

# **Proposed Human Trafficking (Scotland) Bill – Jenny Marra MSP.**

## **Summary of Consultation Responses**

This document summarises and analyses the responses to a consultation exercise carried out on the above proposal.

The background to the proposal is set out in section 1, while section 2 gives an overview of the results. A detailed analysis of the responses to the consultation questions is given in section 3. Section 4 includes Jenny Marra MSP's commentary on the results of the consultation.

Where respondents have requested that certain information be treated as confidential, or that the response remains anonymous, these requests have been respected in this summary.

In some places, the summary includes quantitative data about responses, including numbers and proportions of respondents who have indicated support for, or opposition to, the proposal (or particular aspects of it).

In interpreting this data, it should be borne in mind that respondents are self-selecting and it should not be assumed that their individual or collective views are representative of wider stakeholder or public opinion. The principal aim of the document is to identify the main points made by respondents, giving weight in particular to those supported by arguments and evidence and those from respondents with relevant experience and expertise. A consultation is not an opinion poll, and the best arguments may not be those that obtain majority support.

Copies of the individual responses are available from the Scottish Parliament's Information Centre (SPICe)

A list of abbreviations for the respondents cited is included in the annex

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## Section 1: Introduction and Background

Jenny Marra MSP's draft proposal, lodged on 9th September 2013, is for a Bill to: (a) Require the creation of a Scottish anti-human trafficking strategy (b) Provide for the special treatment of human-trafficking related crime in the criminal justice system (c) Provide for the support of survivors of human trafficking.

The proposal was accompanied by a consultation document. This document was published on the Parliament's website, from where it remains accessible:

[http://www.scottish.parliament.uk/S4\\_MembersBills/20130909\\_Human\\_Trafficking\\_Consultation\\_final\\_version.pdf](http://www.scottish.parliament.uk/S4_MembersBills/20130909_Human_Trafficking_Consultation_final_version.pdf)

The consultation period ran from 9th September 2013 to the 17th of January 2014. Late responses were accepted until the 1st February 2014 where prior notice had been given.

The following organisations and individuals were sent copies of the consultation document or links to it:

- 32 Local Authorities
- Police Scotland
- The Crown Office and Procurator Fiscal Service
- The Lord Advocate
- The Solicitor General
- The Scottish Prison Service
- Scotland's Commissioner for Children and Young People
- 15 Charities
- 45 Representative organisations
- 7 legal organisations
- 4 Victims organisations
- 3 Faith based organisations
- 5 Trades Unions
- 10 Legal organisations

100 consultation papers were also distributed at the launch of the consultation to members of the media, politicians, the legal community and others.

The launch of the consultation took place on the 13th September 2013 during a conference organised by JUSTICE Scotland.

Additionally, press releases were sent out on 13th September 2013 and on 17th of January 2014 to mark the start and end date of the consultation period.

The consultation exercise was run by Jenny Marra MSP's parliamentary office.

The consultation process is part of the procedure that MSPs must follow in order to obtain the right to introduce a Member's Bill. Further information about the procedure can be found in the Parliament's standing orders (see Rule 9.14) and in the Guidance on Public Bills, both of which are available on the Parliament's website:

Standing orders (Chapter 9):

<http://www.scottish.parliament.uk/parliamentarybusiness/26514.aspx>

Guidance (Part 3):

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25690.aspx>

## Section 2: Overview of Responses

There were 51,624 responses to the consultation.

51,505 of those responses were received by individuals, following a global campaign organised by Walk Free - an organisation dedicated to ending Modern Slavery. Those responses are identical, and agree with the entire proposal. The text of those responses is as follows:

“I welcome your proposal for a Human Trafficking Bill in Scotland and believe this should be taken forward into law.

I agree that:

\* A comprehensive, legally-binding strategy against human trafficking should be developed and implemented by the Scottish Government.

\* A 'Survivors Service' should be established to identify, assist and seek justice for victims.

\* There should be strong penalties for those found guilty of human trafficking and those that help them.

\* Special provisions should be made for the child victims of trafficking, including the allocation an expert guardian to fight for their rights.

Strong legislation is an important first step in tackling modern slavery and I hope that this initiative will act as an example to inspire similar efforts elsewhere around the world.”

The remaining consultation responses (119) were received by organisations and individuals who directly engaged with the questions in the consultation. Please note that all the figures cited in the rest of this document for the proportions of respondents expressing a particular view are by reference to this figure of 119 (and not by reference to the overall total of 51,624).

These include:

- 66 individuals
- Police Scotland
- Scotland’s Commissioner for Children and Young People
- STUC
- The Institute for Human Rights and Business
- Legal Services Agency
- Children in Scotland
- Equality and Human Rights Commission
- Baronardo’s Scotland
- 4 Faith based organisations (including an ecumenical response)
- 7 Local Authorities (through various committees)
- 2 NHS Boards/Committees
- Domestic Abuse Partnerships
- Soroptimist International Branches

- UNICEF
- 3 Victims Organisations
- 4 Academics (3 in a joint response)
- Amnesty International
- 3 Equalities Organisations
- The Faculty of Advocates
- The Law Society
- The Scottish Women's Convention
- The Information Commissioner
- A variety of charities and representative organisations

There was a substantial majority of support from respondents for the aims of the proposed Bill. Only one consultation response directly disagreed with the aims of the proposed Bill.

Furthermore, there was a substantial majority of support for the specific proposals within the proposed Bill.

The detailed analysis below seeks to explore the various reasons behind the support for the Bill, and includes various other points raised where it was felt the policies contained within the proposal could be strengthened going forward.

## Section 3: Responses to Consultation Questions

Section 3 sets out an overview of the detailed responses to each question in the consultation document, following the order they appeared in the consultation document.

### **General aims and objectives of proposed Bill**

**Question 1: Do you agree with the aims and summary objectives of the proposed Bill? Please indicate "yes/no/undecided", with reasons for your position.**

**115 (97%) of the 119 respondents agreed, 1 (1%) disagreed, and 3 (3%) did not respond to this question or did not express a clear view.**

The main reasons for supporting the proposed Bill were:

#### **Scotland has a high rate of human trafficking**

Many of those who responded to this question noted that rates of trafficking in Scotland were high, and recognised the role that legislation played in reducing the number of victims. For example:

“Evidence has shown that the rates of human trafficking in Scotland are considerably higher in Scotland.” (Private individual)

“The National Referral Mechanism received 96 referrals of people believed to be victims of trafficking in Scotland in 2012 - this is a 3% increase on the previous year.” (Private individual)

#### **The consultation is victim-centred**

A consistent theme running throughout the consultation responses was the proposal’s focus on victims’ rights. Respondents from victims’ organisations, frontline responders and human rights organisations alike agreed that taking a victim centred approach to tackling human trafficking was critical to protecting victims and preventing trafficking:

“The COMPASS team particularly welcomes the emphasis of this bill on a victim centred response.”(NHS GG)

#### **The consultation proposes to stop victims of human trafficking from being prosecuted or convicted for the crimes they are forced to commit by traffickers**

One of the primary reasons for supporting the general principles of the proposed Bill was the measures within it to prevent victims of human trafficking from passing through the criminal justice system:

“It is important that Scotland has measures in place to ensure we do not prosecute victims of trafficking. We have significant concern about triple victimisation and in particular the sexual exploitation and forced labour amongst victims, mainly women and men” (ERCPC)

#### **The proposed anti-trafficking strategy**

It was widely noted among respondents that a strategy led by government was a coordinated way to tackle trafficking systematically:

“The consultation adopted has a strategic vision which encompasses all aspects of fight against trafficking, whilst maintaining concern for the victim at the heart of all adopted measures.” (G ACT Group)

### **The proposed changes to criminal law**

One of the most cited reasons for supporting the proposed Bill was the proposal to align Scots criminal law with international law, and create clearer criminal law around trafficking:

“It is imperative that Scotland uphold its commitments to international human rights law and to gender equality // EU Directive 2011/36/EU” (AI UK)

“The consultation based on well-established and accepted international and European legal standards in this area” (LSA)

“The introduction of a single criminal offence, as well as an associated offence of aiding, abetting or attempting to commit human trafficking, is vital.” (SWC)

“Comprehensive approach encompassing clear legislation, compliance with international best practice and wide partnership approach including all sectors of society.” (Evangelical alliance)

“[The] idea to galvanise current Scottish and UK trafficking law within one piece of legislation is considered welcome.” (Police Scotland)

“The co-existence of several partially overlapping offences undermines legal clarity and can be problematic in practice when it comes to prosecution and conviction.” (UNICEF UK)

“It has been recommended by the Equality and Human Rights Commission Inquiry into Human Trafficking in Scotland to bring together legislation on human trafficking into one dedicated law.” (Private individual)

### **The consultation focusses on child trafficking**

Many consultation responses noted the focus of the proposed Bill on the rights of children:

“The aims set out in the Bill proposal share a high degree with Barnardo’s Scotland’s relating to the Public Petitions Inquiry into tackling child sexual exploitation”(Barnardo’s)

Points of divergence:

### **The measures should be more gendered in their focus**

Some who responded felt that the consultation lacked any gendered analysis of human trafficking:

“We are disappointed that there is no gendered analysis. (...) It would be helpful to frame human trafficking as a form of gender based violence.” (WS)

“Any strategic intervention aimed at addressing human trafficking must sit within the wider context of sexual exploitation, gender inequality, gender violence and violence against women.”(ERCPC)

**Sex work must not be conflated with human trafficking**

One organisation highlighted that sex work must not be conflated with human trafficking:

“There is no evidence to support the assertion that policies aimed at reducing or ending the demand for commercial sex have any impact on the levels of trafficking for the purposes of sexual exploitation.”(SCOT PEP)

**The proposed Bill should take into account that forced labour is another form of modern slavery**

Some respondents felt the proposed Bill did not adequately address forced labour as another form of modern slavery:

“The proposed Bill is limited in its scope, should cover all forms of modern slavery, human trafficking plus forced labour.” (JRF);

“The proposed Bill should cover all relevant forms of modern slavery: Forced labour and human trafficking.” (ASI)

Other points:

**The proposed Bill should establish an independent Commissioner**

One suggestion that was made by a number of organisations who responded is that there should be the creation of an independent anti-trafficking commissioner for Scotland.

“Creation of an independent Commissioner or Rapporteur to encourage greater coordination whilst also helping ensure that politics does not influence or hinder anti- trafficking policy.” (G ACT Group)

“Creation of a commissioner with specific responsibility for this issue.” (AI UK)

## The Creation of a Scottish Anti-Trafficking Strategy

**Question 2: Do you agree with the proposal for a legal duty on Scottish ministers for a Strategy for Scotland against Human Trafficking? Please indicate "yes/no/undecided", with reasons for your position.**

**Of the 119 responses, 107 (90%) agreed, 2 (2%) disagreed, 5 (4%) were undecided, and 5 (4%) did not express a clear view or did not answer the question.**

Main reasons for supporting:

### **A legal duty on Scottish Ministers would strengthen action and accountability.**

The majority of respondents felt that a legal duty was necessary to for the Scottish Government to take leadership on human trafficking:

“A national strategy led by the Scottish Government would allow a broader approach to combating trafficking in Scotland” (Police Scotland)

“It is the only way to ensure a fully and successful implementation of the measures.” (Private individual)

“Establishing a statutory duty for development of a multi-agency strategy to address human trafficking would guarantee this good work would continue and be developed beyond 2014” (CARE)

“It is therefore encouraging that such a Strategy would include the reduction of human vulnerability and of the demand for cheap goods and services which drive trafficking.” (Private individual)

“A unified approach throughout the UK would place the same “duty “on all Government Ministers to adhere to a United Kingdom wide strategy. However, if Scotland were to seek supplementary legislation, (GLA) would support the proposal.” (GLA)

Points of divergence:

### **The use of legislation is not a pre-requisite of a strategy**

However, a minority recognised that strategies do not necessarily require primary legislation:

“Legislation is not always required for national strategies to be issued and applied.”(Police Scotland)

Other points:

### **The strategy should effectively engage local government**

Some respondents noted the need to ensure local authorities were adequately resourced to carry out much of the work that will be expected of them:

“(…) the Scottish government should enabled to “direct” and “resource” local government, law enforcement and civil society to take forward such a strategy to prevent unenforceable guidance and recommendations being produced.” (TARA)

**It is important that the strategy should harness existing best practice, in Scotland and beyond:**

A number of the responses noted that existing good practice in Scotland and beyond, and suggested this should be retained and enhanced in the strategy:

“The Scottish Government publication ‘Safeguarding Children Who May have been Trafficked in Scotland’ must be considered in any strategy” (ERCPC)

“The content of the strategy should be informed by international practice such as the National Action Plan Against Trafficking in Human Being for 2013-2015 from Poland.” (GREC)

## **Criminalising Human Trafficking**

**Question 3: Do you agree with the approach to criminalising human trafficking in Scotland as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.**

**Of the 119 responses, 110 (92%) agreed, 3 (3%) were undecided, and 6 (5%) did not express a clear view or did not answer the question.**

Main reasons for supporting:

### **The proposed Bill enshrines international law in Scots law**

Many of the respondents noted that the proposal aligns well with international law on human trafficking, and noted the benefit of enshrining international law on human trafficking into Scots law:

“We agree to the approach of criminalising human trafficking and alignment with international frameworks and the European Convention on Human Rights.” (NHS H)

“We believe that it is crucial that the proposed Bill adopts such a broad definition of human trafficking, as documented in the Palermo Protocol, which is recognised and adopted by the Council of Europe.” (AI UK)

“[We] Support proposals that ensure that existing obligations and commitments with respect to human trafficking offences in Scots law are consolidated.” (SCCYP)

“It is important that there is a single, clear criminal offence. It is also vital that a comprehensive definition of trafficking is provided in the Bill, aligned with that in the Palermo Protocol.” (UNICEF UK)

### **The proposed Bill creates a common understanding of human trafficking**

Many of the respondents believed that the provisions within this section would better clarify what ‘human trafficking’ is understood to be in Scotland:

“A new comprehensive Scottish law would provide this much needed common understanding and approach.” (UNICEF UK)

“By creating one single offence, it is hoped that any ambiguity and “loopholes” which have been present in cases in the past would be covered.” (SWC)

### **The proposed Bill provides efficient legal tools necessary to tackle human trafficking**

Some respondents noted that the provisions would make for a more efficient criminal justice response:

“This will provide clear definition to the law and thereby giving police and prosecutors the legal tools necessary to tackle human trafficking.” (Evangelical Alliance)

Points of divergence:

### **There should be a focus on victimless prosecutions**

Police Scotland believed there ought to be a focus on victimless prosecutions:

“The reference within the Modern Slavery Bill to an increased emphasis on victimless prosecutions should be at the core of any proposal in relation to the tackling of human trafficking in Scotland.”  
(Police Scotland)

### **The Criminal Justice Response to Human Trafficking**

**Question 4: Do you agree with the approach to the criminal justice response to human trafficking in Scotland as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.**

**Of the 119 responses, 109 (92%) agreed, 2 (2%) disagreed, 1 (1%) were undecided, and 7 (6%) did not express a clear view or did not answer the question.**

*Main reasons for supporting*

#### **A legal duty on authorities responsible for investigation and criminal prosecution will ensure transparency and accountability**

Many respondents noted that a legal duty on COPFS, Police Scotland and others would ensure that capacity was built for ongoing effective investigation and prosecution of trafficking, and that public reporting would ensure transparency:

“We support the proposal [...] which not only creates a legal duty to investigate but supports it with a duty for Police Scotland and the COPFS to establish ‘requisite capacity’ through provision and training” (CARE)

“JRF welcomes the proposal to establish a legal duty to publicly report on progress and developments by the relevant inspection authorities.” (JRF)

#### **The consultation develops a multi-disciplinary and specialist approach**

Many respondents supported the creation of multi-disciplinary and coordinated specialist approaches to tackling trafficking:

“Flex supports the creation of a multidisciplinary specialism on human trafficking within Police and the Crown Office and Procurator Fiscal Service (COPFS) that ensures a broader and deeper understanding of human trafficking and adequately equipping such specialism with training, investigate tools and resources.” (FLEX); (SBCC)

“It is crucial to create specialism in order to have a comprehensive understanding of both the law on human trafficking and the nature of the problem.” (G ACT Group)

“The proposal for specialist service provision within the Scottish criminal justice system and in Police Scotland is welcome.” (STUC)

*Points of divergence*

**Existing Social Work and youth justice mechanisms should be included in the proposed Bill**

Some noted the importance of including all existing justice structures in the proposal:

“There is no specific reference to the unique youth justice mechanisms that are in place in Scotland, for instance the Children’s Hearing System and associated social work professionals. This omission should be remedied.” (LSA)

*Other points*

**Prosecutors should be given further powers to seize the assets of traffickers**

Both the GLA and Police Scotland made similar calls to be able to seize the assets, including vehicles and vessels, of traffickers:

“We would also wish for Prosecutors to have a legal duty to be fully trained and equipped to seize the assets of any organised criminal group involved in trafficking.” (GLA)

“Although powers are already available to the police to seize items under the Proceeds of Crime Act 2002 under confiscation orders, the opportunity to pass legislation that would enable officers to seize vehicles, vessels etc. used by traffickers to commit their crimes should not be overlooked. This could include the power to retain these items while proceedings are instigated or during the course of an investigation.” (Police Scotland)

**Question 5: Do you agree with the approach on the non-prosecution and non-penalisation of trafficking survivors in Scotland as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.**

**Of the 119 responses, 113 (92%) agreed and 6 (5%) did not express a clear view or did not answer the question.**

*Main reasons for supporting*

**Victims should not be considered criminals**

A consistent argument in support of this proposal was that victims of human trafficking should not, under any circumstances, be treated as criminals for crimes they were forced to commit as a result of their trafficking predicament:

“The proposed approach would enshrine an important principle whereby victims should not be prosecuted for crimes under duress.” (Evangelical Alliance)

“The bill would criminalise those who are exploiting as opposed to those who are being exploited.” (DA)

“Victims do not need to be punished more.” (Private individual)

“Putting a non-punishment provision on a statutory footing would be a good way to tackle this problem.” (JRF)

“Non-prosecution and non-application of penalties as well as prohibition on the detention of trafficked persons are equally in the interest if the prosecution.” (UNICEF UK)

**The proposed Bill embeds EU law**

Many respondents evidenced their support by citing relevant EU law in relation to the non-punishment of victims of human trafficking:

“The Committee notes that in terms of Article 8 of EU directive 2011/36/EU that Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in the criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.” (LSS)

“(RCS) believes any legislation should incorporate a non-punishment clause, similar to those contained in the EU Directive and the Council of European Convention.” (RCS)

**The proposal takes the correct approach to ‘informed consent’**

Police Scotland commented specifically on the need to differentiate between adult and child victims when considering informed consent:

“We agree in relation for the need to differentiate between adult and child victims and the inference of “informed consent”. (Police Scotland)

#### *Points of divergence*

##### **Prosecutors should retain the right to decide on a case by case basis**

Police Scotland stated they believe it should continue to be the prerogative of prosecutors to decide whether or not a case should be brought forward:

“It should remain a decision for the Crown Office and Procurator Fiscals Service on a case by case basis whether it is “in the public interest” to prosecute or not”. (Police Scotland)

#### *Other points*

##### **Human trafficking should not be seen as an asylum and immigration issue**

Many respondents, when considering whether or not the prosecution of victims of human trafficking should occur, noted that possible crimes of asylum and immigration should not be considered when trafficking may have occurred:

“Trafficking should not be seen as an asylum or immigration issue and therefore one that is outside the reach of the Scottish government; trafficking is an abuse of human rights, not a cross-border issue to be dealt with by Westminster.”(Barnardo’s)

“(…) identification of victims of trafficking is carried out by the UKBA which is also responsible for immigration and asylum cases in the UK. (…) Allocating the decision making for both immigration cases and trafficking cases to the same body risks conflicts and confusion in adopting the right approach.” (FOA)

##### **Training of all key agencies in non-prosecution should take place**

Some respondents noted that, as well as a change in the law, training should be provided to key agencies in how to implement the law around non-prosecution:

“There is a need for widespread training for all key agencies on trafficking that supports the non-criminalisation of survivors. This needs to be mandatory as in our experience it is difficult for staff in key agencies to be released to attend optional training.” (WSP)

**Question 6: Do you agree with the approach to harnessing regulators, the private sector, and civil society against human trafficking, as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.**

**Of the 119 responses, 106 (90%) agreed, 1 (1%) disagreed, 3 (3%) were undecided, and 9 (8%) did not express a clear view or did not answer the question.**

*Main reasons for supporting*

**Raising awareness and training is pivotal**

Many respondents noted how crucial awareness raising and training was to tackling human trafficking:

“Raising awareness and training is pivotal to a consistent recognition of the full range of implications of human trafficking in Scotland” (Together)

“The approach developed in this consultation must work in tandem with other initiatives in this area which have a focus on awareness raising and training and taking into account the Policy and Legislative Recommendations of the OSCE” (LSA)

**The proposed Bill enshrines EU law**

Some respondents commented on the provisions within international law to ensure adequate training is provided:

“Article 9 of the EU Directive on preventing and combatting trafficking in human beings and protecting its victims 2011 requires states to ensure that persons, units and services responsible for investigation and prosecution of trafficking are trained accordingly” (HURB)

“Article 11 requires Member States to take the necessary measures to ensure that assistance and support are provided to victims and to ensure assistance and support are not made conditional on the victim’s willingness to co-operate in the criminal investigation” (FOA)

**There is a lack of consistent knowledge among professionals**

Some respondents, like Scotland’s Commissioner for Children and Young People, noted a significant lack of consistent knowledge amongst professionals, which would be addressed by the proposal.

**The proposal harnesses all of civil society**

Speaking in support of the proposal, many respondents noted that trafficking requires a concerted effort on behalf of Scotland’s wider civil society, and must not just be left to law enforcement agencies to tackle:

“Trafficking cannot be tackled simply by State authorities” (G ACT Group)

“Regulators, businesses as well as individuals have a role to play in addressing modern slavery” (ASI)

“Trade Unions themselves can play an important role in the workplace in raising awareness” (STUC)

“It is important that the Bill acknowledges the need to engage with regulatory, private and civil society sectors” (Private individual)

“Raising awareness of human trafficking in our country cannot be left to professional bodies alone” (Private individual)

*Other points*

**There is a need for the introduction of a child and gender-specific trafficking training**

UNICEF UK noted that the proposal should develop gender and child specific training for raising awareness:

“The Scottish authorities should design training programmes in a child-and-gender sensitive manner and involve all relevant State and non-State agencies” (UNICEF UK)

**There is a need to tackle trafficking through business supply chains**

Some respondents noted the need to tackle trafficking within supply chains of businesses:

“In California, a system is in place to encourage large companies to engage with the issue of slavery, exposing areas of concern and allowing a mechanism of improving such situations.”(G ACT Group)

“Any serious strategy to drive out slavery in all its forms from its supply chains would require a provision to criminalise the use of victims of slavery in supply chains. This is in keeping with the UK Bribery Act which provides extraterritorial legislation to tackle a problem that is systemic, international in scope and which individual voluntary initiatives are unlikely to be sufficient for the challenge. “Anti-slavery in supply chains law must be extraterritorial in scope and explicit in relation to the liability of business executives for failing to conduct in their business dealings.” (ASI)

**Question 7: Do you agree with the approach the Survivors Service and minimum standards for victims as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.**

**Of the 119 responses, 113 (95%) agreed, 2 (2%) disagreed, 1 (1%) were undecided, and 3 (3%) did not express a clear view or did not answer the question.**

*Main reasons for supporting*

**The proposal provides a cohesive and comprehensive package of care:**

Many respondents who supported the proposal highlighted the benefits of introducing the proposed minimum standards of care as providing a cohesive package of care that will improve the lives of survivors:

“RCS supports the recognition of the need to provide appropriately for survivors/victim rights and to place minimum standards for their support, for women, in particular, onto a statutory footing. The acknowledgement that services should be non-discriminatory and gendered is necessary and welcome.” (RCS)

“The minimum standards for victims as set out on pages 33-36 provide a cohesive support system which recognises the different need of individual victims of human trafficking.” (Church of Scotland)

The minimum standard of service that is proposed in the Bill for victim’s care and support providers is also likely to improve the lives of those affected.” (Police Scotland)

**Statutory footing of care guarantees consistency**

TARA, one of Scotland’s victims’ agencies, welcomed the fact that the Survivors’ Service and minimum standards of care were placed on a statutory footing, as opposed to being a matter of policy:

“CSG TARA Service is delighted at the proposal to legislate for survivors/victim rights and entitlements, for women in particular, onto a statutory footing. The acknowledgement that services should be non-discriminatory and gendered is necessary and welcome. In order to ensure that potential victims of human trafficking (PVoTs) are confident that the UK will provide adequate protections it is vital that protections, entitlements and support are clearly defined in legislation and are not afforded through a ‘policy’ approach that can be subject to different interpretations according to organisational roles and responsibilities. Clear, legally defined obligations towards supporting PVoTs will improve confidence in the state to provide protection for them, further encourage co-operation and lead to the successful prosecution of perpetrators.” (TARA)

*Points of divergence*

**The current National Referral Mechanism should first be reviewed**

Police Scotland have stated that “It would be beneficial to wait until the finding of the review of the NRM is known before taking any decision.” (Police Scotland)

*Other points*

### **Clarity about the statutory basis of a Survivors' Service:**

Some respondents noted the need to be clear about expectations on organisations should the Survivors' Service and minimum standards of care be placed on a statutory footing:

“There also needs to be clarity about the statutory basis of a Survivors Service; does this mean that professionals / people will be required to refer possible victims? There should be clarity on the definition of who is considered a victim – at the moment there is a reliance on the NRM as the official arbiter of who is a victim. If the Survivors Service (or presently the NRM) considers a person is not a victim, does this mean they are not a victim? In this respect care is required not to replicate some of the practice that the NRM has been criticised for.” (Dr. Paul Rigby and colleagues, University of Stirling)

### **TARA notes for consideration**

As an organisation directly involved with the recovery and assistance of victims of human trafficking, TARA have outlined a comprehensive list of considerations for the proposed Bill going forward. These include:

- There needs to be an accredited system for First Responders (FR) and Competent Authorities (CA) to uphold the integrity of the process.
- Not only should all FRs and CAs be trained and accredited but they should demonstrably understand gender based violence, cultural sensitivity and the impact of trauma.
- TARA are in agreement that CA responsibility should no longer remain with the Home Office. Indeed, the current UK Government has moved the ministerial portfolio for Human Trafficking from Immigration to Police (Crime and Security). As highlighted above the Euro Stat report those VoTs from outwith the EU whilst significant in number are a minority across Europe. CSG suggests that alternatives could include the proposed Survivors Service, or if a statutory body is required the UKHTC, Local Authorities or Police Scotland.
- The confidentiality of adults agreeing to the process must be maintained at all times and their wish not to engage with Police upheld if appropriate i.e. unless there are clear, present and/or serious threats from perpetrators or immediate safety and protection concerns regarding the individual, children or other adults.
- FRs need to be empowered to take the initial Reasonable Grounds Decision and make recommendations regarding temporary leave where there are immigration concerns to the Home Office. If FRs are accredited that will ensure that the integrity of identification and access to a recover period is maintained.
- The 'reflection and recovery period' should be extended to 90 days. This provides for more realistic timescales to assist with engagement, to minimise risk of re-traumatisation, provide more time for expert reports to be prepared by specialist services, NHS colleagues and other experts. It will provide more time for PVoTs to consider their options, begin the recovery process and agree or disagree to engage with Police Scotland and the CJS. It would ensure time for PVoTs to continue to cooperate with law enforcement, without concern about their immediate future, and it will enable planned and therefore safer returns.

- Conclusive decisions (CDs) should be made on a multi-disciplinary level with agreed parties mandated to attend. The highly successful MARAC model designed to increase protection measures for survivors of Domestic Abuse could be used as a template and appears to be a manageable process for all key stakeholders. At a minimum these stakeholders should include UKVIS, Police Scotland, Adult and Children SW Services, Survivor Service representative, support providers (national or local), NHS (national or local) and COPFS
- Pertinent information should be confidently shared to inform the decision. A national group of experts could meet on a monthly basis to make decisions and recommendations based on full disclosures of information gathered by local teams, responders and/or experts. All parties' evidence should be afforded equal weight and their differing expert status acknowledged. Representatives should be of Service Manager level or above to maintain the integrity of the decision making process.
- Such a meeting could also have a dual function of assessing individual risk with stakeholders agreeing actions to manage that risk and ensure protection measures.
- A system to target perpetrators, similar to Multi Agency Tasking and Coordination meetings (MATACs) could also be considered.
- The need for residency in the UK should be assessed and objectively evidenced at the MARAC and recommendations made to UKVIS to consider granting up to 1 year and a day's leave to remain.
- The model should be transparent with explanatory notes on the process available in plain English and translated as required.
- Introduction of a formal appeals process (heard by an Anti-Trafficking Commissioner, see below) will be necessary if this proposed NRM is on a statutory basis.
- All RGD and CD decisions should routinely be audited and reviewed on the application of the process and the quality of decision with any recommendations for improvement implemented.
- For adults entry into the model must remain based on informed consent.
- A 'safety net' should be in place to ensure support is available for adults who come to the attention of the Survivors Service but who do not consent to the NRM or who do not have the capacity to consent. This should be in place for up to 30 days, affording time for further information to be gathered and trust in services to be established. Depersonalised information on their circumstances must be collated and reported.
- Any NRM process must be informed by an understanding of trauma and primarily be focussed on identification, assessment of needs and access to a coordinated care package, taking account of the victim/survivors wishes as much as possible. Responses should always have the best interests of the individual in mind.
- Intelligence and Data collection should NOT be a primary aim of such a mechanism.
- Alternative means to collate consistent information on human trafficking, survivors, perpetrators, trends, prosecutions and support responses should be designed and all

stakeholders mandated to contribute. This could be led by an independent Anti Trafficking Commissioner.

**Question 8: Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?**

Many respondents who answered this question believed that the proposed Bill would have an impact on gender equality because human trafficking is a gendered crime, affecting women acutely. Others noted that it will have a wider positive impact on protected characteristics:

“CSG anticipate that the bill should improve access to specialist (and where appropriate mainstream) services for a number of people with protected characteristics, such as:

- Gender
- Race
- Religion
- Transgender” (Tara)

“The Commission does not envisage that the proposed Bill would have any negative implications for equality.” (EHRC)

“I think the Bill will have positive implications for equality. Although human trafficking is by no means exclusively experienced by women, 80% of the time women are the victims. This is particularly the case for sex trafficking, which is mostly men exploiting women. Therefore anything that is done to help prosecute traffickers and help victims will have a positive impact on equality. It is essential that victims, in particular women who have been forced into sex work, are given the support they need.” (Private individual)

Others recommended a full Equalities Impact Assessment be carried out as the proposed Bill progressed through Parliament:

“The Committee has no specific comment but believes that a proper Equality Impact Assessment should be carried out in this regard.” (LSS)

**Question 9: What is your assessment of the likely financial implications of the proposed Bill to you or your organisation; if possible please provide evidence to support your view? What (if any) other significant financial implications are likely to arise?**

### Section 11

Many respondents noted there would be an extra cost associated with setting up the Survivors' Service:

"The introduction of a single Survivors Service is likely to impact on current funding for supporting VoTs recovered in Scotland.(...)The introduction of a stand-alone Survivor's Service is highly likely to impact on these arrangements and may result in changes which affect the specialist support provided in Scotland." (TARA)

"A new Survivors Service for adults is likely to incur extra costs as it does not exist at present." (Dr Paul Rigby and his colleagues, University of Stirling)

"The Survivors' Service is likely to have the most cost implications since it will create a new agency which will need to employ staff and maintain its own infrastructure." (Care)

However, many also emphasised that these costs are justified:

"Continued financial resources by the Scottish government for specialist services, including legal advice, are a necessary requirement to any strategy in this area." (LSA)

"Cost to create the Survivor's Service must be met." (Private individual)

"Any changes that empower the GLA to play a full and active part in the prevention and detection of forced labour and human trafficking in Scotland is seen as a positive step to protect victims but may increase resource pressures on the GLA. A dedicated response within Scotland, along broader lines than currently, may require additional resources and funding."(GLA)

"The human and monetary cost to government and society of not tackling human trafficking and the harm that causes far out-weighs the cost of taking concerted, adequately-resourced and consistent action to tackle these issues: investment in ensuring that any new law is adequately publicised; that law enforcement, including the judiciary, and others are trained to ensure effective implementation; that prevention programmes are implemented; and that services are put in place to ensure assistance to victims." (EN)

In addition, some anticipated further costs associated with other proposals in the Bill:

"The proposals within the bill, if accepted, are likely to require additional funding to progress, for example:

- Funding for an Anti Trafficking Commissioner which is likely to require staffing/office/admin/interpreting/publication costs.
- Increase in the number of individuals where there are concerns regarding trafficking.

- Enhanced service provision will require additional funding to be made available to support longer term care packages, in particular accommodation.
- Training and accreditation for all frontline responders and key stakeholders will require development, administration and delivery costs
- Resourcing to support implementation of a Scottish 3 year Anti Trafficking Strategy

However, longer term cost benefits may result from improved access to mainstream supports, improved survivor recovery meaning the risk of re trafficking and/or further exploitation is minimised, greater advocacy leading to access to public funds and improved integration into Scottish society and/or safer repatriation and reintegration.” (TARA)

**Question 10: Do you have any other comments on or suggestions that would prevent trafficking in Scotland?**

This question solicited a number of responses, including a reaffirmation of many of the suggestions made in response to previous questions.

**Involving the UN Convention on the Rights of the Child:**

Children in Scotland suggested ensuring the UNCRC was used as an underpinning tool for the development of child-trafficking provisions in the Bill:

“We are concerned that there is no mention of the UNCRC within the Human Trafficking (Scotland) Bill and we would strongly encourage the Scottish Government to ensure that this Bill is underpinned by the general principles of the UNCRC.” (CIS)

**Involving the Third Sector**

Barnardo’s suggested the role of the Third Sector could be enhanced:

“The consultation does not deal enough with the role of the third sector; only directly mentioned once; if the third sector can fall under the umbrella of civil society, it should be mentioned directly (Barnardo’s)

**Forced labour should be included in the proposed Bill**

As previously stated, there was a suggestion that the proposed Bill explicitly include forced labour:

“The bill should deal with human trafficking and forced labour.” (JRF)

**Working alongside the Modern Slavery Bill**

Police Scotland stated that the proposals should work alongside the Modern Slavery Bill:

“The Modern Slavery Bill has progressive proposals and these should be considered in conjunction to enhance any Scottish Bill.” (Police Scotland)

**Internal Trafficking:**

Some respondents believed internal trafficking should feature in the proposed Bill:

“Any trafficking legislation brought forward in Scotland should therefore explicitly include provisions for internal trafficking.” (Barnardo’s)

**The role of social media and the internet:**

Some respondents noted that the role of social media and the internet should be specifically addressed:

“Understanding how victims of trafficking are recruiting over the internet and via social networks has been identified as a priority within the EU Strategy towards the Eradication of Trafficking in

Human Beings 2012-2016(EC 2012). This should also be considered as part of Scotland's developing strategy against THB." (UD)

"With the internet, there is major advancement in how traffickers use technology to further develop how they carry out crime there crime and our law enforcement procedure have to match the technology." (Private individual)

## **Section 4: Commentary on Consultation: Jenny Marra MSP**

Firstly I would like to thank all of those who took the time to respond to the consultation, in particular those who responded with evidence, research and experience to back up their findings. I am delighted that responses were received from legal experts, from victims' organisations, health boards, Police Scotland and many more, making the consultation exercise wide in scope.

The Bill is intended to reform Scotland's law on human trafficking. It sets out clear policy aims which I believe will help achieve the necessary shift in our response to one of the most abhorrent human rights abuses taking place in our communities today.

Unsurprisingly, I agree with many of the points raised by those who responded to the consultation, and I welcome the overwhelming support for the aims and objectives of the Bill. With over 51,000 supportive submissions, I am clear that we must now press ahead with this legislation.

While cooperation with other nations will always be necessary to tackling human trafficking due to its cross-border nature, this should not discourage Scotland from passing its own exemplary laws. As well as playing our part in cooperating effectively, this Bill gives us the opportunity to set an example, and to lead the way in combatting trafficking and protecting victims.

The Scottish Government has the power to pass world leading anti-trafficking laws. With one victim recovered every four days – a number which is growing – I believe this legislation is timely and justified. I hope this proposed Bill will progress with the support of all parties in Parliament, and that of the Scottish Government. I look forward to working with those who have responded in taking this proposal forward.

**Jenny Marra MSP**

**February 2014**

## **ANNEX**

**acts:** action of churches together in Scotland

**AI UK:** Amnesty International

**ASI:** Anti-Slavery International

**CiS:** Children in Scotland

**DA:** Drugs Action

**DAVAWP:** Dumfries and Galloway Domestic Abuse and Violence Against Women Partnership

**DF:** Destiny Lifeline Foundation

**DWAP:** Dundee Violence Against Women Partnership

**EHRC:** Equality and Human Rights Commission

**EN:** Equality now

**ERCPC:** East Renfrewshire Child Protection Committee

**EVAWP:** Edinburgh Violence Against Women Partnership

**FDASAP:** Fife Domestic and Sexual Abuse Partnership

**FLEX:** Focus on Labour Exploitation

**FOA:** Faculty of advocates

**FVR:** Forth Valley Response

**G ACT Group:** Stophetraffick (Glasgow) ACT group

**GLA:** Gangmasters Licensing Authority

**grec:** Grampian Regional Equality Council

**HMICS:** HM Inspectorate of Constabulary for Scotland

**HVAWP:** Highland Violence Against Women Partnership

**IHRB:** The Institute for Human Rights and Business

**IJM:** International Justice Mission UK

**JRF:** Joseph Rowntree Foundation

**LSA:** Legal Services Agency

**LSS:** The Law Society of Scotland

**NHS L:** NHS Lothian

**NHS GG:** Compass Mental Health Team for Asylum Seekers, Refugees and Trafficked Persons affected by Trauma, NHS Greater Glasgow and Clyde

**NHS H:** NHS HIGHLANDS

**RCS:** Rape Crisis Scotland

**SA:** Salvation Army

**SBCC:** Scottish Borders Child Protection Committee Practice Development Subgroup

**SCCYP:** Scotland's Commissioner for Children and Young People

**SCOT PEP:** Scottish Prostitutes Education Project

**SI D:** Soroptimist International Dunfermline

**SI GC:** Soroptimist International Glasgow City

**STUC:** Scottish Trade Union Congress

**SWC:** Scottish Women's Convention

**SIAA:** Scottish Independent Advocacy Alliance

**TARA:** Trafficking Awareness Raising Alliance

**Together:** Scottish Alliance for Children's rights

**UD:** University of Dundee

**VSS:** Victim Support Scotland

**WS:** With Scotland

**WSP:** Women's support project