



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Northern Ireland Modern Slavery Strategy 2018/19

Summary

The Northern Ireland Human Rights Commission ('the Commission'):

- **The Commission recommends that a human rights-based approach is embedded in the Strategy. To achieve this, the Department should commit to taking action consistent with international human rights standards, particularly those protecting the principles of non-refoulement and extraterritoriality (para. 2.9)**
- **The Commission advises that, in order to ensure the timely and effective implementation of its annual strategies, going forward the Department of Justice should seek to conclude consultations on its draft strategies in advance of their start date for implementation (para. 3.2)**
- **The Commission advises that a longer-term strategy is developed as an over-arching tool to inform the annual strategies, which contains concrete and measurable outcomes to be monitored and evaluated across a more substantial time period. This will enable work to continue uninterrupted, and help to inform decisions when drafting annual strategies (para. 3.4)**

- **The Commission recommends that the Strategy take into consideration the impact of Brexit on modern slavery, and include measures to navigate: the potential loss of the European Arrest Warrant and Joint Investigation Teams, and cross-border cooperation more generally; and the vulnerability of those individuals uncertain of settled status, who may be at increased risk of exploitation in the context of Brexit (para. 4.4)**
- **The Commission therefore recommends that the Strategy detail how Health and Social Care Trusts will safeguard and protect the interests of children who have gone missing whilst in the care of the Trust and who are at risk of being trafficked (para. 5.3)**
- **The Commission recommends that the Strategy should recognise the unique vulnerabilities of women victims of modern slavery, and include a commitment to develop an action plan with the Department of Health to address the health of victims of sexual exploitation (para. 5.6)**
- **The Commission advises that the Department of Justice considers partnering with the Commission to deliver human rights training for staff working under the Strategy (para. 6.2)**
- **The Commission recommends that the Department addresses the funding needs of Freedom Acts and other support organisations to ensure the sustainability of the identified mechanisms for delivery so that they can continue to operate (para. 6.4)**
- **The Commission recommends that the Strategy commit to raising awareness among businesses to ensure their fulfilment of obligations under international human rights standards and the Modern Slavery Act, and to become a member of the Northern Ireland Business and Human Rights Forum (para. 6.8)**

1. Introduction

1.1 The Northern Ireland Human Rights Commission (the Commission) pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights.¹ In accordance with this function the following statutory advice is submitted to the Department of Justice in response to the consultation on a human trafficking and modern slavery strategy.²

1.2 The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems.³ The relevant international treaties in this context include:

- International Covenant on Civil and Political Rights (ICCPR);⁴
- International Covenant on Economic, Social and Cultural Rights (ICESCR);⁵
- Convention on the Elimination of Discrimination Against Women (CEDAW);⁶
- Convention on the Rights of the Child (CRC);⁷
- United Nations Convention relating to the Status of Refugees (Refugee Convention);⁸
- Convention against Transnational Organised Crime;⁹
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (UN Trafficking Protocol);¹⁰
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child

¹ Northern Ireland Act 1998, section 69(1).

² DOJNI, 'Draft Northern Ireland Human Trafficking and Modern Slavery Strategy 2016/17', 1 July 2016, available at: <https://www.justice-ni.gov.uk/sites/default/files/consultations/justice/human-trafficking-strategy-consultation-2016-17.pdf> ("2016/17 Strategy").

³ The UK ratified the ECHR in 1951.

⁴ Ratified by the UK in 1976.

⁵ Ratified by the UK in 1976.

⁶ Ratified by the UK in 1981.

⁷ Ratified by the UK in 1991.

⁸ Ratified by the UK in 1954.

⁹ Ratified by the UK in 2006.

¹⁰ Ratified by the UK in 2006.

pornography (CRC Optional Protocol on Child Prostitution).¹¹

1.3 In addition to these internationally-binding treaties, there exists a body of 'soft law' developed by the human rights bodies of the United Nations and Council of Europe. These declarations and principles are non-binding but provide further guidance on specific areas. The relevant standards in this context include:

- Universal Declaration on Human Rights (UDHR);
- UN Convention for the Suppression of the Traffic in Persons and of Exploitation of the Prostitution of Others;
- UN Office on Drugs and Crime Model Law against Trafficking in Persons (UN Model Law);
- UN Guiding Principles on Business and Human Rights (Ruggie Principles);
- UN Guiding Principles Reporting Framework (UN Reporting Framework);
- Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (OHCHR Recommended Principles);
- CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CoE Sexual Exploitation Convention);¹²

1.4 Relevant regional instruments and declarations include:

- CoE Recommendation R(91)11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults;
- CoE Recommendation 1325 (1997) on traffic in women and forced prostitution;
- CoE Recommendation R(2000)11 concerning action against trafficking in human beings for the purposes of sexual exploitation;
- CoE Recommendation Rec(2001)16 on the protection of children against sexual exploitation;
- CoE Recommendation Rec(2002)5 on the protection of women against violence;
- CoE Recommendation 1545 (2002) on the campaign against trafficking in women;

¹¹ Ratified by the UK in 2009.

¹² Ratified by the UK in 2018.

- CoE Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution;
- CoE Recommendation 1663 (2004) on domestic slavery: servitude, au pairs and mail-order brides;
- CoE Convention on Action against Trafficking in Human Beings (CoE Trafficking Convention);¹³
- European Union Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (EU Trafficking Directive).

1.5 The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom (UK) Government's ratification and the provisions of the Northern Ireland Act 1998.¹⁴

General Observations

2.1 In June 2018, the Commission published its Submission to the United Nations Committee on the Elimination of Discrimination against Women, in which it noted that the Human Trafficking and Exploitation Strategy 2016/2017 expired in March 2017, and that an updated strategy was required. The Commission therefore welcomes the draft Northern Ireland Modern Slavery Strategy 2018-19 (the Strategy), and commends the Department of Justice for its incorporation of several recommendations made by the Commission following the consultation on the previous strategy.

2.2 The Commission notes that the Strategy once again omits any reference to the relevant international human rights standards dealing with human trafficking and modern slavery. This was highlighted in the Commission's response to the draft Human Trafficking and Modern Slavery 2016/17, which made reference to the relevant standards to be included.

2.3 The right to freedom from slavery, human trafficking and other forms of labour or sexual exploitation is protected in ICCPR, Article 8 and UN

¹³ Ratified by the UK in 2008.

¹⁴ In addition, the Northern Ireland Act 1998, section 26 (1) provides that 'if the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken'. Moreover the Northern Ireland Act 1998, section 24(1) states that 'a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act - (a) is incompatible with any of the Convention rights'.

Trafficking Protocol, Article 5. States may not extradite or deport victims of human trafficking where there is a risk of irreparable harm occurring.¹⁵ This is in accordance with the principle of non-refoulement contained in the Refugee Convention, Article 33 prohibiting the return of a refugee to their country of origin where they risk persecution on grounds of, inter alia, race or religion.¹⁶ Moreover, under the principle of extraterritoriality,

[i]f a State party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person's rights under the [ICCPR] will be violated in another jurisdiction, the State party itself may be in violation of the [ICCPR].¹⁷

The extraterritorial application of international treaties falls within the purview of the UK Government. Nonetheless, in order to meet the requirements of the treaty, it is incumbent on the Foreign and Commonwealth Office, UK Home Office, PSNI and National Crime Agency to cooperate with the Department of Justice in order to protect the rights of those under the jurisdiction of the state party.

2.4 State obligations in relation to human trafficking are found in the UN Trafficking Protocol and mandate the criminalisation of trafficking in person offences, special protections for victims during criminal proceedings, support services for the recovery of victims and the potential to obtain compensation for damages.¹⁸ Under UN Trafficking Protocol, Article 10, states are also required to provide training to law enforcement and other relevant officials in contact with potential victims of human trafficking to increase identification of potential instances of trafficking in human beings.

2.5 International standards exist in relation to women and children given their particular vulnerability to trafficking. CEDAW, Article 6 requires states parties to take measures to suppress trafficking, exploitation and prostitution of women and the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has made specific comments on the need to adopt a gender-sensitive approach to properly identifying victims of human trafficking among women asylum seekers and access to asylum procedures without discrimination.¹⁹ Similar

¹⁵ Human Rights Committee, General Comment No. 31 (2004), para. 12.

¹⁶ The principle of non-refoulement is also considered to be a rule of customary international law applicable to all states and their devolved administrations.

¹⁷ Human Rights Committee, *Kindler v Canada* (470/91).

¹⁸ UN Trafficking Protocol, Articles 5 and 6.

¹⁹ CEDAW Committee, General Recommendation No. 32 (2014), paras 44-46.

obligations are placed upon states in the context of combating human trafficking and sexual exploitation of children.²⁰ The CoE Sexual Exploitation Convention mandates greater awareness-raising among professionals in contact with children and reiterates the requirement to act in the best interests of the child in decision-making processes.²¹

2.6 Finally, the CoE Trafficking Convention requires states parties to

[p]romote a human rights-based approach and use gender-mainstreaming and a child-sensitive approach in the development, implementation and assessment of all policies and programmes.²²

2.7 The UN Trafficking Protocol emphasises that training provided to officials coming into contact with victims of human trafficking “should also take into account the need to consider human rights and child- and gender-sensitive issues”.²³ Given that human rights violations are both a cause and a consequence of human trafficking, any government strategy should place human rights at the centre of its approach to combating trafficking in human beings.²⁴

2.8 In June 2018, the UK Government ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention), having signed the convention in 2008. The Lanzarote Convention is the first instrument to establish the various forms of sexual abuse of children as criminal offences, including such abuse committed in the home or family, with the use of force, coercion or threats, and entered into force in the UK on 1 October 2018.²⁵

2.9 The Commission welcomes the Strategy, but nonetheless recommends that a human rights-based approach is embedded in the Strategy. To achieve this, the Department should commit to taking action consistent with international human rights standards, particularly those protecting the principles of non-refoulement and extraterritoriality.

²⁰ See, CoE Sexual Exploitation Convention and CRC Optional Protocol on Child Prostitution.

²¹ See, CoE Sexual Exploitation Convention, Articles 4, 5, 8, 9, 12-14 and 35.

²² CoE Trafficking Convention, Article 5(3).

²³ UN Trafficking Protocol, Article 10.

²⁴ OHCHR Recommended Principles, Guideline 1.

²⁵ See, CoE Lanzarote Convention.

Strategy

3.1 The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015 places a requirement on the Department of Justice to produce an annual strategy to address offences related to slavery, servitude and forced or compulsory labour and human trafficking. The Commission notes that the consultation paper on a draft Northern Ireland Modern Slavery Strategy was issued in July 2018, and raises a concern that the consultation exercise will conclude six months into the financial year in which the strategy purports to operate.

3.2 The Commission advises that, in order to ensure the timely and effective implementation of its annual strategies, going forward the Department of Justice should seek to conclude consultations on its draft strategies in advance of their start date for implementation.

3.3 The Strategy contains an acknowledgement that some of its proposed objectives and work-streams will take longer to implement than its one-year lifespan.

3.4 The Commission advises that a longer-term strategy is developed as an over-arching tool to inform the annual strategies, which contains concrete and measurable outcomes to be monitored and evaluated across a more substantial time period. This will enable work to continue uninterrupted, and help to inform decisions when drafting annual strategies.

Strategic Priority 1: Pursue

4.1 Unlike the previous strategy (2016-17), which committed to the implementation of Joint Investigation Teams with other EU member states, where appropriate, this Strategy makes no reference to such mechanisms.

4.2 The Commission raises a concern about the impact of the UK's exit from the EU on efforts to eradicate modern slavery. The Commission makes a special note of the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

4.3 The Commission also notes that, with the incorporation of the previous strategy's fourth priority, 'Partnership', across the three strategic priorities, the Strategy now makes no reference to effective cross-border cooperation.

4.4 The Commission recommends that the Strategy take into consideration the impact of Brexit on modern slavery, and include measures to navigate: the potential loss of the European Arrest Warrant and Joint Investigation Teams, and cross-border cooperation more generally; and the vulnerability of those individuals uncertain of settled status, who may be at increased risk of exploitation in the context of Brexit.

4.5 In its response to the 2016-17 strategy, the Commission recommended that steps should be taken to ensure continuous learning from ongoing cases so as to better inform policy and practice. The Commission therefore welcomes the Strategy's inclusion of a commitment to ensure ongoing learning and best practice from existing cases.

Strategic Priority 2: Protect

5.1 The Commission welcomes the Strategy's commitment to the procurement of an Independent Guardian service to assist, represent and support separated or trafficked children and victims of Modern Slavery, which had been recommended by the Commission following the consultation on the previous strategy.

5.2 The Commission remains concerned that the Strategy again fails to address how Health and Social Care Trusts will safeguard children who have gone missing whilst in the care of the Trust.

5.3 The Commission therefore recommends that the Strategy detail how Health and Social Care Trusts will safeguard and protect the interests of children who have gone missing whilst in the care of the Trust and who are at risk of being trafficked.

5.4 In its previous response, the Commission advised that the 2016-17 strategy should outline more specific actions aimed at female and child victims of human trafficking. The 2018-19 Strategy

commits to providing specialist support to child victims of modern slavery that recognises their unique vulnerabilities, however there is not yet a recognition to women as a vulnerable group.

5.5 In response to the 2016-17 strategy, the Commission recommended that the Strategy commit the Department of Justice to effective liaison with the Department of Health to address the sexual health of victims of human trafficking.

5.6 The Commission recommends that the Strategy should recognise the unique vulnerabilities of women victims of modern slavery, and include a commitment to develop an action plan with the Department of Health to address the health of victims of sexual exploitation.

Strategic Priority 3: Prevent

6.1 The Commission welcomes the Strategy's commitment to engage with at-risk communities, and to support initiatives to educate and provide rights-based information.

6.2 The Commission advises that the Department of Justice considers partnering with the Commission to deliver human rights training for staff working under the Strategy.

6.3 Within the 'Mechanisms for delivery' under this strategic priority, the Strategy cites Freedom Acts and its #Five Campaign. The Department commits to promoting the campaign through 2018/19. The Strategy does not acknowledge that, as a voluntary sector provider, Freedom Acts is operating in the context of strained finances and is due to cease operation of its services at the end of 2018 due to a lack of funding. Freedom Acts is a valued member of the Commission's Northern Ireland Business and Human Rights Forum, which was established in 2015, and has shared knowledge and good practice with Forum members.

6.4 The Commission recommends that the Department addresses the funding needs of Freedom Acts and other support organisations to ensure the

sustainability of the identified mechanisms for delivery so that they can continue to operate.

6.5 The Commission welcomes the Strategy's commitment to increasing engagement with relevant sectors to raise awareness of risk and promote good practice, which includes consideration of procurement and transparency in supply chains.

6.6 Having worked with the Department of Finance to draft a Procurement Guidance Note, the Commission recommends that the Department of Justice gives particular consideration to the Guidance Note when conducting procurement exercises.

6.7 Both the Department of Finance and Department for the Economy are members of the Northern Ireland Business and Human Rights Forum (the Forum). The Department of Justice recently engaged with the Forum, after being invited to present to members at its September 2018 meeting. The Commission suggests that the Department of Justice, alongside the Departments of the Economy and Finance, consider long-term engagement with the Northern Ireland Business and Human Rights Forum in order to share knowledge and good practice with members, particularly on the area of modern slavery.

6.8 The Commission recommends that the Strategy commit to raising awareness among businesses to ensure their fulfilment of obligations under international human rights standards and the Modern Slavery Act, and to become a member of the Northern Ireland Business and Human Rights Forum.