**SECTION 9(2)(b) (i) OF THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015- CONSULTATION REPORT**

**INTRODUCTION AND BACKGROUND**

1. In October 2015 the Scottish Parliament unanimously passed the Human Trafficking and Exploitation (Scotland) Act 2015 (“the Act”). This was the culmination of significant work between agencies and across the political spectrum, including the Cross Party Group on Human Trafficking.

The Act creates a new legislative context that will simplify how police and prosecutors can deal with these crimes. A Guide to the Act has been prepared and is available at: <http://bit.ly/2e0IPzo>.

The offence of human trafficking is defined in Section 1 of the Act as the recruitment, transportation or transfer, harbouring or receiving or exchange or transfer of control of another person for the purposes of exploiting them. The arrangement and facilitation of these actions also constitutes the offence. This definition does not require coercive means such as threats or intimidation to be present and it is irrelevant if the victim ‘consented’ to any part of the action.

**2. This consultation was on section 9(2)(b)(ii) of the Act, which relates to the provision of support and assistance to adult victims of human trafficking and requires the Scottish Ministers to secure such support in certain circumstances**. It asked for views on the period during which adult victims of trafficking must be provided with support.

3. It should be noted that this consultation did not relate to the support of child victims. Child victims of trafficking are abused children; they are therefore supported in the same way that all abused children are supported, by a range of professionals and organisations.

**SECTION 9**

4. Section 9(1) and (2) of the Act require Scottish Ministers to secure support and assistance to adult victims of trafficking during the ‘relevant period’. This is the period of time which:

* begins on the date that a competent authority[[1]](#footnote-1) has determined that there are reasonable grounds to believe that an adult is a victim of trafficking, and
* ends after either **the end of a period set by regulations** or when a conclusive determination is made by a competent authority that the adult is or is not a victim of trafficking (whichever is earlier).

5. The determination process used to come to a conclusive determination is currently carried out through the UK-wide National Referral Mechanism[[2]](#footnote-2).

**6. We asked for views on how long the period set by regulations and referred to above should be.**

The purpose of the relevant period is for victims to reflect on their experiences and begin a process of recovery with appropriate support. The relevant period is not an indication that it is expected that a victim will have fully recovered from their experiences within that time and does not tally exactly with the ‘reflection and recovery period’ set out in the relevant European instruments – the EU Directive on preventing and combatting trafficking in human beings and protecting its victims and in meeting the requirements of the Council of Europe Convention on Action against Trafficking in Human Beings.

7. Examples of the types of support to be available to victims are listed within the Act at section 9(4) but the duty extends to the provision of any support and assistance that Ministers consider necessary based on an assessment of the victim’s needs.

**WHAT WE PROPOSED**

**8. The Scottish Government set out the view that the ‘period to be set by regulations’ should be 45 days. This time period reflects the current arrangements for the provision of support and assistance for victims of trafficking.**

The reasons for this were that

* the setting of any defined period in this context is arbitrary to a certain degree, as each victim is an individual who will have unique needs
* section 9(3) of the Act provides flexibility for Ministers to provide support before and after the relevant period, no matter what length of relevant period is specified in regulations, where required as a result of a victim’s individual circumstances and needs.
* many victims will also go on to be able to claim social security support or asylum support, dependent upon their nationality and immigration status.

The relevant period is nonetheless important, not least in providing certainty to trafficking victims in indicating the period over which they can initially expect to be supported, assuming that a conclusive grounds determination does not come earlier.

The Scottish Government was of the view that setting this period at 45 days was a tested, successful and sustainable approach. This period has been accepted by GRETA (Group of Experts on Action against Trafficking in Human Beings) in their recent report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the UK. It exceeds the 30 days required by that Convention, and matches what is currently provided in other parts of the UK, ensuring a level of consistency throughout Scotland, England, Wales and Northern Ireland.

**CONSULTATION**

9. The consultation consisted of a single question:

**The Scottish Government is of the view that the relevant period in Regulations under Section 9(2)(b)(i) should be 45 days for the reasons set out above.**

**Do you agree with this view? If you do not agree, what would you propose and why?**

10. The consultation ran from 3 November 2016 to 23 December 2016. 31 responses were received, 17 from individuals and 14 from organisations.

In addition to the opportunity to submit written comments, 5 consultation events were held across Scotland where there was an opportunity to discuss the provisions. These formed the afternoon part of the consultation events held with professionals on the Trafficking and Exploitation Strategy between 2 and 17 November 2016. 160 people attended these events from local authorities, health boards and third sector organisations with an interest in trafficking. This report also reflects the comments from these events.

**11. Written responses were received from the following organisations:**

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| * Clackmannanshire and Stirling Child Protection Committee and Adult Protection Committee * Highland Violence Against Women Partnership * Falkirk Public Protection Chief Officers Group * Royal Burgh of New Galloway and Kells Parish Trust * KSynergy * COSLA * East Renfrewshire * Scottish Churches Anti-human Trafficking Group (Action of Churches Together in Scotland) * CARE for Scotland * West Lothian Council * Anti-Trafficking Monitoring Group * Victim Support Scotland * Hope for Justice * Trafficking Awareness Raising Alliance (TARA) |

Where individual respondents have given permission for their responses to be made public these are available on the Citizen Space website.

**ANALYSIS OF RESPONSES**

**12. The majority of those who submitted a written (84%) did NOT agree with the Scottish Government’s proposal to set the period in the Regulations as 45 days.**

**The remaining 16% DID agree with the proposals.**

13. Those who disagreed were asked what they would propose as an alternative approach and why. Most proposed that the period in Regulations should be 90 days and referred to a number of research reports which supported this point of view.

14. Some respondents referred to the situation in other countries, which provide longer reflection and recovery periods. Countries that were cited a number of times were Canada and Norway (180 days), Germany and Italy (90 days) and the Czech Republic (60 days).

15. Reasons given in the responses for the view that 45 days was too short a period included:

* It does not allow enough time for victims to get back on their feet or reintegrate into society
* It does not allow enough time for victims to begin to trust
* The presence of post traumatic stress disorder in victims, which in turn can hamper their ability to give coherent and consistent accounts of their experiences. This could hinder both victims’ ability to help law enforcement agencies to build a case and also victims’ own dealings with other agencies such as immigration.
* A shorter support period could increase the risk of the victim being retrafficked.

16. Some respondents felt that there should be no time limit and that support should be provided for as long as the victim needed it. However, there was also a view expressed that a time limit per se is a positive thing as it focuses agencies on developing support within a particular time frame and helps stop drift. From the victim’s point of view it is also good to have some certainty regarding their entitlement to support.

17. The issue of pathway planning for the victim was felt to be critical, so that at the end of the support period, however long it is to be, the victim had appropriate support to help them move forward. This should include any decisions to be made around their immigration status. One respondent felt that victims should have automatic recourse to public funds.

18. Some respondents felt there was a need for greater clarity over the purpose of the ‘relevant period’. A number of them cited the ‘recovery and reflection period’ required by the EU Directive on preventing and combatting trafficking in human beings and protecting its victims and the Council of Europe Convention on Action against Trafficking in Human Beings. The purpose of that period is to enable survivors to begin to recover from the influence of perpetrators and feel safe enough to make informed choices about their next steps and should therefore allow for that. There was also a view that the 45 day period could not be described as a ‘tested and successful’ approach.

19. Some respondents felt that the response to the consultation could not just focus on the period to be set in Regulations under section 9(b)(ii) and that the Scottish Government needed to set out the policy for discretionary support under section 9(3).

20. There was also a view that an increase would mean that Scotland could lead the way on this issue by going further than the other UK countries and offering support for 90 days.

**NEXT STEPS**

21. The comments from stakeholders will be used to further develop the policy on support for adult victims in advance of bringing section 9 of the Act into force.

1. There are two competent authorities in the UK; the Home Office and the Modern Slavery Human Trafficking Unit (part of the National Crime Agency). [↑](#footnote-ref-1)
2. The National Referral Mechanism is the system under which victims in Scotland (and the UK in general) are assessed to determine whether they are indeed a victim of human trafficking. [↑](#footnote-ref-2)