Response by the Northern Ireland Human Rights Commission to 
Lord Morrow’s consultation on the Human Trafficking and 
Exploitation (Further Provisions and Support for Victims) Bill

1. The Northern Ireland Human Rights Commission (‘the 
Commission’), pursuant to section 69(1) of the Northern Ireland Act 
1998 keeps under review the adequacy and effectiveness in 
Northern Ireland of law and practice relating to the protection of 
human rights. In accordance with this statutory function, the 
Commission submits the following advice to Lord Morrow on the 
‘Human Trafficking and Exploitation (Further Provisions and Support 
for Victims) Bill’ (‘the Bill’).

2. The Commission bases this advice on the full range of 
internationally accepted human rights standards. The Northern 
Ireland Executive is subject to the obligations contained within the 
international human rights treaties that have been ratified by the 
United Kingdom. In this context, the relevant treaties include:

- The UN Protocol to Prevent, Suppress and Punish Trafficking 
in Persons, especially women and children, supplementing 
the UN Convention Against Transnational Organised Crime 
(‘UN Protocol’);¹
- The UN Convention on the Elimination of All Forms of 
Discrimination Against Women (‘CEDAW’);²
- The UN Convention on the Rights of the Child;³
- The UN Optional Protocol to the Convention on the Rights of 
the Child on the Sale of Children, Child Prostitution and Child 
Pornography;⁴

¹ Ratified by the UK on 9 February 2006. 
² Ratified by the UK on 7 April 1986. 
³ Ratified by the UK on 16 December 1991.
- The Council of Europe Convention on Action against Trafficking in Human Beings (‘CoE Convention’);\(^5\) and,

3. Furthermore, the Commission references the international human rights treaties that the UK Government has not yet ratified but as a signatory has indicated an intention to comply, which in this context includes:

- The CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.\(^6\)

4. In addition to the treaty standards, there is a body of ‘soft law’ which has been developed by the human rights organs of the United Nations. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

- The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (‘OHCHR Recommended Principles’).

5. Finally, the UK Government and NI Executive are required to transpose EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (‘EU Directive’) into domestic law by 6 April 2013.

6. The Commission broadly welcomes the provisions of the Bill and limits this advice to the application of the international human rights standards in four specific areas concerning clause 4, ‘paying for the sexual services of a prostitute’. These areas are as follows: paying for the sexual services of a victim of trafficking in human beings (‘THB’); paying for the sexual services of an adult; paying for the sexual services of a child; and, discouraging the demand for victims of THB for the purposes of non-sexual exploitation.

**Paying for the sexual services of a victim of THB**

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\(^4\) Ratified by the UK on 20 February 2009.
\(^5\) Ratified by the UK on 17 December 2008.
\(^6\) Signed by the UK on 5th May 2008.
7. Article 19 of the CoE Convention and Article 18 (4) of the EU Directive specifically require States to consider criminalising the use of services which are the objects of exploitation, where there is knowledge that the person is a victim of THB. Similarly, the Legislative Guide on the UN Protocol states that reduction in demand for THB ‘could be achieved in part through legislative or other measures targeting those who knowingly use or take advantage of the services of victims of exploitation’.\(^7\)

8. At present, it is illegal in NI to pay for the sexual services of a prostitute of any age where the prostitute has been subject to exploitation.\(^8\) This provision goes further than Article 19 of the CoE Convention and Article 18(4) of the EU Directive by eliminating the requirement for ‘knowledge’. However, the Commission notes that as of September 2012, there have been no convictions for this offence.\(^9\) After conducting an extensive evaluation of the UK, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (‘GRETA’) published a report in September 2012, in which it noted that, ‘the UK authorities have recognised that this offence is difficult to prove and is generally charged when accompanying other more serious offences’.\(^10\)

**Paying for the sexual services of an adult**

9. In the absence of exploitation, it is currently not a criminal offence to pay for the sexual services of an adult in NI. The Bill aims to discourage the demand for THB by changing this aspect of the law and making it a criminal offence to pay for the sexual services of a prostitute.\(^11\)

10. Article 9(5) of the UN Protocol, Article 6 of the CoE Convention, Article 18(1) of the EU Directive and Principle 4 of the OHCHR

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\(^9\) See correspondence between Northern Ireland Human Rights Commission and the Department of Justice Research and Statistics Branch. Similarly, there have been no convictions in England & Wales under an identical provision. However, as of June 2011, 40 persons had been charged with the offence in England & Wales. See Council of Europe, Group of Experts on Action Against Trafficking in Human Beings, Evaluation Report: UK (2012), paras 177 and 316.

\(^10\) See GRETA Report para 316.

Recommended Principles, all require the adoption of appropriate measures or strategies to discourage the demand that fosters all forms of exploitation that leads to THB. According to Article 9(5) of the UN Protocol and Article 6 of the CoE Convention, these measures can be, among others, legislative, social, cultural or educational. The Explanatory Report to the CoE Convention notes that such measures represent a positive obligation on the State and that their aim should be the ‘effective’ dissuasion of client demand.12

11. According to the Legislative Guide on the UN Protocol, ‘dealing with prostitution and related matters outside the scope of trafficking in persons is specifically reserved for the laws and policies of individual States parties’.13 The Commentary on the OHCHR Recommended Principles further elaborates that governments,

[...]

12. In March 2012, the UN Committee on the Elimination of All Forms of Discrimination against Women welcomed the introduction of an amendment to the Penal Code in Norway prohibiting the purchase of sexual services and implementing punishment of up to 6 months imprisonment.15 However, the Committee also called upon the State to study the effects of the amendment ‘on the type and extent of prostitution and trafficking, as well as on social perceptions on prostitution and on the purchase of sex services, as well as on women who engage in prostitution’.16

13. The European Court of Human Rights has established that private sexual activity between consenting adults is protected by the right

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13 Legislative Guide on the UN Protocol, para 33 and note 15.
16 Ibid, para 26.
to private and family life under Article 8 of the ECHR.\textsuperscript{17} This aspect of Article 8 may be deemed to include an adult who offers him or herself for sexual services in exchange for payment. However, the right to private and family life can be restricted where it is deemed ‘necessary in a democratic society’. Interference with the right will be considered ‘necessary in a democratic society’ if it is for a legitimate aim which answers a pressing social need and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are relevant and sufficient.\textsuperscript{18}

14. The Commission advises therefore that the criminalisation of payment for the sexual services of an adult is neither required nor prohibited by the international human rights treaties. The Commission further advises that if a decision is taken to introduce clause 4 of the Bill, it should be accompanied by clear mechanisms for monitoring and evaluating its effects as called for by the CEDAW Committee.

\textbf{Paying for the sexual services of a child}

15. The age of consent in NI for sexual activity is 16 years old.\textsuperscript{19} However, in the context of paying for the sexual services of a child, the Sexual Offences (Northern Ireland) Order 2008 acknowledges a child to be anyone under the age of 18 years old. In the absence of exploitation, it is therefore an offence in NI: to pay for the sexual services of a child under 13 years old; and, to pay for the sexual services of a child under 18 years old where the purchaser did not reasonably believe the child to be 18 years or over.\textsuperscript{20} In the latter context, it is for the prosecution to prove that the purchaser does not reasonably believe the child to be 18 years old or more.\textsuperscript{21}


\begin{quote}
[T]he Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from
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\textsuperscript{17} See for example, \textit{Case of Max Mosley v United Kingdom}, ECHR Application no. 48009/08 (10 May 2011).
\textsuperscript{18} See for example, \textit{S. and Marper v United Kingdom}, ECHR Applications nos. 30562/04 and 30566/04), (4 December 2008), para 101.
\textsuperscript{19} See Article 16, Sexual Offences (Northern Ireland) Order 2008.
\textsuperscript{20} Ibid, Article 37.
\textsuperscript{21} See the Explanatory Memorandum on Article 37 of the Sexual Offences (Northern Ireland) Order 2008.
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.

17. The Optional Protocol recognises such work to include child prostitution and taken together, Articles 1, 2(b) and 3(1)(b) require the prohibition of child prostitution under the criminal law, including ‘obtaining’ or ‘procuring’ a child for prostitution. Similarly, the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, stipulates in Article 19 that the conduct of ‘having recourse to child prostitution’ should be criminalised. For the purposes of both Treaties, a child is any person under 18 years of age.22

18. The Commission notes therefore, that whilst the international human rights standards have no definitive conclusion on paying for the sexual services of an adult, the standards are clear in regard to paying for the sexual services of a child. As such, the Commission advises that the Bill implement the unqualified criminalisation of paying for the sexual services of a child who is over 13 years old and under 18 years old. The existence of a burden on the prosecution to prove that the purchaser reasonably believed the child was 18 years old or above does not meet the protections for the development of the child as safeguarded by the international human rights treaties.

Measures to address demand for victims of THB for the purposes of non-sexual exploitation

19. The Commission notes that the obligations contained in the international human rights treaties to address the demand for victims of THB and consider criminalising persons who knowingly make use of their services, applies to all forms of THB. However, clause 4 of the Bill does not contain any provision to discourage the demand for victims of THB for the purposes of non-sexual exploitation, such as domestic servitude23 and other forms of labour exploitation.

22 See Article 1 of the Optional Protocol, unless under the law of the State Party the age of majority is attained earlier. In NI, the age of majority is 18 under the Age of Majority (Northern Ireland) Act 1969. See also Article 3 of the CoE Convention.

23 The Joint UN Commentary on the EU Directive recognises domestic workers as ‘particularly vulnerable, since their work is confined to the employer’s household, a private domain that is difficult to regulate’, Joint UN Commentary on the EU Directive: Prevent. Combat. Protect. Human Trafficking, (2011: OHCHR, UNHCR, UNICEF, UNODC, UN Women and ILO), p93.
20. In September 2012, the GRETA Report urged the government to,

... step up their efforts to discourage demand for the services of trafficked persons for the purpose of domestic servitude and for labour exploitation, including in the agriculture, fisheries, construction, hospitality and cleaning sectors, *inter alia*, through strengthening the role of labour inspections.²⁴

21. The Explanatory Report to the CoE Convention states that under Article 19 government, ‘could, for example, [make it] a criminal offence...for the owner of a business to knowingly use trafficked workers made available by the trafficker.’

22. In this regard, the Commission notes the criminalisation of slavery, servitude and forced or compulsory labour under section 71 of the Coroners and Justice Act 2009. However, in light of the GRETA findings, the Commission advises that consideration be given to introducing within the Bill further measures to discourage the demand for domestic servitude and other forms of labour exploitation.²⁵

²⁴ GRETA Report, para 182.
²⁵ See Joint UN Commentary on the EU Directive, p96.