 1966 (ICCPR),**

(adopted on 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. The UK ratified the ICCPR 20 May 1976. Particularly:

Art. 8

(1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

(2) No one shall be held in servitude.

(3)(a) No one shall be required to perform forced or compulsory labour.

Art. 9

(1) Everyone has the right to liberty and security of person.

Art. 23

(3) No marriage shall be entered into without the free and full consent of the intending spouses.

**International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)**, (adopted on 16 December 1966, entered into force 3 January 1976) 993 UNTS 3. The UK ratified this Treaty 20 May 1976. Particularly:

Art. 3 - The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Art. 6 – (1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Art. 7 - The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no

considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Art. 10

(3) Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** (adopted on 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13. The UK ratified this treaty 7 April 1986.

Art.6 – States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

**UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (adopted on 10 December 1984, entered into force on 26 June 1987) 1465 UNTS 85. The UK ratified it 7 January 1989.

**UN Convention on the Rights of the Child 1989 (UNCRC)** (adopted by UN General Assembly resolution 44/25 of 20 November 1989 and entered into force 2 September 1990) 1577 UNTS 3. The UK ratified this Treaty 16 December 1991.

While recognising that the rights set out in the UNCRC are indivisible and interrelated and that child trafficking touches on all rights held by the child, the below includes the rights most pertinent to the issue of child trafficking; these are:

#### Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

#### Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

#### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

#### Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available

resources and, where needed, within the framework of international co-operation.

#### Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

#### Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

#### Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

#### Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

#### Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

#### Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

#### Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

## Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

## Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

## Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

## Article 29

1. States Parties agree that the education of the child shall be directed to:
- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

## Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

## Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

## Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

## Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

## Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

## Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

## Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the

human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

## Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

## Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

- (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of

acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which

children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

**Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**, adopted by General Assembly resolution

A/RES/54/263 of 25 May 2000 and entered into force on 18 January 2002. The Optional Protocol entered into force in the UK on 22 March 2009.

**International Labour Organization (ILO) Convention No. 29 on Forced or Compulsory Labour** (adopted on 10 June 1930, entered into force 1 May 1932) 39 UNTS 55. Particularly:

Art. 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of **forced or compulsory labour** in all its forms within the shortest possible period.

2. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.

3. At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.

Art. 2

1. For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Art. 6

Officials of the administration, even when they have the duty of encouraging the populations under their charge to engage in some form of labour, shall not put constraint upon the said populations or upon any individual members thereof to work for private individuals, companies or associations.

**ILO Convention No. 138 concerning Minimum Age for Admission to Employment (adopted 26 June 1973, entered into force 19 June 1976)** 1015 UNTS 215. Particularly:

Art. 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Art. 2

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a

minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

**ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (adopted on 17 June 1999)**, entered into force 19 November 2000) 2133 UNTS 161. Particularly:

Art. 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Art. 2

For the purposes of this Convention, the term *child* shall apply to all persons under the age of 18.

Art. 3

For the purposes of this Convention, the term *the worst forms of child labour* comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

(adopted on 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3. The UK has not ratified this Treaty.

In the Preamble it requires “that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights.”

**Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**(adopted on 4 November 1950, entered into force 3 September 1953) 213 UNTS 222.

Particularly:

Art. 3 - No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Art. 4 -

No one shall be held in slavery or servitude.

No one shall be required to perform forced or compulsory labour.

For the purpose of this article the term forced or compulsory labour’ shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.

Art. 5 -

Everyone has the right to liberty and security of person.

**Council of Europe Convention on Action against Trafficking in Human Beings** CETS 197 (adopted on 16 May 2005, entered into force 1 February 2010) The UK ratified the Convention on 17 December 2008 and it entered into force on 1 April 2009.

**Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse** CETS 201 (adopted on 25 October 2007, entered into force 1 July 2010) . The UK signed this Convention 5 May 2008.

**The Rome Statute of the International Criminal Court**, entered into force 1 July 2002. Particularly:

Art. 7 (1) – Crimes against Humanity, which include:

(c) Enslavement

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity

2. For the purpose of paragraph 1:

(c) ‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.

**Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery** (adopted on 30 April 1956, entered into force 30 April 1957) 226 UNTS 3.

Art. 1

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young

person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Art. 3

1. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.

Art. 6

1. The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

**The UN General Assembly declaration of Violence against Women**, (adopted 20 December 1993 UNGA Res 48/104).

Art. 2 - Violence against women shall be understood to encompass, but not be limited to, the following:

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

Art. 3 - Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

(c) The right to liberty and security of person

(g) The right to just and favourable conditions of work;

(h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

**Vienna Declaration and programme of Action** (12 July 1993 A/CONF.157/23).

38. In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women.

**Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community**, 13 December 2007. Particularly:

Article 6

1. The Union recognises the rights, freedoms and principles set out in the Charter of

Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States,

shall constitute general principles of the Union's law.'

Article 63a

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(d) combating trafficking in persons, in particular women and children.

**Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption**, adopted on 29 May 1993, entered into force 1 May 1995). This entered into force in the UK on 1 June 2003.

The Convention does not explicitly mention trafficking, but forbids anyone gaining, financially or otherwise, from intercountry adoption. (Art. 32(1)).

**UN High Commissioner for Refugees (UNHCR), Recommended principles and Guidelines on Human Rights and Human Trafficking**, May 2002.

Applying to both trafficked adults and children these Guidelines stress that the human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking, and to protect, assist and provide redress to all victims (Principle 1).

### **Council of the European Union Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings**

This aims for a more uniform approach to human trafficking throughout the EU, aiming to reach an agreed upon common definition of trafficking and harmonising the legal approaches within member states. Primarily concerned with the application of criminal law, the framework decision does not go into protection issues at length and does not refer to preventative measures.

**The Yokohama Global Commitment, 2001**, agreed at the 2nd World Congress on the Commercial Exploitation of Children, 17-20 December 2001.

Representatives from governments, intergovernmental organisations, non-governmental organisations, the private sector, and members of civil society from around the world gathered to reiterate their commitment to protecting and promoting the rights of children to not be sexually exploited, which included taking:

Enhanced actions against child prostitution, child pornography and trafficking of children for sexual purposes, including national and international agendas, strategies or plans of action to protect children from sexual exploitation, and new laws to criminalize this phenomenon, including provisions with extra-territorial effect.

## UK Legislative Framework

The UK has not incorporated a specific definition of human trafficking into domestic law, but several pieces of legislation have been introduced criminalising the practice.

### **Immigration Act 1971**

Section 25 makes it an offence to secure or facilitate entry into the UK of any person reasonably believed to be an illegal entrant. This has been greatly expanded by the Nationality, Immigration and Asylum Act 2002.

### **Human Rights Act 1998**

The Act incorporates articles 2 to 14 (except 13), among others, of the European Convention on Human Rights into UK Law.

Particularly pertinent here are:

Article 4: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour. (...)

Article 5: Right to liberty and security

1. Everyone has the right to liberty and security of person. (...)

### **Nationality, Immigration and Asylum Act 2002**

Section 145 established trafficking for prostitution as an offence.

### **Sexual Offences Act 2003**

Sections 57-59 of the Act apply to England, Wales and Northern Ireland only.

The above provision in the **Nationality, Immigration and Asylum Act 2002**, was repealed by this act which introduced a wider range of offences related to trafficking for sexual exploitation.

Section 57 - Trafficking into the UK for sexual exploitation

(1) A person commits an offence if he intentionally arranges or facilitates the arrival in the United Kingdom of another person (B) and either—

- (a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence, or
- (b) he believes that another person is likely to do something to or in respect of B, after B's arrival but in any

part of the world, which if done will involve the commission of a relevant offence.

Section 58 - Trafficking within the UK for sexual exploitation

(1) A person commits an offence if he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either—

(a) he intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or

(b) he believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.

Section 59 - Trafficking out of the UK for sexual exploitation

(1) A person commits an offence if he intentionally arranges or facilitates the departure from the United Kingdom of another person (B) and either—

(a) he intends to do anything to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence, or

(b) he believes that another person is likely to do something to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence.

**Asylum and Immigration (Treatment of Claimants, etc.) Act 2004**

(Sections 4 and 5 apply throughout the UK)

Section 4 - Trafficking people for exploitation

(1) A person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the "passenger") and—

(a) he intends to exploit the passenger in the United Kingdom or elsewhere, or

(b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

(2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the "passenger") in respect of whom he believes that an offence under subsection (1) may have been committed and—

(a) he intends to exploit the passenger in the United Kingdom or elsewhere, or

(b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

(3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the "passenger") and—

(a) he intends to exploit the passenger outside the United Kingdom, or

(b) he believes that another person is likely to exploit the passenger outside the United Kingdom.

(4) For the purposes of this section a person is exploited if (and only if)—

(a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),

(b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)),

(c) he is subjected to force, threats or deception designed to induce him—

(i) to provide services of any kind,

(ii) to provide another person with benefits of any kind, or

(iii) to enable another person to acquire benefits of any kind.

**Gangmaster (Licensing) Act 2004**

This does not directly deal with trafficking, but rather with workers who may not have legal status, and who are vulnerable to exploitation. It covers the agricultural, horticultural, shellfish gathering and associated processing and packaging industries.

**Immigration, Asylum and Nationality Act 2006**

Sections 15-26 make it a criminal offence for a natural person or a body corporate to knowingly employ persons who are not legally entitled to work in the UK.

**UK Borders Act 2007**

Section 31 extends the offences in the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants) Act 2004. In addition to facilitating “the arrival in” the UK, this Act covers facilitating “entry into” the UK. It also provides extraterritorial jurisdiction to the Sexual Offences Act offence of trafficking for sexual exploitation. This section applies to England, Wales and Northern Ireland.

**Borders, Citizenship and Immigration Act 2009**

Section 54 expands the definition of exploitation in the offence of trafficking in section 4 of the Asylum and Immigration (Treatment of Claimants) Act 2004. This is to cover use or attempted use of a person for the provision of services or the provision or acquisition of benefits of any kind, where the person is chosen on the grounds of ill-health, disability, youth or family relationship. Section 54 applies to England, Wales and Northern Ireland (see Section 57).

Section 55 Duty regarding the welfare of children

(1) The Secretary of State must make arrangements for ensuring that—

(a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and.

(b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need..

(2) The functions referred to in subsection (1) are—

(a) any function of the Secretary of State in relation to immigration, asylum or nationality;.

(b) any function conferred by or by virtue of the Immigration Acts on an immigration officer;.

(c) any general customs function of the Secretary of State;.

(d) any customs function conferred on a designated customs official..

**Policing and Crime Act 2009**

This Act criminalises paying for the sexual services of a prostitute subjected to force. It applies in England and Wales (section 14) and Northern Ireland (section 15). In Scotland, the offence is not limited to prostitutes subjected to force, but to all clients of prostitutes, see the **Prostitution (Public Places) (Scotland) Act 2007**.

**Coroners and Justice Act 2009**

The full act entered into force in February 2010. It introduced an offence of holding another person in slavery or servitude or forcing another person to perform forced or compulsory labour, This section of the act (Section 71) is applicable in England, Wales and Northern Ireland.

## Scottish Legislative Framework

### **Criminal Justice (Scotland) Act 2003**

Section 22 covers offences equivalent to Sections 57 – 60 of the **Sexual Offences Act 2003**.

The **Criminal Justice (Scotland) Act 2003** introduced a specific statutory offence of trafficking a person for the purpose of sexual exploitation. The maximum penalty on conviction on indictment is 14 years imprisonment. An offence of ‘trafficking for exploitation’, which covers non-sexual exploitation, including trafficking for forced labour and the removal of organs, is contained in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

### **Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005**

This Act criminalises *inter alia* certain offences against children (sections 10-12). The Criminal Justice and Licensing (Scotland) Act 2010 extends these offences so that bodies corporate as well as natural persons may be prosecuted for the offences proscribed.

### **Prostitution (Public Places) (Scotland) Act 2007**

The Act criminalises loitering or soliciting in any public place for the purpose of obtaining the services of someone engaged in prostitution.

### **Sexual Offences (Scotland) Act 2009**

Part 4 of the Act deals extensively with sexual offences against children.

**Criminal Justice and Licensing (Scotland) Act 2010**. This Act was passed on 30 June 2010 and received Royal Assent 6 August 2010.

Section 46 makes amendments to Section 22 of the **Criminal Justice (Scotland) Act 2003**. Section 47 criminalises slavery, servitude and forced/compulsory labour.

Section 99 gives the police a the power to close premises associated with exploitation.

## Appendix 8: Overview of Child Protection in Scotland

This offers an overview of the relevant legislation relating to child protection in Scotland.

In February 2009, the Scottish Government published *Safeguarding Children in Scotland who may have been Trafficked*. The guidance adapts the equivalent UK government guidance to the Scottish context.

In December 2010, the Scottish Government published National Guidance for Child Protection in Scotland, its revised national guidance on child protection, replacing the 1998 guidance *Protecting Children – A Shared Responsibility: Guidance on Inter-Agency Co-operation*. This reflects the need for a refresh in light of a number of legislative changes made in recent years.

The relevant Scottish legislation is presented below in the following categories:

- the duties conferred on services to investigate and respond to concerns about a child's welfare, as well as the responsibilities of local authorities to develop community planning processes with partner agencies;
- 'over-arching' legislation (for example, data protection) where some aspects have a particular relevance; and
- other legislation including offences relating to children and young people and legislation relating to civil law or administrative arrangements, arranged in thematic order.

### Duties to Protect

#### **Children (Scotland) Act 1995**

This remains one of the primary pieces of legislation delimiting the range and scope of local authority intervention in the lives of children and their families. The

duties of the local authority within this legislation are, in the main, discharged by statutory social work services. The Act further restated and reformed the law governing Scotland's children's hearings system, which deals with children and young people who are in need of protection and/or offend.

#### **Police (Scotland) Act 1967**

Although updated and amended by subsequent legislation, many of the current standard police powers emanate from this legislation. Powers to arrest and detain, duties to investigate and report (including the duty towards children), and the nature and organisation of the police service in Scotland come within the remit of this legislation.

#### **Social Work (Scotland) Act 1968**

Although frequently amended over the years, this legislation provides the primary mandate for social work intervention in Scotland. It is the legislation that creates the duty under section 12 to 'promote social welfare'. Notwithstanding, this has been supplemented by the Children (Scotland) Act 1995 to specify 'children in need', the over-arching mandate remains that it is the duty of the local authority to ensure that such services are made available across their jurisdiction as could be considered consistent with this duty. The Act also first set up the children's hearings system, which went operational in 1971.

#### **Local Government in Scotland Act 2003**

Part 2 of this legislation, which is concerned mainly with issues of community planning, contains details of the

duty on local authorities to establish and maintain a process of community planning which will include within its functions the scope for developing Child Protection Committees. Part 3 of the Act deals with the power of local authorities to enhance well-being and as such this can be interpreted as being relevant to the establishment of Child Protection Committees.

## Over-arching Legislation

### **Data Protection Act 1998**

This legislation impacts on all aspects of social work intervention with some sections have a particular importance for child protection situations. Of particular note in the child protection context are those sections of the Act that relate to confidentiality, sharing of information and disclosure of sensitive information.

### **Human Rights Act 1998**

All legislation passed by either the UK or Scottish Parliament should adhere to the principles of the European Convention on Human Rights. Insofar as it is possible, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention Rights.

### **Scotland Act 1998**

The Act enshrines the Scottish devolution settlement and transferred significant powers relating to children and young people, education, health, housing, policing and justice, among other matters, to the Scottish Parliament and Scottish Ministers. An Act of the Scottish Parliament is

outwith legislative competence of the Scottish Parliament if it is not compliant with the rights contained within the European Convention on Human Rights. Also, Scottish Ministers have no power to make secondary legislation, or do any other act unless it is in line with the ECHR.

### **United Nations Convention on the Rights of the Child 1989**

As a state party to this Convention the UK Government as well as devolved governments have made a commitment to respect and implement the requirements set out in the UNCRC. In September 2008 the UK withdrew its reservations relating to immigration and children in custody with adults. In regards to removing the reservation on immigration, children who are subject to immigration control will now be entitled to the fundamental human rights set out in the UNCRC.

More on the UNCRC, particularly in relation to child trafficking and exploitation, can be found in Appendix 7.

### **Scotland's Children's Hearings System**

The children's hearings system deals with children and young people who are in need of protection, and those who offend. It is premised on the recognition that 'the legal distinction between juvenile offenders and children in need of care or protection was – looking to the underlying realities – very often of little practical significance'<sup>1</sup>, a key finding of the 1964 Kilbrandon Report. The previous juvenile courts were found to be not suitable for dealing with the needs of children by the Kilbrandon Committee because they had to combine the attributes of a criminal court with an agency making decisions on welfare. As a result these functions were separated, and the establishment of facts, where

1. Scottish Home & Health Department and Scottish Education Department (1964), Children and Young People, Scotland: Report by the Committee Appointed by the Secretary of State for Scotland ('The Kilbrandon Report'), Edinburgh: HM Stationery Office, at para 13.

disputed, remains with the courts, but decisions on actions necessary in the welfare interests of the child are the responsibility the Children's Hearings<sup>2</sup>.

Children are referred to the children's reporter on a number of grounds including where they are the victims of child abuse or neglect, fail to attend school, or are alleged to have committed an offence. A children's hearing is an independent tribunal charged with making decisions in the best interest of the child, and wherever possible, with the child's and their family's participation in the process; the welfare of the child is the paramount consideration in decisions made by a hearing, or by a sheriff in relation to the hearing.

### **Getting it Right for Every Child (GIRFEC), 2008**

*Getting it Right for Every Child* is multi-agency approach to ensure that all services meet the needs of children and young people. It aims to build solutions with and around children, young people and families; enable children and young people to get the help they need when required; and support a positive shift in culture, systems and practice.

## Legislation Defining Offences against Children

### **Sexual Offences (Amendment) Act 2000**

This legislation deals with issues arising from offences committed against children by persons in a 'position of trust'. For the purposes of the Act, this encompasses any person who is looking after a child under the age of 18 who is being detained by order of a court and looked after and accommodated by the local authority, in a range of settings including hospitals and residential schools. The offences in question relate to a range of 'sexual activity'

with the young person undertaken in the knowledge that the young person at the time was under the age of 18.

### **Criminal Justice (Scotland) Act 2003**

This wide-ranging piece of legislation has sections that relate to children and young people both in terms of the Children's Hearings System and the interpretation of what constitutes legally justifiable physical punishment.

Sections 52 and 53 relate to changes in terms of the reporting restrictions on Children's Hearings and also the amount of information that the Principal Reporter can make available to child victims and relevant persons where the offender is also a child.

### **Prohibition of Female Genital Mutilation (Scotland) Act 2005**

This Act not only makes the procedure of FGM illegal, but also makes it an offence to send a girl abroad from the UK for the purpose of FGM.

### **Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005**

This legislation introduced a number of new offences including an offence of 'grooming' a child under the age of 16 years for sexual purposes and meeting such a child following prior contact for the purposes of engaging in some form of illegal sexual conduct. Arranging or facilitating any sexual services from a young person under the age of 18 is an offence as is attempting to control a young person for the provision of such services, including pornography. In the case of the production of pornographic images, the previous upper limit was 16.

The legislation also introduced Risk of Sexual Harm Orders (section 2) designed to protect children and

2. The background and functions of the Children's Hearing System can be found on its website at: <http://www.chscotland.gov.uk/index.asp>. The Children's Hearings (Scotland) Act 2011 restated and reformed the law governing the children's hearings system; this is expected to come into force in 2012.

young people from persons who may not have been convicted of any criminal offence but who have engaged in some level of sexually explicit behaviour or communication in respect of a child under 16 years.

This Act also extended the powers available under the Sexual Offences Act 2003 to allow courts to impose a Risk of Sexual Harm Order at the time of conviction for a sexual offence.

### **Sexual Offences (Scotland) Act 2009**

This Act substituted a number of common law offences with statutory offences - for example, rape - and clarified the issue of consent, introducing a new definition of 'free agreement'. A number of what are described as 'protective' offences are introduced to allow for the protection of children, including strict liability offences in respect of children under 13 who are not be deemed able to give 'free agreement' to sexual activity. The Act introduced in sections 42-45 a new offence relating to a breach of a position of trust in respect of a child. The Act provides clear guidance as to what constitutes a position of trust in these circumstances. It updated and amended the provisions of the UK Sexual Offences (Amendment) Act 2000.

## Legislation on Managing Adults Who May Pose a Risk to Children

### **Police Act 1997**

Part V of this legislation provides the responsibility and authority for 'disclosure checks' on individuals by local authorities or third sector organisations as well as other organisations depending on the nature of the work being undertaken; this is further supported by the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006. The legislation allows such bodies to obtain Criminal Record Certificates (known generally as 'disclosures') on any person who is likely to undertake direct work with children and other vulnerable groups.

### **Protection of Vulnerable Groups (Scotland) 2007**

The Protection of Vulnerable Groups (Scotland) 2007 (PVG) Act is Scotland's response to the principal recommendation of the Bichard Inquiry following the murders in Soham in 2002. In February 2011, the Scottish Government introduced a new membership scheme to replace and improve upon the current disclosure arrangements for people who work with vulnerable groups. This replaces the relevant sections in the Protection of Children (Scotland) Act 2003.

## Legislation on Criminal Proceedings and Witness Supports

### **Sexual Offences (Procedure and Evidence) (Scotland) Act 2002**

This legislation places restrictions on when an accused person is allowed to conduct his/her own defence and thereby cross-examine the defendant. The categories include a range of offences against children including unlawful sexual intercourse with a girl aged 13-16 years and indecent behaviour towards a girl aged 12-16 years. The extent of the powers under this legislation was extended further in the Vulnerable Witnesses (Scotland) Act 2004 to include non-sexual offences involving children under 12 years.

### **Vulnerable Witnesses (Scotland) Act 2004**

This amended some sections of the Criminal Procedure (Scotland) Act 1995, and includes provisions removing the need for child witnesses to undergo a competence test to ascertain whether they can demonstrate an understanding of the distinction between telling the truth or not. Under section 6 (which inserts section 288E to the Criminal Procedure (Scotland) Act 1995), an accused cannot conduct his own defence where the child concerned is under 12 and the offence involves sexual

assault or violence. The Act covers criminal cases, civil cases and court proceedings relating to children's hearings (although there is no accused in children's hearings-related proceedings, the 2004 Act applies in respect of persons who may have offended against the child). Standard special measures available to all child witnesses under the age of 16 are a live TV link, screens in the courtroom and the presence of a supporter in conjunction with either of these measures. Further special measures, available on application to the court, include evidence being taken in advance in the form of a prior statement (criminal cases only) or the taking of evidence by a commissioner.

## Additional Legislation

### **Asylum and Immigration (Treatment of Claimants etc) Act 2004**

Section 4 – Creates the offence of trafficking people for exploitation

### **Adoption and Children (Scotland) Act 2007**

This legislation made a number of changes to the administration of the adoption process in Scotland with the most notable being the introduction of the Permanence Order. This new order, which can be awarded to local authorities allows for a greater degree of flexibility around a core of more permanent decisions about a child's care.

### **The Mental Health (Care and Treatment) (Scotland) Act 2003**

This introduced a number of principles which those discharging functions under the Act are required to have regard to, including a specific principle for the '*welfare of the child*'. It requires that any functions under the Act in

relation to a child with mental disorder should be discharged in the way that best secures the welfare of the child.

### **Foster Children (Scotland) Act 1984 and the Foster Children (Private Fostering) (Scotland) Regulations 1985**

Under section 3 of the Foster Children (Scotland) 1984 a local authority is under a duty to secure the welfare of children within their area who are foster children and to ensure that such advice is given to those caring for them as appears to the authority to be needed.

### **UK Borders Act 2007**

This Act requires the Secretary of State to publish a Code of Practice, *Keeping Children Safe from Harm*, which UKBA officials are required to have regard to when dealing with children in the UK identified as being at risk of harm.

### **Commissioner for Children and Young People (Scotland) Act 2003**

The Act provides the legislative basis for the appointment of Scotland's Commissioner for Children and Young People. The remit of the Commissioner is to promote and safeguard the rights of children and young people by promoting awareness and understanding of the rights of children and young people; keeping under review the law, policy and practice relating to the rights of children and young people; promoting best practice by services; and, promoting, commissioning and undertaking research. The Commissioner must have regard to the provisions of the United Nations Convention on the Rights of the Child, and encourage equal opportunities, and involve children and young people and those who work with them in his work.