



FRA
Thematic Study on Child Trafficking
[United Kingdom]

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Executive Summary

General anti-child trafficking framework

- [1]. The United Kingdom (UK) has ratified the ILO Convention Nr. 182 on the Worst Forms of Child Labour in 2000 and the UN Convention against Transnational Organised Crime/ Palermo Protocol in 2006 and intends to ratify the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings by the end of 2008.
- [2]. The *Sexual Offences Act 2003* introduced measures, in England, Wales and Northern Ireland, to criminalise trafficking of both children and adults, *where that trafficking is related to the commission of sexual offences*. In Scotland, offences prohibiting human trafficking, including child trafficking, were introduced by the *Criminal Justice (Scotland) Act 2003* and the *Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005*.
- [3]. International trafficking for reasons *not related to the commission of sexual offences* is criminalised by the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004*, which applies in all parts of the UK. Section 4 of the Act creates three offences: trafficking a person (adult or child) into the UK, within the UK, and out of the UK respectively. In each case, the offence is committed by a person (A) who ‘arranges or facilitates’ the trafficking of a person (B) intending to exploit that person or believing that a third person (C) is likely to exploit B.
- [4]. *Legal provisions establishing the principle of the best interest of the child*. The principle of the best interest of the child, which is described as ‘the welfare principle’ in UK law, is well established. Law and policy regarding the needs, welfare and interests of trafficked children are incorporated within an integrated framework which applies to all children. There are various legal duties to safeguard and promote the welfare of the child, including in the context of trafficked children the duty to provide services and accommodation to children in need and the duty to investigate suspected cases of abuse.
- [5]. The *UK Action Plan on Tackling Human Trafficking* was published by the Home Office and the Scottish Executive in March 2007, and an updated version in July 2008. Its main objectives are: (i) to underscore that the central focus of UK policy is on the needs of victims, (ii) to ensure that there is an ‘end to end’ strategy in place, in which the various agencies and areas of policy – prevention and law enforcement, immigration, and support for victims – function in an holistic and ‘joined up’ way and (iii) to broaden and deepen the scope of anti-

trafficking policy and practice. The Action Plan contains a chapter dedicated to the safeguarding and protection of child victims of trafficking.

- [6]. The July 2008 *Update to the UK Action Plan* provides up to date information on progress in the key areas of prevention, enforcement and prosecution and the protection and support of adult and child victims of trafficking, and proposes a number of new actions. A major change is the Equality impact assessment which assesses impact on preventative and investigative methods and support provided to adult and child victims. Moreover, the *Update* envisages the development of a National Referral Mechanism to help co-ordinate the identification and referral of victims into support.

- [7]. The UK Human Trafficking Centre (UKHTC), which has been established under the *UK Action Plan*, works together with other agencies to address the trafficking of human beings. Part of its work involves designing data collection mechanisms, gathering information and being the central data collection point for the UK. The timetable for agencies such as the Home Office, the Serious and Organised Crime Agency (SOCA) and the Scottish Crime Drug Enforcement Agency (SCDA) to regularly provide data on trafficking will commence from 1 October 2008. Funding for UKHTC as well as for anti-trafficking initiatives and research have increased in the last years.

- [8]. Training and awareness-raising of professionals on human trafficking is a key element of the *UK Action Plan*. It outlines the need for further training and gives an overview of training programmes already undertaken or still ongoing, such as the *Keeping Children Safe* programme for UK Border Agency staff, training courses by UKHTC delivered to senior investigation officers from the police, as well as specialised training provided by NGOs for practitioners and professionals in different government agencies.

Prevention of child trafficking

- [9]. The UK is running several nationwide and regional campaigns to raise awareness of human trafficking amongst the general public, through posters, press, radio and audio-visual media, as well as online toolkits. Moreover, the Home Office is currently conducting a cross government review of its strategy on prostitution which is specifically focussing on the demand for purchasing sexual services in the UK, and is discussing new guidance for its staff on safeguarding children from sexual exploitation.

- [10]. Between 2006-2007 the Home Office operated a Community Partnership programme which aimed, *inter alia*, to improve mechanisms for safeguarding children and promoting good practice between statutory bodies, local minority ethnic communities and faith groups. Examples of direct participation of local communities in this programme include working with supplementary schools run by the Bangladeshi, Somali, Roma, Kosovan, Ethiopian and Southern

Sudan communities to provide training on child abuse, including child trafficking and exploitation. The Home Office also funded a series of Community focus meetings among the African Community on the trafficking of children into the UK.

Appointment of legal guardian

- [11]. The current policy of the UK Government is that the establishment of a formal scheme for the automatic appointment of a guardian when a child is identified as a trafficking victim is not required; nor in its view is it necessary in any case that such a scheme be established, whether or not the unaccompanied child has been identified as a trafficking victim, because all unaccompanied children seeking asylum in the UK come within the provenance of child services authorities and Local Safeguarding Children Boards (LSCB) or Child Protection Committees (CPC) (in Scotland), exercising the duties to safeguard and promote the welfare of children in their area. In addition, there are a number of other forms of assistance available to child victims of trafficking, e.g. the Refugee Council Children's Panel, legal advice and representation, the appointment of a Court Official to safeguard the welfare of the child and the appointment of a Guardian with parental powers for private law hearings. However, as the UK Government intends to ratify the CoE Convention by the end of 2008, there will be a need for domestic law to comply with Article 10(4) of the Convention which requires the appointment of a legal guardian.
- [12]. The age of a trafficking victim is a vital question, in terms of immigration status, entitlement to services, and the manner in which those services will be provided. There is at present no statutory provision that deals with issues around age assessment, and both the UK Border Agency (UKBA) and local authority social services departments have procedures for age determination. UKBA guidance provides that an applicant will be given the benefit of the doubt when there is uncertainty about that person's age, but it will dispute his or her claimed age where 'physical appearance and/or general demeanour *very strongly* suggests that they are aged 18 or over', and will treat as an adult any claimant whose physical appearance and general demeanour suggest is *significantly* over 18 years of age. If the social services authority undertakes an assessment of age, there is case law which provides some guidance and lays down some minimum standards for age assessment by a social worker, which includes that an assessor should elicit and examine the history and background of the applicant, including family circumstances and history, with appropriate recognition of any cultural or ethnic factors, and any relevant prior statements of age made by the applicant, as well as his or her physical appearance and behaviour; although a decision should not rest solely on physical appearance, except in an 'obvious case'.

Coordination and cooperation

- [13]. The main formalised task force on trafficking in human beings is the UK Human Trafficking Centre (UKHTC), the multi agency body tasked with developing expertise and co-ordinating operational activity with agencies in the UK and abroad. UKHTC is working closely with the Child Exploitation and Online Protection (CEOP) Centre who are responsible for building a strategic and national picture on child trafficking in the UK. Moreover, since 2005, a cross-government ministerial arrangement, through the Inter-Departmental Ministerial Group (IDMG) on Human Trafficking, has been monitoring progress made in tackling child trafficking. The IDMG is considered the most suitable body to monitor trafficking in the UK as it holds responsibility for implementing Government policy on human trafficking, including monitoring the implementation of the CoE Convention and the *UK Action Plan*.
- [14]. Nothing in the UK Data Protection Act refers specifically to personal data of the trafficked child, however there is cross-government guidance in the form of the '*Information sharing: Practitioners' guide. Integrated working to improve outcomes for children and young people*' which includes information on how to exchange information legally and professionally with respect to children and young people.
- [15]. The UK recognises the importance of international co-operation in preventing human trafficking and has played an active role in the G6 initiative to assist in enhancing international cooperation, to increase knowledge of human trafficking, to develop victim care capabilities and to increase the specialist capability of participating states. The UKBA runs a programme, *Organised Immigration Crime: Source and Transit Countries (Nexus Points)*, which involves developing knowledge on trafficking from key source and transit countries that impact the UK. Based in 40 different countries are 140 Liaison Officers who work, *inter alia*, on human trafficking. According to the *Update to the UK Action Plan*, the Home Office and other agencies will engage in further capacity building activities in source and transit countries relating to organised immigration crime, including human trafficking.

Care and protection

- [16]. There is no statutory regime which governs the entitlement to remain in the UK of trafficking victims as such, nor is there currently any automatic legal right to remain in the UK. However, it has recently been announced that, by April 2009, the UK intends to implement measures allowing for the grant of a temporary residence permit to trafficking victims, whether adults or children, with a duration of one year in the first instance with the possibility of renewal.

- [17]. Children who have been trafficked into the UK from outside the EU may apply for asylum, which is granted in accordance with the provisions of the *Geneva Convention of 1951*, and are then considered within the regime for unaccompanied asylum-seeking children (UASC). If a child trafficking victim seeking asylum does not fall within the Geneva Convention definition of a refugee, he or she may be eligible for humanitarian protection or for Discretionary Leave (DL) to remain in the UK.
- [18]. *Detention*. There is no explicit prohibition of the administrative detention or detention pending deportation of a child trafficking victim in the UK, however it is the policy of the UK that the detention of a child, whether or not a victim of trafficking, should only occur as a last resort. Detention of trafficked children may be used by (i) immigration authorities, under the powers of the Immigration Act 1971, in order to prevent unauthorised entry into the UK or to facilitate removal or deportation from the UK for a maximum of 28 days; or (ii) local social service authorities as a measure to prevent the child from absconding. In the latter case, authorities may make use of *Emergency Protection Orders* (EPOs, known as Child Protection Orders in Scotland) and Child Assessment Orders, which authorise the restriction of a child's liberty for one week. If a child is suffering or likely to suffer significant harm, local authorities can apply for 'care orders' which give them parental responsibility for the child. In cases where the child 'is likely to injure himself or other persons' or has a history of absconding, he or she might, as a last resort, be placed in 'secure accommodation', that is accommodation provided for the purpose of restricting the liberty of children, but only for a strictly limited period of time.
- [19]. *Family tracing*. The UK Government recognises that the best interest of the children should be taken into consideration when deciding to return children to their country of origin. This includes providing for their safe resettlement and repatriation. Therefore, the UKBA only returns a child if they are completely satisfied that adequate reception arrangements are in place. Family tracing is undertaken by the UKBA, with the help of British Embassies or High Commissions and charitable organisations such as the British Red Cross, or by local authorities who are looking after a child.
- [20]. *Access to services – healthcare*. The UK National Health Service provides free health care to the people ordinarily resident in the UK jurisdiction. Therefore, a trafficked child is eligible to access the full range of medical services on the basis of need, if it is a citizen of the UK or if it has been granted asylum, humanitarian protection or discretionary leave to remain in the UK, as well temporary leave to remain in the UK under the terms of the *Immigration Act 1971* pending the outcome of an application. There has been some controversy on whether a person whose asylum claims had been rejected, but who has temporary leave in the UK pending the making of removal directions, would have access to free healthcare. According to new guidance on the issue, a person who has been lawfully in the UK for more than 12 months is entitled to

free healthcare, whatever his or her immigration status. In other cases, it will be a question of fact, to be determined by the service provider before offering treatment, whether or not a person in the above situation is to be deemed to be 'ordinarily resident' in the UK.

- [21]. As to access of trafficked children to education, there are no specific legal provisions; instead the general law applies as it does to all children. Every child of compulsory school age in the UK should attend school or otherwise have appropriate provision made for his or her education.
- [22]. Although there are no specific legal provisions ensuring access to legal assistance for trafficked children solely by reason of them being trafficked children, a child seeking asylum is entitled to legal assistance in connection with his or her claim, in the form of (i) advice and assistance on immigration, nationality, asylum, deportation and terms of entry to stay in the UK (Legal Help); (ii) preparation and advocacy for proceedings before the Asylum and Immigration Tribunal (AIT) (Controlled Legal Representation); (iii) full representation for judicial review and onward appeals (under different arrangements). The provision of information about and help with access to legal assistance for trafficked children is integrated into the obligations placed on all agencies and professionals working with children and falls in particular within the remit of the Children's Panel of the Refugee Council.
- [23]. *Hotlines*. The EU 116000 hotline for victims of trafficking will be fully operational in the UK by September 2008. There are however a number of other free phone-in services, which provide help for trafficking victims.

Best interests determination and durable solutions, including social inclusion/return

- [24]. The principle of best interest of the child is outlined in the UK Government's *Every Child Matters: Change for Children* agenda which, based on the *Children's Act 2004*, sets out the national framework for programmes to build services around the needs of children and young people. Based on the five outcomes of '(1) Be healthy, (2) Stay safe, (3) Enjoy and achieve, (4) Make a positive contribution and (5) Achieve economic well-being' the *Every Child Matters* agenda places responsibilities on all practitioners to carry out a thorough assessment of the child, and outlines information to statutory, voluntary and community agencies relating to improved access for children to health care and education.
- [25]. The provision of care and support, including appropriate placements for unaccompanied asylum seeking children is ensured the National Register of Unaccompanied Children (NRUC) which contains on all unaccompanied

asylum seeking children, missing and separated children supported by local authorities.

- [26]. There are legal provisions in all UK jurisdictions requiring that a child participates in, and is consulted on, decisions made by local authorities regarding that child; and obliging courts to listen to children and in certain circumstances appoint a court official and a lawyer to represent the child in the proceedings in question. Moreover, guidance issued to immigration officers, for example on the conduction of screening and other interviews with children who may have been trafficked, similarly requires that interview are a dialogue rather than an inquisition, with the views of the child being taken into account.

Prosecution

- [27]. *Child sensitive procedures.* There are legal provisions which are designed to protect vulnerable and/or intimidated witnesses in police stations, prosecutors' offices, and courts, and there are particular measures in place for child victims of sexual or violent or certain other crimes. All of these provisions are relevant to the protection available to victims of child trafficking.
- [28]. While there are no specific legal provisions guaranteeing child trafficking victims that child-sensitive procedures will be used by police officers, there is specific guidance issued to police and prosecutors in all parts of the UK in relation to the identification and subsequent treatment of 'vulnerable witnesses', which includes all child witnesses under the age of 17.
- [29]. Guidance requires that in every police force there is a named dedicated officer who is the single point of contact for outside agencies in relation to any issue relating to child trafficking. In Scotland, a police officer has a legal duty to refer any case in which compulsory measure of protection might be required to the Principal Reporter.
- [30]. Guidance for prosecutors dealing with cases involving children as victims and/or witnesses of crime emphasises the need to treat child victims and witnesses of crime with sensitivity, and refers prosecutors to the 'special measures' regime under the *Youth Justice and Criminal Evidence Act 1999* which includes screening the witness from the accused in court; the giving of evidence by live video link, in private or in chief by recorded video; the removal by legal personnel of wigs and gowns; and the cross-examination or re-examination of that witness by recorded video.
- [31]. Scotland has established a slightly different framework from that which operates in the rest of the UK, creating only one category of witness eligible for protection. Pursuant to the *Criminal Procedure Scotland Act 1995* a 'vulnerable witness' is defined as either a child under the age of 16, or as a person in respect

of whom there is a 'significant risk' that the quality of his or her evidence will be diminished by reason of mental disorder.

- [32]. With respect to witness protection, the *Serious Organised Crime and Police Act 2005* provides the statutory basis for providing protection to witnesses before, during, and subsequent to criminal investigations and prosecutions in the UK. Section 82 of this Act gives a power to the chief officer of any police force in the UK as the 'protection provider' to 'make such arrangements as he considers appropriate' for the purposes of protecting a person.
- [33]. On the basis of the decision of the High Court in *R(A) v Health Secretary and West Middlesex University Hospital NHS Trust*, it would seem that any child trafficking victim who is in the UK, whether having been granted asylum, humanitarian protection or DL to remain in the UK, will qualify for witness protection, provided that he or she has spent 'a significant period' of time in the UK.
- [34]. *Right to compensation.* There are no legal provisions which provide access to justice specifically for trafficked children, however there are a number of legal mechanisms by which compensation may be provided for them: (i) compensation as a victim of a violent crime through the Criminal Injuries Compensation Authority (CICA), which is funded through the Ministry of Justice and pays compensation according to a tariff; (ii) a compensation order made by a court on conviction for a criminal offence, with the amount payable being at the discretion of the Court; or (iii) compensation through civil action as the trafficking of children usually involves the commission of various torts (civil wrongs) for which the child may sue the trafficker in court.

Miscellaneous

- [35]. The issue of human trafficking, in particular child trafficking, is receiving increasing attention by Parliament/the UK Government. Recent Parliamentary debates focused on the problem of trafficked children missing from local authority care, the lack of comprehensive statistical information on trafficking, as well as on budgetary considerations.
- [36]. The UK courts have taken a robust attitude towards the sentencing of persons convicted of child trafficking offences. Sentences for trafficking offences range from 5 years imprisonment for the trafficking of one individual for prostitution/sexual purposes, to 23 years imprisonment for trafficking several women, including girls for purposes of prostitution. Recently, an award of £62,000 from the Criminal Injuries Compensation Authority (CICA) was made to a Romanian national who was forced into prostitution.

Good practice

- [37]. There are a number of mechanisms in place to provide assistance and support to victims of trafficking and to raise awareness on the issue. These include a national register for unaccompanied children, a helpline for trafficking victims and professionals, online training tool kits, as well as specialised groups dealing with research on trafficking and the provision of care for its victims.

A. General anti-child trafficking framework

A.1. Ratification of international legal instruments [15]¹.

[38]. The United Kingdom (UK) has ratified the following international legal instruments:

- ILO Convention Nr. 182 on the Worst Forms of Child Labour (1999). Ratified 22.03.2000.
- UN Convention against Transnational Organised Crime/Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000). Ratified 06.02.2006.

[39]. The UK has signed but has not to date ratified the following international legal instruments:

- Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000). Signed 07.09.2000.²
- Council of Europe (CoE) Convention on Action against Trafficking in Human Beings (2005). Signed 23.03.07.³ However the UK has stated its intention to ratify this Convention by the end of 2008.
- CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007). Signed 05.05.08.⁴

¹ The number in brackets refers to the paragraph numbers of the guidelines for this report.

² The Government has recently carried out an assessment to determine whether the UK is compliant with the provisions of the Optional Protocol, and is currently reviewing this assessment. Following this review, it is hoped that the ratification process can begin. Information provided by Sergio Moreno (Policy Advisor, Ministry of Justice) on 28.07.2008.

³ The UK has stated its intention to ratify this Convention by the end of 2008. See Home Office Press Release (2008) *Home Secretary Moves to Ratify the Council of Europe Convention Against Trafficking in 2008*, 14 January 2008, available at <http://press.homeoffice.gov.uk/press-releases/Trafficking> (30.07.2008)

⁴ The UK government considers itself compliant with most of the Convention's obligations and aims to ratify the Convention soon. Information provided by Sergio Moreno (Policy Advisor, Ministry of Justice) on 28.07.2008.

A.2. Legal provisions criminalising child trafficking [16].

A.2.1. Legal provisions criminalising child trafficking in line with definitions of international standards.

- [40]. The criminal law of the UK with respect to child trafficking is compatible with the requirements of international law, and in particular with the requirements of Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings.⁵ There are specific offences relating to trafficking which are discussed below. In addition, prosecutions for other offences, such as kidnapping, may be brought against a person alleged to have trafficked a child or children, as well as for offences under Section 25 of the *Immigration Act 1971*,⁶ which prohibits actions which facilitate a breach of immigration law (i.e. the unlawful entry of a child who is not a citizen of the European Union into the UK).

A.2.2. Legal provisions criminalising international trafficking for reasons relating to the commission of sexual offences [16].

- [41]. The *Sexual Offences Act 2003*,⁷ which applies for these purposes in England, Wales and Northern Ireland,⁸ introduced, in sections 57-60, measures to criminalise trafficking of both children and adults, where that trafficking is related to the commission of sexual offences. An offence is committed under UK law wherever in the world the prohibited acts are committed and whether or not by a UK citizen.⁹
- [42]. Section 57 of the *Sexual Offences Act 2003* is concerned with the trafficking of persons into the UK, whether as a final destination or in transit to another country. It is a criminal offence, punishable by a maximum of 14 years in prison,¹⁰ for a person (A) intentionally to 'arrange or facilitate' the arrival of

⁵ Official Journal L 203 of 01.08.2002, available at <http://europa.eu/scadplus/leg/en/lvb/l33137.htm> (02.07.2008).

⁶ UK/ Immigration Act 1971 c.77 (28.10.1971), available at: <http://www.statutelaw.gov.uk/LegResults.aspx?LegType=All+Primary&PageNumber=57&NavFrom=2&activeTextDocId=1578007> (11.07.2008).

⁷ UK/ Sexual Offences Act 2003 c.42 (20.11.2003), available at www.opsi.gov.uk/Acts/acts2003/ukpga_20030042_en_1 (02.07.2008).

⁸ UK/ Sexual Offences Act 2003 c.42 (20.11.2003), s142(2).

⁹ UK/ Sexual Offences Act 2003 c.42 (20.11.2003), s60(2).

¹⁰ UK/ Sexual Offences Act 2003 c.42 (20.11.2003), s57(2).

another person (B) in the UK if A intends to do anything in respect of B after his or her arrival in the UK (or subsequently if B subsequently leaves the UK, after B's arrival in a third country), which is defined by section 60 of the 2003 Act as a 'relevant offence'. A also commits an offence under section 57 if he or she believes that a third person (C) will commit a 'relevant offence', whether in the UK or elsewhere.

[43]. Section 60 says that a 'relevant offence' is any offence to be found in Part One of the 2003 Act, and other listed offences. Part One of the 2003 Act contains a large number of sexual offences. Although some of these are generally applicable offences, such as rape and sexual assault, the 2003 Act also contains many offences designed to protect vulnerable citizens, such as those with a mental disorder and, in particular for present purposes, children. Thus, relevant offences include:

- Rape, assault by penetration, sexual assault of, and the incitement to sexual activity by, a child under 13 (ss. 5-8);
- Sexual activity with a child or in the presence of a child, or inciting a child to engage in or to observe sexual activity (ss. 9-12);
- Arranging or facilitating any of the offences listed above (s.14);
- Meeting with a child following sexual grooming (s.15);

There are separate offences when the prohibited acts listed above are engaged in by a person in breach of trust (ss. 16-22) and when the child in question is a member of the family of the offender (ss.25-29).¹¹

[44]. Section 60 also refers to the offences under section 1(1)(a) of the *Protection of Children Act 1978*, the offences listed in Schedule 1 to the *Criminal Justice (Children) (Northern Ireland) Order 1998* (S.I. 1998/1504), and those listed under Article 3(1)(a) of the *Protection of Children (Northern Ireland) Order 1978* (S.I. 1978/1047). These are offences concerned with the making or possession of indecent images of children.

[45]. Section 59 of the 2003 Act is concerned with trafficking children out of the UK. Here the offence is committed if a person (A) intentionally arranges or facilitates the departure from the UK of a person (B), and A either intends to commit a relevant offence in relation to B elsewhere in the world or believes that a third person (C) will commit such an offence. The 'relevant offences' for this purpose are the same as those discussed above in relation to the offence under section 57, and again the maximum punishment is 14 years imprisonment.¹²

¹¹ No offence is committed if the parties to the act are lawfully married (section 28) or if the acts in question pre-dated the formation of family relationship (see section 29).

¹² UK/ Sexual Offences Act 2003 c.42 (20.11.2003), s59(2).

- [46]. When a person has been arrested in connection with an offence under sections 57 or 59, a police constable or senior immigration officer may detain any land vehicle, ship or aircraft, until such time as a decision is taken not to charge that person, or he or she is acquitted by a court, or, following conviction, an order is made that the vehicle, ship or aircraft be forfeited to the state.¹³
- [47]. Following a conviction on indictment (that is, before a Crown Court) of an offence under section 57 or section 59 the court may make an order that the convicted person forfeit a land vehicle, ship or aircraft that was used or was intended to be used for the commission of the offence, provided that the owner of the vehicle, ship or aircraft knew or ought to have known of the intention to use it in connection with trafficking offences.¹⁴
- [48]. In Scotland, offences prohibiting human trafficking, including child trafficking, were introduced by Section 22 of the *Criminal Justice (Scotland) Act 2003*¹⁵ and Sections 10 to 12 of the *Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005*.¹⁶ The offence in section 22 of the 2003 Act is the arrangement or facilitation by a person, A, of the arrival of another person, B, into the UK, or the travel of B within the UK, or the departure from the UK of B, in circumstances in which A ‘intends to exercise control over prostitution by [B] or to involve [B] in the making or production of obscene or indecent material’. The offence is also committed if A believes that another person, C, is likely to exercise such control or to so involve B.
- [49]. An offence is committed under section 22 of the 2003 Act wherever it is committed if the offender is a British citizen, which is widely defined,¹⁷ or is a body incorporated under the law of any part of the UK.¹⁸ The maximum penalty on conviction is 14 years imprisonment.¹⁹
- [50]. Section 10 of the 2005 Act makes it an offence for a person, A, to cause or incite another, B, to provide sexual services or to be involved in pornography if B is aged under 18 years of age and A does not reasonably believe that B is older than 18, or if B is under 13 years of age.
- [51]. Section 11 of the 2005 Act creates an offence of intentionally controlling the activities of such a person relating to the provision of sexual services or the

¹³ UK/ Sexual Offences Act 2003 c.42 (20.11.2003), s60B.

¹⁴ UK/ Sexual Offences Act 2003 c.42 (20.11.2003), s60A.

¹⁵ UK/Criminal Justice (Scotland) Act 2003 asp7 (26.03.2003), available at: http://www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030007_en_1 (02.07.2008)

¹⁶ UK/ Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 asp9 (12.07.2005), available at:

http://www.opsi.gov.uk/legislation/scotland/acts2005/asp_20050009_en_1 (02.07.2008).

¹⁷ The Act applies to a British citizen, a British overseas territory citizen, a British National (Overseas), a British Overseas, a British subject under the British Nationality Act 1981 and a British protected person under the 1981 Act: ss. 22(4) and 22(6) Criminal Justice (Scotland) Act 2003.

¹⁸ UK/ Criminal Justice (Scotland) Act 2003 asp7 (26.03.2003), s.22(4)(b)(ii).

¹⁹ UK/ Criminal Justice (Scotland) Act 2003 asp7 (26.03.2003), s.22(3)(a).

involvement in pornography; and section 12 creates a further offence of intentionally arranging or facilitating the provision of sexual services or the involvement in pornography of such a person. In each case, the offence is committed wherever in the world the provision of sexual services or the involvement in pornography occurs.²⁰ The maximum penalty under any of these sections is 14 years imprisonment.²¹

A.2.3. Legal provisions criminalising international trafficking for reasons other than relating to the commission of sexual offences.

[52]. International trafficking for reasons not related to the commission of sexual offences is criminalised by Section 4 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004*,²² which applies in all parts of the UK.²³ Section 4 creates three offences; trafficking a person (adult or child) into the UK, within the UK, and out of the UK respectively. In each case, the offence is committed by a person (A) who ‘arranges or facilitates’ the trafficking of a person (B) intending to exploit that person or believing that a third person (C) is likely to exploit B.

[53]. All three of the offences contained in section 4 apply to anything done in the UK, and to any act of a body incorporated under the law of any part of the UK inside or outside the UK, and to anything done by a British citizen or any other person inside or outside the UK.²⁴ The maximum penalty for any of these offences is 14 years imprisonment.²⁵

[54]. Section 4(4) states that a person is ‘exploited’ if:

- he or she is the victim of behaviour in breach of Article 4 of the *European Convention on Human Rights* (slavery and forced labour) (section 4(4)(a)); or
- ‘he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the *Human Organ*

²⁰ UK/ Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 asp9 (12.07.2005), s.10(1)(a), 11(1)(a) and 12(1)(a).

²¹ UK/ Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 asp9 (12.07.2005), s.10(2), 11(2) and 12(2).

²² UK/ Asylum and Immigration (Treatment of Claimants, etc) Act 2004 c.19 (22.07.2004), available at: http://www.opsi.gov.uk/ACTS/acts2004/ukpga_20040019_en_1 (02.07.2008).

²³ UK/ Asylum and Immigration (Treatment of Claimants, etc) Act 2004 c.19 (22.07.2004), s.49.

²⁴ UK/ Asylum and Immigration (Treatment of Claimants, etc) Act 2004 c.19 (22.07.2004), s.5(1), 5(2).

²⁵ UK/ Asylum and Immigration (Treatment of Claimants, etc) Act 2004 c.19 (22.07.2004), s.4(5).

Transplants Act 1989,²⁶ or sections 32 or 33 of the *Human Tissue Act 2004*²⁷ or the *Human Tissue (Scotland) Act 2006*,²⁸ (section 4(4)(b)); or

- ‘he is subjected to force, threats or deception designed to induce him— (i) to provide services of any kind, (ii) to provide another person with benefits of any kind, or (iii) to enable another person to acquire benefits of any kind’ (section 4(4)(c)); or
- he or she is vulnerable by reason of physical or mental disability, family connection or, most relevantly for present purposes, youth, and ‘is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement’ because of this vulnerability, and ‘a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement’ (section 4(4)(d)).

[55]. This is a very broad definition of exploitation which catches all reasons for which a child is trafficked.

[56]. Under the terms of the *Proceeds of Crime Act 2002*²⁹ the assets of traffickers, obtained from the profits of trafficking operations, can be seized on the authority of an order made, in England, Wales and Northern Ireland, by the Crown Court, or in Scotland by the High Court of Justiciary or by a sheriff.³⁰

A.3. Legal provisions criminalising all forms of trafficking within the UK [17].

[57]. In England, Wales and Northern Ireland, section 58 of the *Sexual Offences Act 2003* criminalises the trafficking of people within the UK. This offence is identical in form and requirements to those in sections 57 and 59, discussed above, and the same powers to seize vehicles, ships and aircraft, and to seize the assets of those convicted of a trafficking offence apply. The only difference is that there is no necessary international element to the offence.

[58]. In Scotland, section 22 of the *Criminal Justice (Scotland) Act 2003*, discussed above, criminalises both international and domestic trafficking for prostitution or involvement in pornography.

²⁶ UK/Human Organ Transplants Act 1989 c.31 (27.07.1989), available at: http://www.opsi.gov.uk/acts/acts1989/ukpga_19890031_en_1 (02.07.2008).

²⁷ UK/ Human Tissue Act 2004 c.30 (15.11.2004), available at: http://www.opsi.gov.uk/ACTS/acts2004/ukpga_20040030_en_1 (02.07.2008).

²⁸ UK/ Human Tissue (Scotland) Act 2006 asp.4 (16.03.2006), available at: http://www.oqps.gov.uk/legislation/acts/acts2006/asp_20060004_en_1 (02.07.2008).

²⁹ UK/ Proceeds of Crime Act 2002 c.29 (24.07.2002), available at: http://www.opsi.gov.uk/acts/acts2002/ukpga_20020029_en_1 (02.07.2008)

³⁰ See UK/ Proceeds of Crime Act 2002 c.29 (24.07.2002), s6 (England and Wales); s92 (Scotland); s156 (Northern Ireland).

- [59]. Section 4 of the *Asylum and Immigration (Treatment of Claimants, etc) Act 2004*, which applies in all parts of the UK,³¹ creates an offence of trafficking for exploitation within the UK, the elements of which are identical to those offences with an international element.

A.4. Legal provisions and/or case law establishing direct applicability of international standards on child trafficking [18].

- [60]. There is no case law which establishes the direct applicability of international standards on child trafficking within the UK. Instead, the UK courts have focussed their attention on the national legislation discussed above. However, as that legislation was passed in order to bring the UK and the countries within it in line with international standards, it certainly establishes the applicability of relevant international standards, albeit indirectly, but with the same net effect.

A.5. Legal provisions establishing the principle of best interests of the child [19].

- [61]. Although there is no constitutional guarantee of the primacy of the best interests of the child as there is no written constitution in the UK, the principle, which is described as ‘the welfare principle’ in the UK, is nonetheless well established. Law and policy regarding the needs, welfare and interests of trafficked children are incorporated within an integrated framework which applies to all children.³²
- [62]. Local social services authorities are under various statutory duties to work together to provide services to safeguard and promote the welfare of children. In England and Wales, a multi-agency framework was put in place by the *Children Act 2004*,³³ which requires each local authority to establish a Children’s Service Authority (CSA), and each CSA to establish a Local Safeguarding Children Board (LSCB).³⁴ In Scotland the equivalent to the LSCB is the Child Protection

³¹ UK/ Asylum and Immigration (Treatment of Claimants, etc) Act 2004 c.19 (22.07.2004), s49.

³² See HM Government (2007) *Safeguarding Children*, para. 7.126.

³³ UK/ Children Act 2004 c.31 (15.11.2004), available at: http://www.opsi.gov.uk/Acts/acts2004/ukpga_20040031_en_1 (15.07.2008).

³⁴ UK/ Children Act 2004 c.31 (15.11.2004), ss. 10 and 11.

Committee (CPC).³⁵ The UK Border Agency (UKBA) is required to play a full part in the activities of the local LSCB or CPC.³⁶ In Northern Ireland there is no equivalent to the LSCB or CSA but a similar policy framework can be found in the 10 year strategy for children and young people in Northern Ireland, published in 2006.³⁷

A.5.1. Duties to protect the best interest of the child.

- [63]. There are various legal duties to safeguard and promote the welfare of the child.
- [64]. Legislation in all parts of the UK places a duty on all courts hearing matters relating to the upbringing of a child to give paramount consideration to the welfare of the child.³⁸
- [65]. As public bodies, local authorities, and the other agencies involved in safeguarding and protecting the best interests of children, are obliged by section 6(1) of the *Human Rights Act 1998*³⁹ not to act in a way incompatible with the terms of the *European Convention on Human Rights* which applies the best interest principle.
- [66]. The UKBA will also be required, when section 21 *UK Borders Act 2007*⁴⁰ comes into force, to take ‘appropriate steps to ensure that while children are in the UK they are safe from harm’. Section 21(1) of the 2007 Act also requires

³⁵ See Scottish Executive (2005) *Protecting Children and Young People; Child Protection Committees*, available at: <http://www.scotland.gov.uk/Resource/Doc/36496/0023577.pdf> (09.08.2008).

³⁶ Home Office and Border and Immigration Agency (2008) *The Border and Immigration Agency Code of Practice for keeping children safe from harm*, para. 3.6.13.

³⁷ See Office of the First Minister and the Deputy First Minister (2006) *Our Children and Young People – Our Pledge: A Ten Year Strategy for Children and Young People in Northern Ireland 2006-2016*, p. 7, available at: <http://www.allchildrenni.gov.uk/ten-year-strategy.pdf> (09.07.2008).

³⁸ UK/ Children Act 1989 c.41 (16.11.1989), s1 (England and Wales), available at: http://www.opsi.gov.uk/Acts/acts1989/ukpga_19890041_en_1 (09.07.2008) ; UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s. 22 in Scotland, available at: http://www.opsi.gov.uk/ACTS/acts1995/ukpga_19950036_en_1 (08.07.2008); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 3, available at: http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=3&BrowseLetter=C&NavFrom=1&parentActiveTextDocId=2963047&ActiveTextDocId=2963055&file_size=5132 (08.07.2008).

³⁹ UK/ Human Rights Act 1998 c.42 (09.11.1998), available at: http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980042_en_1#pb3-11g6 (10.07.2008).

⁴⁰ UK/ Borders Act 2007 c.30 (30.10.2007), available at: http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070030_en.pdf (16.07.2008).

the Secretary of State to issue a Code of Practice, to which the UKBA must have regard in the exercise of its functions.⁴¹

A.5.2. The duty to provide services to safeguard and promote the welfare of children in need.

- [67]. Legislation places a duty⁴² on local social services authorities⁴³ to safeguard and promote the welfare of children in their area who are in need, with ‘need’ being defined⁴⁴ as comprising situations in which the child ‘is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority...[or] his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services’.

A.5.3. The duty to investigate suspected cases of abuse.

- [68]. There are duties to investigate possible abuse of children in each country in the UK. In England and Wales⁴⁵ and Northern Ireland⁴⁶ every local authority is required to investigate any situation where it has reasonable cause to suspect that a child in its area is suffering or likely to suffer significant harm, in order to ascertain whether it should take action to safeguard or promote the child’s welfare. It must also do this if an Emergency Protection Order⁴⁷ (EPO) has been made in respect of a child or if a child is in police protection. If access to the child is prevented, or information about the child’s whereabouts is not disclosed to the local authority, it must apply to a court for the most appropriate order in

⁴¹ See Home Office and Border and Immigration Agency (2008) The Border and Immigration Agency Code of Practice for keeping children safe from harm, available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/keepingchildrensafe/uasc_codeofpractice.pdf?view=Binary (09.07.2008). At the time of writing this Code of Practice is in draft form. Its substance was the subject of consultation between 31 January and 25 April 2008. The Code is likely to come into force later in 2008 (Note that in 2008 the Border and Immigration Authority was replaced by the UK Border Agency).

⁴² UK/ Children Act 1989 c.41 (16.11.1989), s17 (England and Wales), UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s. 25, and UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 18.

⁴³ Known as social work departments in Scotland and as health and social care trusts in Northern Ireland.

⁴⁴ UK/ Children Act 1989 c.41 (16.11.1989), s17(10) (England and Wales), UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s. 93(4), and UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 17.

⁴⁵ UK/ Children Act 1989 c.41 (16.11.1989), s47 (England and Wales).

⁴⁶ UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 66.

⁴⁷ The EPO is an emergency order by which a child is taken into local authority care for a maximum of eight days under section 44 of the Children Act 1989 (in England and Wales) or Article 63 Children (Northern Ireland) Order 1995.

the circumstances which may be an EPO, a Child Assessment Order (CAO),⁴⁸ or a care or supervision order,⁴⁹ unless satisfied that the child's welfare can be satisfactorily protected without such an order being made.⁵⁰

- [69]. A local authority acting under these powers may also call on involvement from housing, health and education authorities. In this way the duty to investigate should ensure that the child is provided with whichever services are required in his or her best interest.
- [70]. In Scotland the duty to investigate is similar in scope but the framework in which it operates differs from elsewhere in the UK. Section 53 of the *Children (Scotland) Act 1995* requires a local authority, which receives information suggesting that compulsory measures of supervision may be required in respect of a child, to make inquiries unless of the view that inquiries are unnecessary.⁵¹ Compulsory measures are appropriate for a variety of reasons⁵² including the commission of a criminal offence by the child, or his or her continued absence from school, but the most relevant reasons for present purposes include that the child (i) is falling into bad associations or is exposed to moral danger; (ii) is likely to suffer unnecessarily; (iii) is a child victim, aged under 17, of specified sexual, or violent, or child cruelty or neglect, offences.⁵³
- [71]. The findings of such an inquiry must be given by the local authority to the Principal Reporter.⁵⁴ The Principal Reporter, a role which has no direct equivalent elsewhere in the UK, is charged to decide whether compulsory measures of supervision are required in respect of a child. He or she must, on receipt of information which suggests that a Children's Hearing⁵⁵ may be necessary, investigate the matter; and those investigations may include the production of a further report by the local authority social work department.⁵⁶

⁴⁸ UK/ Children Act 1989 c.41 (16.11.1989), s43 (England and Wales); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 62. This is an order which a local authority should apply for when there is reasonable cause to suspect that the child in question is suffering or is likely to suffer significant harm, and there is a need to assess the child to see if those suspicions are confirmed or not. The order requires the child be made available by those with control or him or her so that an assessment can take place.

⁴⁹ Discussed in paras. 209-216 below.

⁵⁰ UK/ Children Act 1989 c.41 (16.11.1989), s47(6) (England and Wales); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 66(6).

⁵¹ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.53(1).

⁵² These are listed in section 52 Children (Scotland) Act 1995.

⁵³ These offences are listed in Schedule 1 of the UK/Criminal Procedure (Scotland) Act 1995 c. 46(08.11.1995), available at: http://www.opsi.gov.uk/Acts/acts1995/ukpga_19950046_en_1 (10.07.2008).

⁵⁴ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.53(1)(b).

⁵⁵ Again, there is no direct equivalent to Scottish Children's Hearings in the rest of the UK. A Children's Hearing is an informal alternative to a court, staffed by non-lawyers on a voluntary basis. See UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.39.

⁵⁶ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.56.

- [72]. In order to facilitate investigations, local authorities may apply for a Child Protection Order (the Scottish version of an EPO)⁵⁷ or a CAO⁵⁸ on essentially the same basis as in the rest of the UK.

A.5.4. The duty to provide accommodation for children in need.

- [73]. Local authorities in all parts of the UK are placed under a duty,⁵⁹ to provide accommodation for any child in need of it. Accommodation may also be provided under the general power to protect children in need (discussed in para.67 above).
- [74]. The Home Office has estimated that around 4500 unaccompanied children seeking asylum were being supported by local authorities in March 2008.⁶⁰
- [75]. If the child in question is 16 years old or older (18 in Scotland), the local authority must provide him or her with accommodation if otherwise his or her welfare would be seriously prejudiced,⁶¹ or, in Scotland, if to do so would safeguard that young person's welfare.⁶² In all jurisdictions, the wishes of the child must be taken into consideration.⁶³
- [76]. A child who has been provided with accommodation by a local authority becomes a 'looked after' child, in respect of whom the authority is then placed under further duties. These include the duty to safeguard and promote the welfare of the child, maintain him or her and to provide other relevant services.⁶⁴ Each child who is accommodated must be the subject of a care plan and his or her situation must be subjected to regular reviews, at which the views of the child must be considered before any change in his or her status is implemented.⁶⁵

⁵⁷ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.57.

⁵⁸ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.55.

⁵⁹ UK/ Children Act 1989 c.41 (16.11.1989), s20 (England and Wales); UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.25; UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art.21.

⁶⁰ Home Office (2008) *Asylum Statistics First Quarter 2008 United Kingdom* available at: <http://www.homeoffice.gov.uk/rds/pdfs08/asylumq108.pdf> (14.07.2008), p. 8, footnote 9.

⁶¹ UK/ Children Act 1989 c.41 (16.11.1989), s20 (3) (England and Wales); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art.21(3).

⁶² UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.25(3).

⁶³ UK/ Children Act 1989 c.41 (16.11.1989), s20 (6) (England and Wales); UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.25(5); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art.23.

⁶⁴ UK/ Children Act 1989 c.41 (16.11.1989), s22 (England and Wales); UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.17; UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art.26 and schedule 2.

⁶⁵ See the UK/Arrangements for the Placement of Children (General) Regulations 1991 (No.890) (14.10.1991) (England), available at:

- [77]. If a child is looked after for 13 weeks or more, he or she is eligible to further assistance on leaving the accommodation provided by the local authority, if aged 16 or older at that point.⁶⁶ This can be in the form of advice and assistance with accommodation for example.
- [78]. Local authorities have greater powers of compulsion than are described here. These are discussed in paras. 209-227 below.

A.6. The UK Action Plan on Tackling Human Trafficking [20].

- [79]. The *UK Action Plan on Tackling Human Trafficking* was published by the Home Office and the Scottish Executive in March 2007,⁶⁷ and a revised version was published in 2008.⁶⁸ This document applies to trafficking both in children and in adults. Its key aims are:

- *To underscore that the central focus of UK policy is on the needs of victims.*
This entails the further building of human rights principles into policy and practice, and to ensure that strong law enforcement is backed up by effective protection and services for trafficking victims.

http://www.opsi.gov.uk/si/si1991/Uksi_19910890_en_1.htm#end (07.07.2008); the UK/ Placement of Children (Wales) Regulations 2007 (No.310 W.27) (01.07.2007), available at: http://www.opsi.gov.uk/legislation/wales/wsi2007/wsi_20070310_en_1 (07.07.2008); the UK/ Arrangements to Look After Children (Scotland) Regulations 1996 No. 3262 (S.252) (01.04.1997) (Scotland) available at: http://www.opsi.gov.uk/si/si1996/Uksi_19963262_en_1.htm (07.07.2008); UK/ Arrangements for the Placement of Children (General) Regulations (Northern Ireland) No. 453 (04.11.1996), available at: http://www.opsi.gov.uk/sr/sr1996/Nisr_19960453_en_1.htm (07.07.2008).

⁶⁶ See the UK/ Children (Leaving Care) Act 2000 c.35 (30.11.2000) (England and Wales), available at: http://www.opsi.gov.uk/acts/acts2000/ukpga_20000035_en_1 (08.07.2008); UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s29 (Scotland) and the UK/ Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 (No.608) (01.04.2004), available at:

http://www.opsi.gov.uk/legislation/scotland/ssi2003/ssi_20030608_en.pdf (08.07.2008); the UK/ Children (Leaving Care) Act (Northern Ireland) 2002 c. 11 (22.11.2002), available at: http://www.opsi.gov.uk/legislation/northernireland/acts/acts2002/pdf/nia_20020011_en.pdf (08.07.2008). See also *R(Behre) v London Borough of Hillingdon and Secretary of State for Skills and Education* [2003] EWHC 2075 (Admin) available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2003/2075.html> (08.07.2008).

⁶⁷ Home Office and Scottish Executive (2007) *UK Action Plan on Tackling Human Trafficking*, available at: <http://www.homeoffice.gov.uk/documents/human-traffick-action-plan> (23.06.2008). (09.07.2008). Hereinafter referred to as *UK Action Plan*.

⁶⁸ Home Office and Scottish Executive(2008) *Update to the UK Action Plan on Tackling Human Trafficking*, available at: <http://www.crimereduction.homeoffice.gov.uk/humantrafficking004.pdf> (09.07.2008). Hereinafter referred to as *Update to the UK Action Plan*.

- *To ensure that there is an ‘end to end’ strategy in place, in which the various agencies and areas of policy – prevention and law enforcement, immigration, and support for victims – function in an holistic and ‘joined up’ way*

The UK Human Trafficking Centre (UKHTC) has been established to co-ordinate policy and practice across the range of relevant agencies. The UK signed the *CoE Convention on Action against Trafficking in Human Beings* on 23 July 2007 and intends to ratify it by the end of 2008. Compliance with the Convention by all agencies involved in combating human trafficking will help to ensure a coherent multi-agency approach.

- *To broaden and deepen the scope of anti-trafficking policy and practice.*

The historical focus on trafficking for reasons of sexual exploitation is being broadened to also focus on trafficking for non-sexual reasons, such as for forced labour. As seen in the section on legal provisions criminalising child trafficking (paras.40-59), new legislation is already in place to ensure that all types of trafficking are within the purview of the criminal law, and in 2006 the Serious Organised Crime Agency (SOCA) was established, 25% of the resources of which are dedicated to combating organised immigration crime including trafficking. Trafficking within the UK has been the subject of new policy guidance.⁶⁹

- The Action Plan also provides for the ‘mainstreaming’ of trafficking policy and practice, so that it is integrated into the working frameworks and practices of immigration, law enforcement, and victim support services.
- The Action Plan contains a Chapter dedicated to the safeguarding and protection of child victims of trafficking.

A.7. Impact Assessment of the UK Action Plan on Tackling Human Trafficking [21].

- [80]. The *UK Action Plan on Tackling Human Trafficking* 2007 made some recommendations with regard to child trafficking that included: (i) the development of a National Referral Mechanism that identifies victims;⁷⁰ (ii) the development of a code of practice on the carriage of minors⁷¹ and (iii) safe

⁶⁹ In 2006 the UK Government commissioned research on the nature and extent of child trafficking within the country: see Child Exploitation and Online Protection (CEOP) Centre (2007) *A Scoping Project on Child Trafficking in the UK*, available at: <http://polis.osce.org/library/f/2973/1500/GOV-GBR-RPT-2973-EN-A%20Scoping%20Project%20on%20Child%20Trafficking%20in%20the%20UK.pdf> (09.07.2008).

⁷⁰ Home Office and Scottish Executive (2007) *UK Action Plan*, p.105.

⁷¹ Home Office and Scottish Executive (2007) *UK Action Plan*, p.64.

arrangements for trafficked children to be accommodated within the Unaccompanied Asylum Seeking Children Reform Programme.⁷²

- [81]. The July 2008 *Update* provides up to date information on progress in the key areas of prevention, enforcement and prosecution and the protection and support of adult and child victims of trafficking. A major change that forms part of the impact assessment of the *UK Action Plan on Tackling Human Trafficking 2007* is the Equality impact assessment.⁷³ It assesses impact on preventative and investigative methods and support provided to adult and child victims.
- [82]. A number of new actions⁷⁴ have been proposed: (i) to combat the trafficking of children for benefit fraud and domestic servitude, (ii) to reduce the numbers of foreign trafficked children going missing or at risk of being trafficked from Local Authority care by improving Working Together to Safeguard Children arrangements, (iii) to develop effective policing strategies to disrupt the internal trafficking of UK resident children and ensure victims are adequately supported and safeguarded, (iv) ensure the safeguarding elements of the CoE *Convention on Action against Trafficking in Human Beings* are implemented, (v) review the UK's human trafficking legislation to enable more traffickers to be successfully prosecuted.
- [83]. The updated plan also highlights changes that have seen different child protection agencies incorporating child trafficking into their agency plans. These plans, mentioned in the following paragraphs, pay particular attention to child specific factors linked to child trafficking because agencies are now in a position to recognise that trafficking is different from factors that affect trafficked men and women.
- [84]. The cross government strategy, *Staying Safe: Action Plan*⁷⁵ makes reference to providing better protection for children and young people coming in/going out of the country by (i) publishing new guidelines on cross-border issues to help raise awareness amongst all children's services professionals, (ii) implementing reforms as set out in *Better Outcomes: The Way Forward. Improving the care of unaccompanied asylum seeking children and trafficked children*,⁷⁶ (iii) issuing a Code of Practice on keeping children safe from harm, following placing the Border and Immigration Agency's duties towards children on a statutory

⁷² Home Office and Scottish Executive (2007) *UK Action Plan*, p.68.

⁷³ Home Office and Scottish Executive (2007) *UK Action Plan*, Annex c, pp 73.

⁷⁴ Home Office (2008) *Keeping Children safe*, pp.1-2, available at: <http://police.homeoffice.gov.uk/publications/operational-policing/issue-4?view=Binary> (09.07.2008).

⁷⁵ HM Government (2008) *Staying Safe: Action Plan*, para.4.21 pp. 52, available at: <http://publications.everychildmatters.gov.uk/eOrderingDownload/DCSF-00151-2008.pdf> (09.07.2008) Para 4.21 pp 52.

⁷⁶ Home Office/ Border and Immigration Agency (2008) *Better Outcomes: The Way Forward. Improving the care of unaccompanied asylum seeking children and trafficked children*, available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/uasc/betteroutcomes.pdf?view=Binary> (09.07.2008).

footing and (iv) disseminate recently published guidance for practitioners on child trafficking and how to safeguard and promote the welfare of children who may have been trafficked. The plan also encourages all professionals to know what signs to look and to be able identify what specialist information is available to assist a child victim of trafficking⁷⁷.

- [85]. The Department for Children, Schools and Families (DCSF) aims to make England the best place in the world for children and young people to grow up⁷⁸ and this aim is set out in the Children's Plan.⁷⁹ DCSF is responsible for disseminating guidance on child trafficking to agencies concerned with the protection of children.⁸⁰
- [86]. In December 2007, DCSF together with the Home Office, jointly issued guidance, *Safeguarding children who may have been trafficked*.⁸¹ This guidance aims at raising awareness of ways of identifying children or young people who may have been trafficked and places where they can get help. It provides the role and functions of relevant agencies, giving guidance on procedures that ensure the safety and well being of trafficked children.
- [87]. The *Safeguarding children who may have been trafficked* guidance is supplementary to the UK Government's statutory guidance: *Working Together to Safeguard Children*⁸² and is intended to assist agencies and their staff, safeguard and promote the welfare of children who may have been trafficked.
- [88]. The *Better Outcomes*⁸³ guidance outlines the reforms to procedures in identifying and helping child victims of trafficking who may be unaccompanied asylum seeking children. Paragraph 6.1 of the guidance recognises that all children and young people granted refugee status are supported in their integration into the UK society. If there is no legal reason for them to remain in the UK, they are fully supported in their return to their country as it is believed that the needs of children are best served by being with their families.

⁷⁷ HM Government (2008) *Staying Safe*, para.4.4.

⁷⁸ <http://www.dfes.gov.uk/> (09.07.2008).

⁷⁹ Department for Children, Schools and Families (2007) *The Children's Plan. Building Brighter Futures*, available at: <http://www.dfes.gov.uk/publications/childrensplan/> (09.07.2008).

⁸⁰ HM Government (2007) *PSA Delivery Agreement 13: Improve Children's and Young People's Safety*, chapter 3, and para.3.34, available at: http://www.hm-treasury.gov.uk/media/8/7/pbr_csr07_psa13.pdf (09.07.2008).

⁸¹ HM Government (2007) *Safeguarding children who may have been trafficked*, available at: <http://publications.everychildmatters.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=HMG-00994-2007> (09.07.2008). Para. 11.76 – 11.80 outline circumstances of child victims of trafficking.

⁸² HM Government (2006) *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*, available at: <http://www.everychildmatters.gov.uk/resources-and-practice/IG00060/> (09.07.2008).

⁸³ Home Office/ Border and Immigration Agency (2008) *Better Outcomes: The Way Forward. Improving the care of unaccompanied asylum seeking children and trafficked children*.

- [89]. The revised plan has also seen trafficking sub groups established in Local Authorities under LSCBs and CPCs⁸⁴ to increase awareness of child trafficking as a child protection issue. UKBA for example now recognise that LSCBs need to apply a multi agency approach in order to properly safeguard child victims of trafficking. This will assist in the identification child victims of trafficking and providing safe accommodation and specialist services to victims.
- [90]. The revised Action Plan 2008 further highlights two important decisions. The *CoE Convention on Action against Trafficking in Human Beings* requires a minimum of 30 days for reflection and recovery and a minimum of six months for temporary residence. The revision to the length of time all identified victims are granted for reflection and recovery has been increased from 30 days to 45 days in the revised Action Plan and the length of time of temporary residence has been increased from 6 months to one year with the option to extend depending on the circumstances.⁸⁵

A.8. Existence of data collection mechanisms [22].

- [91]. The UKHTC works together with other agencies to address the trafficking of human beings.⁸⁶ Part of this work involves designing data collection mechanisms that will be gathered via a central repository at UKHTC. UKHTC is working closely with the Child Exploitation and Online Protection (CEOP) Centre who are responsible in building a strategic and national picture on child trafficking in the UK.⁸⁷
- [92]. CEOP collected data on trafficked children from 41 UK police forces and law enforcement agencies, 8 non-governmental organisations and 21 Border and Immigration Agencies.⁸⁸
- [93]. UKHTC started collecting data from April 2008 when Home Office funding became available. The responsible agencies for this process will be the Home Office, UKHTC, Serious and Organised Crime Agency (SOCA) and the Scottish Crime Drug Enforcement Agency (SCDA). The time table to regularly provide data gathering information will therefore commence from 1 October 2008.⁸⁹

⁸⁴ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.32.

⁸⁵ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, pp.3 and 30.

⁸⁶ See <http://www.ukhtc.org/history.htm> (09.07.2008).

⁸⁷ Child Exploitation and Online Protection (CEOP) Centre (2007) *A Scoping Project on Child Trafficking in the UK*, p.8.

⁸⁸ See http://www.ceop.gov.uk/about/child_trafficking.asp (09.07.2008).

⁸⁹ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.37.

- [94]. Research on human trafficking has been carried out by the Scottish Government Justice Analytical Services with findings to be released soon.⁹⁰ Data has been collected from police, statutory agencies, victim services and NGOs in the last year, 2007/8.
- [95]. A model protocol⁹¹ exists between LSCBs and the Police which outlines the necessary action needed should a child come to the attention of police investigation during Operation Pentameter 2.⁹² It encourages joint planning between named contacts from LSCBs and the local police force. A National Advocate⁹³ in accordance with the appropriate child protection procedures in England, Scotland, Wales and Northern Ireland, supports the Local authority through LSCBs to ensure that children recovered from Operation Pentameter 2 receive the necessary care. This service was provided by the National Society for the Prevention of Cruelty to Children (NSPCC) and ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) staff who are qualified and experienced in working with child victims of trafficking. Both organisations are members of the Pentameter Gold Command Victim Care Group coordinated by the UKHTC.
- [96]. EU funding is being sought by UKHTC⁹⁴ for another scoping study that would examine the sources of data on both victims and suspected traffickers. It is intended that international models of data collection from organisations like the International Organization for Migration will be applied.

A.9. Designated Budget of relevant ministries for anti-trafficking measures [23].

- [97]. The Home Office has increased funding for the work of UKHTC.⁹⁵ For the financial year 2008/9, there has been an increase from a budget of £834,084 in 2007/08 to £1,712,000 in 2008/09, and £1,602,000 in 2009/10. The increased budget in 2008/09 includes a one off payment for a National Intelligence system that forms part of the anti-trafficking measures within UKHTC.

⁹⁰ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.7.

⁹¹ Copy of protocol provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on file with the authors.

⁹² In October 2007, Operation Pentameter 2 was launched by the UKHTC. It was a UK wide multi agency campaign that aimed to rescue and protect victims of trafficking for sexual exploitation and to identify, disrupt, arrest and bring to justice those involved in criminal activity. See also Home Office Press Release, *Major Police probe into trafficking leads to 528 arrests*, 2 July 2008, available at: <http://press.homeoffice.gov.uk/press-releases/police-probe-trafficking> (09.07.2008).

⁹³ Copy of protocol provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on file with the authors.

⁹⁴ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.7.

⁹⁵ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.7.

- [98]. Funding has been made available by the Home Office and Comic Relief, who will contribute £100,000 each, per annum over 3 years, for a telephone advice line for professionals, and victims of human trafficking. The line, National Child Trafficking Advice and Information Line (CTAIL), will offer training packages to professionals dealing with child trafficking and also offers an appropriate response to victims of child trafficking (see para 275).
- [99]. £30,000 has been paid as a single payment by the Home Office to ECPAT UK for the development of an e-learning tool for professionals.

A.10. Designated budget to support research in child trafficking [24].

- [100]. The CEOP scoping study in 2007 on the extent of child trafficking was funded at a cost of £37,500.⁹⁶ Currently, SOCA are funding a CEOP Strategic Threat assessment on trafficking.⁹⁷
- [101]. Operation MAXIM⁹⁸ is a Metropolitan Police Service partnership with the UKBA and the Crown Prosecution Service (CPS) targeting organised immigration crime across London. In 2003, Operation Maxim through Reflex,⁹⁹ the Government's multi-agency response to organised immigration crime, tasked with coordinating intelligence on the problem of trafficking, provided £100,000 funding for a research initiative on trafficking called Operation Paladin Child.¹⁰⁰ The report¹⁰¹ published in 2004, summarised more than eight months of work undertaken in an attempt to define the nature of child migration from non – EU countries to the UK via London Heathrow.

⁹⁶ Home Office and Scottish Executive (2007) *UK Action Plan*, p.93.

⁹⁷ Information provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on 17.07.2008.

⁹⁸ http://www.met.police.uk/op_maxim/ (09.07.2008).

⁹⁹ Metropolitan Police Authority (2006) *Operation Maxim*, available at: <http://www.mpa.gov.uk/committees/ppr/2006/061109/08.htm> (09.07.2008).

¹⁰⁰ Metropolitan Police and Reflex (2004) *Paladin Child. The Safeguarding children strand of MAXIM funded by Reflex*, available at: <http://www.mpa.gov.uk/downloads/committees/ppr/ppr-040712-14-appendix01.pdf> (09.07.2008).

¹⁰¹ Metropolitan Police and Reflex (2004) *Paladin Child. The Safeguarding children strand of MAXIM funded by Reflex*.

A.11. Existence of Monitoring mechanisms such as National Rapporteurs [25].

- [102]. Article 29(4) of the *CoE Convention on Action against Trafficking in Human Beings* states that member states should consider appointing a National Rapporteur. The concept of a National Rapporteur was developed as one of the tools to combat and strengthen action against Human Trafficking in the European Union (see *Experts Group on Trafficking in Human Beings*).¹⁰²
- [103]. Though the role a National Rapporteur has been recognised as one to collect, monitor and report information on a range of issues including trafficking, in the UK Action Plan 2007,¹⁰³ the UK Government, feels that the appointment of an independent National Rapporteur has not been necessary.
- [104]. Since 2005, a cross-government ministerial arrangement, through the Inter-Departmental Ministerial Group (IDMG)¹⁰⁴ on Human Trafficking, has been monitoring progress made in tackling child trafficking. The IDMG are considered the most suitable body to monitor trafficking in the UK as they hold responsibility for implementing Government policy on human trafficking, including monitoring the implementation of the CoE Convention and the *UK Action Plan*.¹⁰⁵
- [105]. In addition to the IDMG, there is a NGO Advisory Group on Human Trafficking which also covers the cross-government ministerial arrangements for monitoring progress.
- [106]. The independent Children's Commissioner for England also has an active interest in child trafficking.¹⁰⁶

A.12. Existence of National Referral Mechanisms [26].

- [107]. In the updated Action Plan 2008, a National Referral Mechanism is being developed to help co-ordinate the identification and referral of victims into

¹⁰² European Commission, Directorate-General Justice, Freedom and Security, *Report of the Experts Group on Trafficking in Human Beings* (2004) p.77, available at: http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc/report_expert_group_1204_en.pdf (09.07.2008)

¹⁰³ Home Office and Scottish Executive (2007) *UK Action Plan*, p.13.

¹⁰⁴ House of Commons (HC) Deb (2006–07) 461, oral answers column 397. See also: House of Lords (HL) Deb (2006–07) 692, written answers column WA188.

¹⁰⁵ Home Office and Scottish Executive (2007) *UK Action Plan*, p.13.

¹⁰⁶ See <http://www.parliament.the-stationery-office.co.uk/pa/ld200607/ldhansrd/text/70625w0008.htm> (09.07.2008).

support. This is being pilot tested under Operation Pentameter 2.¹⁰⁷ Pentameter 2 is taking place in conjunction with a G6 project on human trafficking being led by the UK and Poland. UKHTC believe that a National Referral Mechanism would require a model that reflects existing child safeguarding procedures and will include working with Local Authorities and LSCBs as key stakeholders.

- [108]. CEOP are working on developing an assessment and referral tool to support the process for determining “reasonable grounds to believe” an individual child may have been trafficked.¹⁰⁸ The assessment of this tool would be through partnership work with LSCBs, and key agencies at the Home Office, UKBA, CEOP, UKHTC, DCSF, the Scottish Government and NGOs.

A.13. Training strategy [27].

- [109]. The need for further training for a range of agencies is addressed by the *UK Action Plan 2007*.¹⁰⁹ The plan gives an overview of training programmes already undertaken, e.g. training has already been delivered to front line staff working on the labour trafficking project led by UKBA.¹¹⁰
- [110]. In October 2007, the UKBA introduced a *Keeping Children Safe training programme*¹¹¹ for all staff members. The training programme aimed at UKBA staff, raises awareness about children's issues so that they are more responsive to children and their needs, including protection issues. Leaflets have also been available for both EEA and non-EEA nationals explaining that officers may seek to establish the relationship between children and the adult accompanying them.
- [111]. UKHTC have delivered training courses to over 100 senior investigation officers from most UK police forces. Future plans are underway to develop and update all training materials and toolkits.¹¹² E-learning packages on specific trafficking topics have also been distributed to over 65000 police officers.
- [112]. ECPAT UK provides training for all professionals in different agencies who come into contact with victims of trafficking.¹¹³ The Department for Children

¹⁰⁷ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.5.

¹⁰⁸ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.33, objective 67.

¹⁰⁹ Home Office and Scottish Executive (2007) *UK Action Plan*, p.30.

¹¹⁰ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.21.

¹¹¹ See <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmhansrd/cm080611/text/80611w0021.htm> (09.07.2008).

¹¹² Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.20.

¹¹³ See <http://www.ecpat.org.uk/training.html> (09.07.2008).

Schools and Families have funded ECPAT UK with £220,000 over three years to deliver this multi agency training programme.¹¹⁴

- [113]. The NGO ‘Africans Unite against Child Abuse’ (AFRUCA), in partnership with ECPAT UK, run training programmes for practitioners across the UK on Child Trafficking.¹¹⁵ AFRUCA also run their own National and In-house training programme for different agencies in order to deliver customized training to help meet internal needs and organizational priorities on issues of child trafficking within the African community.¹¹⁶
- [114]. CEOP are undertaking a cross agency pilot training course on child trafficking.¹¹⁷
- [115]. The Home Office *Trafficking Toolkit*¹¹⁸ provides helpful guidance on dealing with trafficking. The toolkit is aimed at police, immigration officials, the Crown Prosecution Service (CPS), victim support, social services departments, local authorities, NGOs and other agencies throughout the UK.
- [116]. The Immigration and Advisory Service have designed an anti-trafficking toolkit¹¹⁹ for caseworkers and external organisations. The toolkit provides guidance on identification and referral procedures, guidance on effective asylum case construction and an overview of the legal framework covering domestic and international legislation on related asylum cases.

A.14. Policy of non-criminalisation of child victims of trafficking [28].

- [117]. Although it is not implemented through substantive criminal law or legislation, the UK does have a policy of the non-criminalisation of children who have been trafficked. If a child has committed an offence whilst under the control of traffickers, prosecutors should consider whether the offence was committed as a result of coercion amounting in law to duress.¹²⁰ The Code for Crown

¹¹⁴ Information provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on 17.07.08

¹¹⁵ See http://www.afruca.org/work_trafficking.php (09.07.2008).

¹¹⁶ AFRUCA (2008) *Training Programme*, available at: <http://www.afruca.org/documents/afruca%202008-2009%20training%20courses.pdf> (09.07.2008).

¹¹⁷ See:

www.londoncouncils.gov.uk/London%20Councils/Crime%20and%20Public%20Protection/IA20080310LApresentationv0.ppt (09.07.2008).

¹¹⁸ See: <http://www.crimereduction.homeoffice.gov.uk/toolkits/tp00.htm>

¹¹⁹ Immigration and Advisory Services *Anti Trafficking Toolkit*, available at: http://www.iasuk.org/C2B/document_tree/ViewAdocument.asp?ID=389&CatID=53&Search=true (09.07.2008).

¹²⁰ HM Government (2007) *Safeguarding children*, para. 5.25.

Prosecutors further and generally requires prosecutors to consider the interests of the child in deciding whether a prosecution should proceed,¹²¹ and also states that a child should only normally be considered for prosecution (but depending on the severity of the offence) after having already been given a reprimand and a final warning.¹²²

- [118]. The *UK Action Plan 2007* explains that ‘Victims of trafficking should not normally be charged with an immigration offence under Section 2 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* as the circumstances of their case are likely to constitute a reasonable defence to entering the UK without a passport’; and places an obligation on prosecutors to stop prosecutions if a person who has been trafficked is wrongly charged with a trafficking offence.¹²³
- [119]. The *Updated Plan 2008*¹²⁴ addresses the issue of criminalisation of victims under two key objectives: (i) to develop effective strategies to combat the trafficking of children forced or coerced into criminal activities, such as illegal cannabis farming and street crime for the profit of organised crime gangs¹²⁵ and (ii) to explore effective strategies to combat the trafficking of children for the purpose of fraudulently acquiring welfare benefits.¹²⁶ These objectives are meant to safeguard children from criminal exploitation and to ensure that trafficked children are not punished by the criminal justice system for being coerced or forced to engage in criminal activities like cannabis farming and street crime.
- [120]. The *Updated Plan 2008*¹²⁷ also refers to the need to criminalise, prevent and deter trafficking with a periodic review and assessment of legislation. The assessment of and any subsequent changes to legislation will ensure that child victims of trafficking are not criminalised (See para 117). Guidance about non-criminalisation of child victims of trafficking¹²⁸ has been issued to all Police Chief Constables and Regional Crown Prosecution Service by ACPO and CPS.

¹²¹ Director of Public Prosecutions (2004) *The Code for Crown Prosecutors*, para.8.8, available at http://www.cps.gov.uk/victims_witnesses/code.html (09.07.2008).

¹²² Director of Public Prosecutions (2004) *The Code for Crown Prosecutors*, para.8.9, available at http://www.cps.gov.uk/victims_witnesses/code.html (09.07.2008).

¹²³ Home Office and Scottish Executive (2007) *UK Action Plan on Tackling Human Trafficking* p. 57.

¹²⁴ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*.

¹²⁵ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.35, objective 84.

¹²⁶ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.35, objective 85.

¹²⁷ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.44, action 17.

¹²⁸ Information provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on 17.07.08.

- [121]. The Home Office ran a consultation in 2007 on ‘*Planning better Outcomes and Support for Unaccompanied Asylum Seeking Children*’.¹²⁹ The consultation covered the issue of child victims of trafficking who are seeking asylum, and how best to secure their protection.
- [122]. The guidance issued by HM Government which is specifically concerned with the situation of trafficked children is explicit in its statement of the policy of non-criminalisation of children trafficked for prostitution:

‘The use of a child in a criminal enterprise is a form of child abuse. A child who is forced into prostitution will be treated by [the prosecution authorities] as an abused child and a victim who needs help rather than as a defendant.’¹³⁰

B. Prevention of child trafficking

B.1. Evidence of Awareness raising campaigns [29].

- [123]. In October 2007, Operation Pentameter 2 was launched by the UK Human Trafficking Centre (UKHTC). It was a UK wide multi agency campaign that aimed at tackling trafficking for sexual exploitation through the rescue and protection of victims.¹³¹
- [124]. The *Blue Blindfold campaign*,¹³² launched in December 2007, is a joint pilot poster national campaign run in partnership with Crimestoppers, UKHTC, End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (CEOP), the Poppy project, ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes), Europol, Interpol, MTV Exit, and Stop the Traffik.¹³³ It has been

¹²⁹ Home Office/ Immigration and Nationality Directorate (2007) *Planning better outcomes and support for unaccompanied asylum seeking children*, available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/uasc/consultationdocument.pdf?view=Binary> (09.07.2008).

¹³⁰ HM Government (2007) *Safeguarding children* (2007) para. 5.24. There is currently no equivalent statement in the draft guidance issued for consultation in Scotland.

¹³¹ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.17.

¹³² See <http://www.blueblindfold.co.uk/> (09.07.2008).

¹³³ See <http://www.blueblindfold.co.uk/partners/> (09.07.2008).

launched in 12 UK cities and on 550 buses to raise awareness amongst male sex buyers of the exploitation and trafficking involved in off street prostitution.¹³⁴ It encourages public involvement in sharing any suspicions or information with the police or through the free police line through Crimestoppers.¹³⁵

- [125]. UKHTC and the Home Office run a marketing campaign between May and June 2008.¹³⁶ Posters are being piloted in men's toilets in pubs and clubs in two UK cities - Westminster and Nottingham. They will be supported by online advertising, with additional advice on the UKHTC 'Blue Blindfold' website. The impact of the campaign will be evaluated in autumn 2008 and fed into any recommendations made at the end of the review.¹³⁷
- [126]. The Home Office is leading a cross government review of its prostitution strategy which is specifically focussing on the demand for purchasing sexual services in the UK. Ministers have visited Sweden and the Netherlands as part of their evidence collection. The review will be published later this year. On 18th July the Government published for consultation new guidance on safeguarding children from sexual exploitation. The guidance includes advice on how front line staff should be aware of the risks of children being sexually exploited and then trafficked within the UK.¹³⁸
- [127]. The Home Office have commissioned Bedfordshire University to scope the criminal justice agencies response to child sexual exploitation with reference to the children who might also then be at risk of trafficking within the UK. The report will be published by the University this summer.¹³⁹
- [128]. An online e learning tool¹⁴⁰ funded by the Home Office has been developed by ECPAT UK in 2007. It is aimed at social workers, immigration officers and other frontline professionals who come into contact with vulnerable children from abroad. The e-learning tool provides access to a mini website and gives information on the issues of trafficking in general context and best practice approaches. It has been tested by some local authorities, Local Safeguarding Children Boards (LSCB) and child care practitioners.¹⁴¹

¹³⁴ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p. 10.

¹³⁵ See <http://www.crimestoppers-uk.org/> (09.07.2008).

¹³⁶ See http://www.blueblindfold.co.uk/poster_campaign_may2008.htm (09.07.2008).

¹³⁷ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.12.

¹³⁸ Information provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on 17.07.08.

¹³⁹ Lead Expert on the project is Professor Jenny Pearce, Director of the Institute of Applied Social Research, Professor of Young People and Public Policy, University of Bedfordshire. Information provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on 17.07.08.

¹⁴⁰ See <http://course.ecpat.org.uk/> (09.07.2008).

¹⁴¹ Home Office (2008) *Keeping Children safe*, pp.1-2.

- [129]. With funding from the Foreign and Commonwealth Office (FCO) Drugs and Crime Fund, UKHTC have run a campaign in Romania and Bulgaria highlighting the dangers of trafficking.¹⁴²
- [130]. The Poppy Project ran a four week poster campaign in 2007 with Transport for London, a local government body responsible for the transport network throughout Greater London in England. Their poster focussed on human trafficking for sexual exploitation and was targeted not only to victims of trafficking but to the general public. Posters were placed on the underground train network and bus shelters.¹⁴³
- [131]. Between 2007 and 2008, a nationwide press and radio campaign by the UK Border Agency (UKBA) targeted employers who employ illegal migrants. This was supplemented by guidance booklets that can be found on the UKBA website.¹⁴⁴
- [132]. The Department of Health has embarked on an awareness campaign that aims to respond to victims of violence and abuse. The campaign is targeting health professionals through its Victims of Violence and abuse Prevention Programme and the programme of work is due for completion in autumn 2008.¹⁴⁵
- [133]. In 2006, the NGO ‘Africans Unite Against Child Abuse’ (AFRUCA) was awarded a government grant¹⁴⁶ to run a national advocacy campaign in England on safeguarding African children including victims of trafficking. AFRUCA is the main charity campaigning against the trafficking of African children into the UK.
- [134]. UKHTC in partnership with the Home Office, CEOP, the National Society for the Prevention of Cruelty to Children (NSPCC), Street Reach Doncaster and Sheffield Children’s Services, are producing a film¹⁴⁷ aimed at school children that warns of the danger of young girls being seduced into sexual exploitation by older teenage boys. The film will be shown as part of an education pack in schools and forms part of UKHTC internal trafficking education campaign.

¹⁴² Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.39, action 9.

¹⁴³ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.13.

¹⁴⁴ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.13.

¹⁴⁵ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.32.

¹⁴⁶ AFRUCA – Africans Unite against child abuse (AFRUCA) press release *AFRUCA awarded £290,000 Government Grant*, available at: <http://www.afruca.org/archive/AFRUCA%20DFES%20GRANT%20PRESS%20RELEASE.htm> (09.07.2008).

¹⁴⁷ Home Office (2008) *Keeping Children safe*, p.6, available at: http://www.dfes.gov.uk/localauthorities/documents/content/2205080001_Keeping%20Children%20Safe%20issue%204.pdf (09.07.2008).

B.2. Evidence of direct participation of children and relevant NGOs in awareness raising [30].

- [135]. Since the *Child Trafficking Advice and Information Line* (CTAIL) was launched in September 2007, it has helped around 60 children aged 18 months to 18 who have been trafficked from across the globe.¹⁴⁸ Two children from the Young People's Advisory Group sit on the CTAIL Advisory Group who meets to discuss child trafficking issues.¹⁴⁹

B.3. Evidence of direct participation of local communities and minority groups [31].

- [136]. Between 2006-2007, a Community Partnership programme¹⁵⁰ was funded by the Department for Education and Skills DFES (now DCSF), the Home Office, and jointly managed with eight London boroughs. The project recognised the diverse needs of different cultures and so aimed to improve mechanisms for safeguarding children and promoting good practice between statutory bodies, local minority ethnic communities and faith groups.
- [137]. Examples¹⁵¹ of direct participation of local communities from the Community Partnership programme are as follows: (i) training sessions on spirit possession with the Congolese Action Group, Sudan's Women Group and relevant statutory agencies and (ii) Working with supplementary schools run by the Bangladeshi, Somali, Roma, Kosovan, Ethiopian and Southern Sudan communities to provide training on the four areas of child abuse - female genital mutilation, honour based violence, abuse linked to a belief in spirit possession and child trafficking and exploitation.

¹⁴⁸ National Society for the Prevention of Cruelty to Children (NSPCC) press release, *Alert for 'Invisible' Children and Young People*, 5 May 2008, available at: http://www.nspcc.org.uk/whatwedo/mediacentre/pressreleases/alert_invisible_children_wdn57019.html (09.07.2008).

¹⁴⁹ Information provided by Mandy John-Baptise, NSPCC, on 18.07.08.

¹⁵⁰ London Safeguarding Children Board (2007) *Community Partnership Project Report*, p.23, available at: http://www.londonscb.gov.uk/files/conference07/community_partnership_project_30_nov_2007.pdf (09.07.2008).

¹⁵¹ London Safeguarding Children Board (2007) *Community Partnership Project Report*, p.23, available at: http://www.londonscb.gov.uk/files/conference07/community_partnership_project_30_nov_2007.pdf (09.07.2008).

- [138]. AFRUCA received funding from the Home Office to hold a series of Community focus meetings¹⁵² in 2006 on the trafficking of children into the UK. The aims of the meeting was to gather views from members of the African community across the capital about prevention, identification, protection and rehabilitation of victims and provide feedback to government and the relevant agencies concerned with trafficking of African children. A key outcome of this meeting, now part of the *UK Action Plan* as a result of a consultation process, addresses the trafficking of children through private fostering and for benefit fraud.¹⁵³

B.4. Policies to prevent that children in a vulnerable position become victims of trafficking [32].

- [139]. The UKBA's policies are geared to recognise children in vulnerable positions and not by their immigration status. An example of such policy is the *Immigration Code of Practice*¹⁵⁴ which forms part of the Government work in improving the welfare of asylum seeking children in the UK. There are no safe houses providing 24-hour care and protection in the UK and many trafficked children are referred to the local authority children's service and usually end up in foster care or hostels. Policy and guidance is generally provided under the government's *Every Child Matters* programme.
- [140]. The Ports Safeguarding Team (Paladin Team)¹⁵⁵ of the Metropolitan Police is based at London Heathrow airport and the Home Office Asylum Screening Unit. The team, made up of Child abuse investigators, work with Immigration Officers and social workers in addressing child protection issues including trafficking.

¹⁵² See http://www.afruca.org/events_archive.php (08.07.2008).

¹⁵³ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.34.

¹⁵⁴ Border and Immigration Agency (2008) *Border and Immigration Agency Code of Practice For Keeping Children safe from harm*. Consultation, para 3.3 – 3.6, available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/keepingchildrensafe/uasc_codeofpractice.pdf?view=Binary (09.07.2008).

¹⁵⁵ See http://www.met.police.uk/scd/specialist_units/child_abuse.htm (09.07.2008).

C. Appointment of legal guardian

C.1. Appointment of a Legal Guardian [33].

- [141]. Trafficked children who are separated from their legal guardians or parents become the responsibility of the local authority under Section 17 or 20 of the *Children Act 1989*. If they remain at risk of harm the ‘*Working together to Safeguard Children 2006*’ statutory guidance states that there should be a Section 47 investigation to assess their need and a child safety plan put in place. As a looked after child the local authority and their representative social worker act ‘in loco parentis.’¹⁵⁶
- [142]. The appointment of a legal guardian, organisation or authority with an obligation to act in the best interests of the child, for any unaccompanied child as soon as he or she has been identified as a victim of trafficking, is required by Article 10(4) of the *CoE Convention on Action against Trafficking in Human Beings*. In addition, the UK is bound by Directive 2003/9/EC, Article 19 of which requires that unaccompanied child asylum seekers be provided, where necessary, with representation by a legal guardian or an appropriate organisation or other appropriate form of representation able to promote the care and well-being of the child.
- [143]. The current policy of the UK Government is that neither of these provisions requires the establishment of a formal scheme for the automatic appointment of a guardian when a child is identified as a trafficking victim; nor in its view is it necessary in any case that such a scheme be established,¹⁵⁷ whether or not the unaccompanied child has been identified as a trafficking victim.¹⁵⁸ This is because all unaccompanied children seeking asylum in the UK come within the provenance of child services authorities and Local Safeguarding Children Boards (LSCB) or Child Protection Committees (CPC) (in Scotland), exercising the duties to safeguard and promote the welfare of children in their area, outlined in paras. 61-78 above, which devolve in practice to named case

¹⁵⁶ Information provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on 17.07.08.

¹⁵⁷ UK Government (2007) *UK Consolidated 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child*, 15 July 2007, p. 149, para 8.12, available at: <http://www.everychildmatters.gov.uk/files/0B51045676CEF239367221123B913E60.pdf> (10.07.2008).

¹⁵⁸ See the Memorandum provided by Liam Burt, a Minister of State at the Home Office, included as an appendix to the Joint Committee on Human Rights (2007) *Seventeenth Report of Session 2006-07*, HLC Paper 134 HC 790, at para. 31, available at: <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/134/13402.htm> (22.06.2008).

workers. In addition, there are specific provisions to provide the assistance that would be provided by a legal guardian in various circumstances.

[144]. However, it is the stated intention of the UK Government to ratify the CoE Convention by the end of 2008,¹⁵⁹ and so there will be a need for domestic law to comply with Article 10(4) of the Convention. It seems, therefore, that it will become the practice to appoint a legal guardian in line with this provision in the UK in or on that event. The Scottish Executive has announced that it is working with stakeholders to devise a Scottish model of guardianship and pilot that model.¹⁶⁰

[145]. Although there is at present in the UK no legal provision to require that a legal guardian automatically be appointed when a child has been identified as a victim of trafficking, the following forms of assistance, in addition to that provided by local social service authorities and UK Border Agency (UKBA) under the powers and duties described above, are available:

- The Refugee Council Children’s Panel (RCCP)¹⁶¹

The RCCP provides assistance to unaccompanied children seeking asylum, in the form of (i) facilitating access to legal representation (ii) providing advice and assistance through the asylum process (iii) accompanying the child, where necessary, to asylum interviews, tribunal and panel hearings and court appointments and (iv) accompanying the child where necessary to other appointments, for example with health or social care providers.

- Legal Advice and Representation

A court may appoint a solicitor for a child who is able to give instructions, and in the view of the court to do so is in the best interests of the child in certain circumstances, for example when there is an application to make a care or secure accommodation order¹⁶² in respect of that child. A child is also entitled to legal advice and representation in respect of a claim for asylum. Further information about this is given in chapter E, under the section on access to legal assistance (paras.260-268).

- Appointment of a Court Official to safeguard the welfare of the child

A court official (the Official Solicitor in England and Wales or a Guardian ad litem in Northern Ireland) can be appointed to act on behalf of a child, including the provision of instructions to the legal representatives of a child

¹⁵⁹ See Home Office Press Release (2008) *Home Secretary Moves to Ratify the Council Of Europe Convention Against Trafficking in 2008*, 14 January 2008, available at <http://press.homeoffice.gov.uk/press-releases/Trafficking> (30.07.2008).

¹⁶⁰ See Scottish Executive (2008) *Safeguarding children who may have been trafficked in Scotland*, p. 24.

¹⁶¹ See <http://www.refugeecouncil.org.uk/howwehelp/directly/children> (08.07.2008)

¹⁶² UK/ Children Act 1989 c.41 (16.11.1989), s41 (England and Wales); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 60.

in specified proceedings.¹⁶³ This will be especially pertinent if the instructions the child wishes to give are deemed not to be in his or her best interests (a situation said to be not uncommon in child trafficking cases). However, a court official cannot appear for the child in the early stages of the asylum process, at UKBA interviews or before the Asylum and Immigration Tribunal,¹⁶⁴ although a child can be legally represented and should only be interviewed in the presence of an adult who, if not a parent or carer, must be a person independent of the Secretary of State.¹⁶⁵

- Appointment of a Guardian or Special Guardian with parental powers in private law hearings
 - A ‘Guardian’ here means a person appointed by the court, either on the application of that person or, in ongoing proceedings, on the initiative of the judge, in a situation where no person has parental responsibility for a child. The person appointed acquires parental responsibility for the child.¹⁶⁶
 - A Special Guardian is a person appointed by the court in a situation where arrangements for a child’s family life need to be set on a permanent and secure footing and the parents of the child are unavailable or unsuitable to care for the child but where, for example because of the wishes of the child, adoption is not an appropriate option. The person appointed acquires parental responsibility for the child.¹⁶⁷

C.2. Age limit for qualifying for legal representation [34].

[146]. There is no maximum age limit for qualifying for legal advice and representation.. The courts will not ordinarily appoint a person to act as a guardian once the child has obtained the age of 18, although the courts may appoint the Official Solicitor to act on behalf of a person above that age if that person is particularly vulnerable by reason of limited mental capacity. The Mental Capacity Act 2005 also now provides a framework for the protection of adults lacking capacity, including the appointment of a ‘deputy’ to make

¹⁶³ UK/ Children Act 1989 c.41 (16.11.1989), s41 (England and Wales); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 60.

¹⁶⁴ See Letter from the Immigrant Law Practitioners Association, 2 April 2008, available at: <http://www.ilpa.org.uk/submissions/Lord%20Adonis%20-%202%20April%202008.doc> (08.07.2008)

¹⁶⁵ UK/ Consolidated Immigration Rules (June 2008), Rule 352, available at: <http://www.bia.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/> (08.07.2008).

¹⁶⁶ UK/ Children Act 1989 c.41 (16.11.1989), s.5 (England and Wales). Section 6 provides that a Guardianship Order may be revoked on the application of the guardian or the child or by the court acting on its own initiative.

¹⁶⁷ UK/ Children Act 1989 c.41 (16.11.1989), s.14A-14G (England and Wales).

decisions relevant to the welfare or affairs of the person in question. Mental capacity may be limited for various reasons, including for example the effects of trauma or abuse on the person concerned.

C.3. Age Assessment Policies [35].

- [147]. The age of a trafficking victim is a vital question, in terms of immigration status, entitlement to services, and the manner in which those services will be provided. It is also a statistically significant issue: in 2006, of 5,515 people who claimed asylum as an unaccompanied child, 2,270 had their age disputed by the immigration authorities in the first instance.¹⁶⁸
- [148]. In a Home Office and Border and Immigration Authority document listing five key reforms to improve the quality of services to unaccompanied asylum seeking children (UASC), published in January 2008,¹⁶⁹ key reform four is to improve the system for assessing the age of those seeking asylum who claim to be children, in order to ensure that adults and children are not housed together in any accommodation provided for asylum seekers.
- [149]. However, there is at present no statutory provision that deals with issues around age assessment, and both the UKBA and local authority social services departments have procedures for age determination. There is a Joint Working Protocol on age assessment,¹⁷⁰ agreed between immigration and social services at senior management level. The Protocol aims to ensure that there is minimum delay in decision-making, with clear and common procedures to consider all the available evidence, and to ensure that information is shared between immigration and social service agencies,¹⁷¹ although each service will make its own assessment for its own purposes.
- [150]. How the system works in practice¹⁷² depends on how a trafficking victim of uncertain age first comes to the attention of the authorities. If a trafficking victim is detected at a port of entry (or of departure), perhaps because an

¹⁶⁸ Home Office (2007) *Home Office Bulletin 14/07 Asylum Statistics United Kingdom 2006*, table 2.4., available at: <http://www.homeoffice.gov.uk/rds/pdfs07/hosb1407.pdf> (15.07.2008).

¹⁶⁹ Home Office and Border and Immigration Authority (2008) *Better Outcomes: The Way Forward – Improving the care of unaccompanied asylum seeking children*.

¹⁷⁰ Immigration and Nationality Directorate (IND) and the Association of Directors of Social Services (ADSS) (2004) *Age Assessment Joint Working Protocol between Immigration and Nationality Directorate of the Home Office and the Association of Directors of Social Services For UK Local Government and Statutory Child Care Authorities*, available at: <http://www.adss.org.uk/publications/guidance/ageassessment.pdf> (26.06.2008). Hereinafter referred to as *Joint Working Protocol*.

¹⁷¹ IND and ADSS (2004) *Joint Working Protocol*, para.5.

¹⁷² For a detailed empirical investigation, see Heaven Crawley (2007) *When is a child not a child? Asylum, age disputes and the process of age assessment*. London: Immigrant Law Practitioners' Association, available at: <http://www.ilpa.org.uk/publications/ILPA%20Age%20Dispute%20Report.pdf>. (27.06.2008).

immigration officer has cause to be suspicious that a child is being trafficked or perhaps because the trafficking victim seeks asylum at the point of entry, the UKBA will make an assessment of age¹⁷³ and will give notice of its decision and the reasons for it to the young person. If the outcome of that assessment is that the young person in question is a child he or she will be referred to the local social services authority in the absence of any other suitable carer,¹⁷⁴ and the social services authority should then carry out an assessment of the needs of the child.

- [151]. UKBA guidance provides that an applicant will be given the benefit of the doubt when there is uncertainty about that person's age, but it will dispute his or her claimed age where 'physical appearance and/or general demeanour *very strongly* suggests that they are aged 18 or over', and will treat as an adult any claimant whose physical appearance and general demeanour suggest is *significantly* over 18 years of age.¹⁷⁵
- [152]. A child trafficking victim may not be identified until after arrival in the UK. Others will have been trafficked within the UK. Such an individual might present themselves at a police station or social services facility, or might be discovered as a result of law enforcement and child protection activities within the UK or elsewhere. Here the primary issue will be the need of the child for services rather than his or her immigration status. In this case, it will be the social services authority for the area where the child is found that will undertake an assessment of age if that is deemed necessary, in pursuance of its duty to investigate where a child appears to be in need (see paras.61-78). The assessment will ordinarily be undertaken by a social worker.
- [153]. There is case law which provides some guidance and lays down some minimum standards for age assessment by a social worker, although no case has yet reached the appellate courts. The first of these cases, and the most important, is *R (B) v London Borough of Merton*.¹⁷⁶ In this case B had arrived in the UK from Senegal. He claimed to be 17 years old. He sought asylum and was denied it by an immigration officer on the grounds that his application for asylum had not been made as soon as reasonably practical after his arrival.¹⁷⁷ Part of that assessment for eligibility for consideration for asylum entailed that B's age be assessed. The immigration officer determined that B was an adult. Thereafter B was referred by the Refugee Council to the social services authority for the area for assistance under section 17 of the *Children Act 1989*. The assessment of B's needs was undertaken by a social worker, R, who concluded that she was

¹⁷³ Following the guidance issued by the UKBA (2007) *Disputed Age Cases*, available at: http://www.opsi.gov.uk/Acts/acts2002/ukpga_20020041_en_1 (14.07.2008).

¹⁷⁴ IND and ADSS (2004) *Joint Working Protocol*, para.10.c.

¹⁷⁵ UKBA (2007) *Disputed Age Cases*, p.3, emphasis in original.

¹⁷⁶ *R (B) v London Borough of Merton* [2003] EWHC 1689; 4 ALL E.R. 280. In interview for this Report, David Macdonald, Vulnerable Persons Coordinator, Home Office, stated that the *Merton* guidance was generally accepted as the best model for practice (17.07.08).

¹⁷⁷ UK/ Nationality, Immigration and Asylum Act 2002 c.41 (07.11.2002), s.55, available at: http://www.opsi.gov.uk/Acts/acts2002/ukpga_20020041_en_1 (14.07.2008).

‘taking the stance of the Home Office’,¹⁷⁸ namely that B was not a child. B sought judicial review of that decision.

[154]. The High Court decided the judicial review in B’s favour, but only on the narrow grounds that the pro forma form used by R required that the assessor give the person being assessed the chance to respond to the specific points that the assessor was minded to hold against him or her; and R had not given B this opportunity.¹⁷⁹ The broader significance of the case is that the High Court provided guidance on the legal requirements of the assessment process. The main points of significance are as follows:

- There is no single or simple test for age determination and an assessor should elicit and examine the history and background of the applicant, including family circumstances and history, with appropriate recognition of any cultural or ethnic factors,¹⁸⁰ and any relevant prior statements of age made by the applicant,¹⁸¹ as well as his or her physical appearance and behaviour;¹⁸² although a decision should not rest solely on physical appearance,¹⁸³ except in an ‘obvious case’;¹⁸⁴
- An assessment is not a trial and may be relatively informal, provided that minimum standards of inquiry and fairness are adhered to;¹⁸⁵ and the applicant may be questioned about the evidence that he or she has given to test its credibility;¹⁸⁶
- Any decision must be based on adequate evidence;¹⁸⁷
- If there is a prior-existing UKBA assessment of the applicant, a social worker deciding age for the purposes of the provision of services for children cannot simply accept that decision, albeit that it is a relevant consideration, but must make his or her own judgement;¹⁸⁸
- Adequate reasons for the decision must be given to the applicant so as to enable him or her to understand the decision and to decide whether it is lawful;¹⁸⁹
- The court was not keen to impose what it described as ‘unrealistic and unnecessary burdens’ on those required to assess age, for example requiring

¹⁷⁸ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 13.

¹⁷⁹ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 56.

¹⁸⁰ *R (B) v London Borough of Merton* [2003] EWHC 1689, at paras. 30 and 37.

¹⁸¹ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 38.

¹⁸² *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 30.

¹⁸³ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 37.

¹⁸⁴ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 38.

¹⁸⁵ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 36.

¹⁸⁶ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 37.

¹⁸⁷ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 39.

¹⁸⁸ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 39.

¹⁸⁹ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 45.

as a matter of law that medical evidence of age is obtained by those persons before making a decision;¹⁹⁰

- The court also held it to be ‘preferable’, but not essential, that, if required, an interpreter should be physically present during the interview (as opposed to being on the end of a phone line);¹⁹¹ and a verbatim note of the interview is ‘helpful’ but, again, not essential.¹⁹² On the other hand the court did also emphasise that each case is different and the appropriate level and extent of information required will vary from case to case.¹⁹³ In some cases, a higher standard of inquiry and procedural formality will be appropriate if the assessment is to be held lawful.

[155]. The Court did not discuss explicitly the question of whether the applicant should be given the benefit of any doubt. The tenor of the judgement does seem however to suggest that this would not necessarily be the case. The judge was clear that the burden of proving age was on the applicant not the service provider.¹⁹⁴ The nature of judicial review is such that the courts will only intervene when there has been a manifestly unreasonable decision, which does seem to indicate that in cases of doubt the assessor is lawfully entitled not to give the benefit of any doubt to the applicant.

[156]. The *Merton* case was applied in *R (T) v London Borough of Enfield*,¹⁹⁵ a case in which a local authority social worker had assessed a young woman, T, who claimed to be 17 years old, and who was seeking asylum from a very traumatic life in Angola, as being an adult. That decision was successfully challenged in the High Court on the basis that the person conducting the assessment had not given sufficient weight to medical evidence of age, to psychological and psychiatric evidence that T was suffering from post-traumatic stress disorder; had not given T sufficient chance to answer questions; and had questioned her in an unduly hostile manner. The Court emphasised that those conducting age assessments must be sensitive to the presence of any psychological or mental health difficulties that the young person may harbour as a result of trauma in his or her history, and of the relevance of such difficulties to the attitude, demeanour and answers given by the young person in interview.¹⁹⁶

[157]. In England and Wales,¹⁹⁷ and Northern Ireland,¹⁹⁸ the courts have powers to issue a direction that a local social services authority investigate the circumstances of a child ‘Where, in any family proceedings in which a question

¹⁹⁰ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 49-50.

¹⁹¹ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 52.

¹⁹² *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 54.

¹⁹³ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 50.

¹⁹⁴ *R (B) v London Borough of Merton* [2003] EWHC 1689, at para. 50.

¹⁹⁵ *R (T) v London Borough of Enfield* [2004] EWHC 2297 (Admin).

¹⁹⁶ See also *E (by her litigation friend PW) v London Borough of X* [2005] EWHC 2811 (Fam) and *R(A) v Liverpool City Council* [2007] EWHC 1477 (Admin) for further applications of the Merton guidance.

¹⁹⁷ UK/ Children Act 1989 c.41 (16.11.1989), s.37 (England and Wales).

¹⁹⁸ UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 56.

arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to him'. Thus, this power can only be used when there are already court proceedings underway. In *London Borough of Lambeth v TK (by her Litigation Friend) and KK*¹⁹⁹ such a direction had been made, but the local authority had declined not to apply for any order because in its view TK, the young person in question, was not a child. The response of the court was to order that a hearing take place for it to establish the age of TK. The local authority challenged this decision in the courts, arguing that its assessment of TK's age could not be challenged or re-opened by the court, or by any other person or body, except by way of judicial review.

- [158]. The Court of Appeal rejected this argument, holding that the nature of the duty on the court is to be satisfied that a care or supervision order was not necessary and so it was open to the court in its discretion to order a hearing so that it could determine TK's age, although the court 'must be satisfied that the proceedings are not a contrivance in which, by the proposed direction, to secure the facility to challenge a local authority's assessment of a person's age in a judicial enquiry *de novo* which would run counter to the statutory scheme for the discharge of local authority functions'.²⁰⁰

C.4. Specialised training of legal guardians and the provision of adequate time for the preparation of cases [36], [37].

- [159]. As discussed above, it is not the policy in the UK to appoint a legal guardian for a trafficked child on a routine basis. The training of professionals involved in providing services to and safeguarding the welfare of child trafficking victims has been discussed in paras. 109-116. As discussed in the section on access to legal assistance below (paras. 260-268), all contracts made for the provision of legal services to UASC are made only with specialist service providers. The Immigrant Law Practitioners' Association is an organisation of lawyers and other related professions which provides specialist legal services and which provides training and accreditation of expertise in all matters relating to immigration, including people trafficking. Details of training programmes are available at <http://www.ilpa.org.uk/>.
- [160]. There is no direct or systematic evidence demonstrating that sufficient time for the preparation of legal cases is available. It is hoped that this sort of data will be made available under data collection programmes that began in April 2008

¹⁹⁹ *London Borough of Lambeth v TK (by her Litigation Friend) and KK* [2008] EWCA Civ 103.

²⁰⁰ *London Borough of Lambeth v TK (by her Litigation Friend) and KK* [2008] EWCA Civ 103, para. 33.

(see section on data collection mechanisms, paras.91-96). The standard processing time for a typical asylum claim by a child is 35 days. This time scale, rather than that which pertains to adults, is also followed in cases in which UKBA dispute the claimed age of the applicant (and such persons are no longer put on the ‘detention fast track’, under which claims are determined within days of initial application).

D. Coordination and cooperation

D.1. Existence of a formalised Task Force on child trafficking [38].

- [161]. The main formalised task force on trafficking in human beings is the UK Human Trafficking Centre (UKHTC), the multi agency body tasked with developing expertise and co-ordinating operational activity with agencies in the UK and abroad. UKHTC utilises law enforcement expertise and a victim centred approach by working with the Child Exploitation and Online Protection (CEOP) Centre, the Serious Organised Crime Agency (SOCA) and NGOs.
- [162]. UKHTC has prevention subgroups which focus on prevention and awareness raising campaigns in source and transit countries.²⁰¹ UKHTC has work streams in Research, Prevention, Victim Care, Learning and Development, Operations and Intelligence. Each of these work streams has a subgroup.²⁰² Other subgroups are the UKHTC Overview and Advisory Group, the child protection victim care group of the UKHTC and the Independent Advisory Group to the UKHTC.
- [163]. CEOP, affiliated to SOCA has the responsibility of intelligence analysis of child trafficking in the UK and provides a specialist, child-focused approach to tackling child trafficking. CEOP also works with law enforcement partners in UKBA, specialist charities and NGOs²⁰³ and have established an ACPO²⁰⁴/CEOP Child trafficking steering group, a police strategic group chaired by the Director General of CEOP.
- [164]. Other groups are the National Society for the Prevention of Cruelty to Children (NSPCC) Child Trafficking helpline advisory group, the Joint Ministerial NGO stakeholder group on human trafficking which holds bi-monthly meetings

²⁰¹ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.9.

²⁰² Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.19.

²⁰³ See http://www.ceop.gov.uk/about/child_trafficking.asp (09.07.2008).

²⁰⁴ Association of Chief Police Officers (ACPO), which covers police service in England, Wales and Northern Ireland).

organised by the Home Office Minister and the Solicitor General and the Home Office-NGO Steering Group focuses on child trafficking.²⁰⁵

D.2. Existence of cooperation agreements concerning child trafficking between relevant Ministries [39].

- [165]. The Inter-Departmental Ministerial Group (IDMG)²⁰⁶ is chaired by the Under-Secretary of State for the Home Office and meets four times a year.²⁰⁷ The group has representatives from the Department for Children, Schools and Families; the Department for International Development, the Department for Work and Pensions (Minister for Equality), the Solicitor General, the Foreign and Commonwealth Office (FCO), the Department of Health, the Department for Communities and Local Government and the Scotland Office.²⁰⁸ The group is supported by the Human Trafficking NGO Advisory Group on focusing on victim support.²⁰⁹ A dedicated project team on trafficking was also set up within the Border and Immigration Agency in May 2007 and this team also reports to the IDMG.

D.3. Existence of cooperation agreements between state agencies and non-governmental actors [40].

- [166]. See section on existence of specialised shelters for trafficked children (paras. 234-240).

²⁰⁵ Information provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on 17.07.08.

²⁰⁶ See para.104.

²⁰⁷ House of Commons (HC) *Debate (2006–07) 459, written answer column 1141W.*

²⁰⁸ Information provided by David McDonald (Vulnerable Persons Coordinator, Home Office) on 17.07.2008.

²⁰⁹ Home Office and Scottish Executive (2007) *UK Action Plan*, p.48.

D.4. Guidelines aimed at protecting personal data of trafficked children [41].

- [167]. The Information Commissioner's Office²¹⁰ is the UK's independent authority set up to promote access to official information and to protect personal information. All organisations are legally bound to protect personal information. The Data Protection Act²¹¹ places a legal obligation on organisations who process personal information, to comply with eight important principles²¹² related to privacy and disclosure. Nothing in this Act refers specifically to personal data of the trafficked child. (See also Information Commissioner's report 2008²¹³)
- [168]. The cross-government guidance, *Information sharing: Practitioners' guide. Integrated working to improve outcomes for children and young people*²¹⁴ gives information practitioners on the following: (i) how to exchange information legally and professionally with respect to children and young people,²¹⁵ (ii) provides core guidance for practitioners on information sharing²¹⁶ and (iii) sets out further information to inform practitioners' decisions on information sharing.²¹⁷
- [169]. The IDMG on Human Trafficking is responsible for the monitoring of anti trafficking initiatives in the UK and overseeing the ratification and implementation of the *CoE Convention on Action against Trafficking in Human Beings*. The UKHTC has the responsibility for the collation of all data relating to the recording of trafficking cases. This is in the early stages of development.
- [170]. However, in 2004, the *Bichard Enquiry report*²¹⁸ was published. The enquiry focussed on child protection procedures particularly in relation to record keeping and information sharing of intelligence data within police forces. Recommendation 1 of the report gives the Home Office full responsibility

²¹⁰ See <http://www.ico.gov.uk/> (09.07.2008).

²¹¹ UK/ Data Protection Act 1998 c.29 (16.07.1998), available at: http://www.opsi.gov.uk/Acts/Acts1998/ukpga_19980029_en_1 (09.07.2008). Further information: http://www.ico.gov.uk/Home/what_we_cover/data_protection.aspx (09.07.2008).

²¹² See http://www.ico.gov.uk/Home/what_we_cover/data_protection/the_basics.aspx (09.07.2008).

²¹³ Information Commissioner's Office (2008) *Annual Report 2007/8*, available at: http://www.ico.gov.uk/upload/documents/library/corporate/detailed_specialist_guides/annual_report_2007_08.pdf (07.07.2008).

²¹⁴ HM Government (2006) *Information sharing: Practitioners' guide. Integrated working to improve outcomes for children and young people*, available at: <http://www.everychildmatters.gov.uk/files/ACB1BA35C20D4C42A1FE6F9133A7C614.pdf> (09.07.2008). Hereinafter referred to as *Practitioner's Guide*.

²¹⁵ HM Government (2006) *Practitioners' guide*, p.5.

²¹⁶ HM Government (2006) *Practitioners' guide*, p.7.

²¹⁷ HM Government (2006) *Practitioners' guide*, p.13.

²¹⁸ Sir Michael Bichard (2004) *The Bichard Inquiry Report*, available at: <http://www.bichardinquiry.org.uk/10663/report.pdf> (09.07.2008).

(responsibility for this has now moved to the National Policing Improvement Agency (NPIA)) for a national IT system for England and Wales to support police intelligence, including personal data of children.

- [171]. The Home Office, the Department for Children, Schools and Families (DCSF), the Scottish Government and UKBA are implementing a process for vetting and approving addresses and carers for unaccompanied children applying to stay in UK in excess of 28 days 2008.²¹⁹ Data issues will be addressed as part of this process.

D.5. Existence of cooperation agreements with countries of origin outside the EU [42].

- [172]. UKBA's programme, Organised Immigration Crime: Source and Transit Countries (Nexus Points) involves developing knowledge on trafficking from key source and transit countries that impact the UK. Based in 40 different countries are 140 Liaison Officers who work alongside the Serious and Organised Crime Agency (SOCA) priorities including human trafficking.²²⁰

D.6. Support programmes in countries of origin or within the EU [43].

- [173]. In the *Updated UK Action Plan 2008*,²²¹ actions around capacity building in source and transit countries relating to organised immigration crime including human trafficking will be progressed by the Home Office, FCO and SOCA. In addition, the European Police Chiefs Task Force is carrying out work around cooperation agreements.
- [174]. The G6 Initiative²²² coordinates an international campaign of activity to tackle the trafficking of human beings. Ireland, UK, Netherlands, Poland, Italy and Spain are participating in the Initiative which is being supported by Europol, Interpol and Eurojust.

²¹⁹ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.62, action 60.

²²⁰ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.39.

²²¹ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.38, action 8.

²²² See

<http://www.justice.ie/en/JELR/Pages/Lenihan%20welcomes%20launch%20of%20G6%20Human%20Trafficking%20Initiative> (09.07.2008).

- [175]. British Police have been working with their counterparts in Romania. Four Romanian police officers are now working in Britain.
- [176]. A Home Office working group that is working with the seconded Romanian police officers are looking at the issue of what should happen to trafficked children and how they can be safely sent back to Romania.²²³

²²³ Information provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on 17.07.08.

E. Care and protection

E.1. Legal Provisions ensuring respect for a reflection period of minimum 30 days [44].

[177]. At present there is no statutory provision in UK law which provides for a period of reflection. However, the use of a 30 day reflection period has been piloted in the UK, for example as a component of a recent and successful multi-agency anti-trafficking law enforcement and victim rescue operation.²²⁴ In addition, it has been announced that the UK Government intends to implement a reflection and recovery period of 45 days,²²⁵ with the implementation date set at April 2009.²²⁶

E.2. Legal Provisions ensuring a right/entitlement to residence to trafficking victims, irrespective of cooperation with police/prosecutor [45].

[178]. Any decision about entitlement to residence in the UK, whether on a permanent or a temporary basis, is made irrespective of whether the person seeking permission to stay in the country has cooperated in an investigation or prosecution of those carrying out the trafficking, although guidance to immigration officials requires that when an applicant for asylum does indicate a wish to co-operate with investigations, consideration must be given to whether that strengthens the claim for asylum.²²⁷ This may be so, for example, because co-operation entails a risk of traffickers carrying out reprisals to a victim who co-operates with law enforcement agencies.

²²⁴ This was known as Operation Pentameter 2, discussed in para.95.

²²⁵ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.3, 5 and 6.

²²⁶ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.55.

²²⁷ UKBA (2008) *Victims of Trafficking*, available at:

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/victimsoftrafficking.pdf?view=Binary> (16.07.2008).

E.2.1.1. Residence Permits for Trafficking Victims.

- [179]. There is no statutory regime which governs the entitlement to remain in the UK of trafficking victims as such, nor is there currently any automatic legal right to remain in the UK. However, it has recently been announced that, by April 2009, the UK intends to implement measures allowing for the grant of a temporary residence permit to trafficking victims, whether adults or children, with a duration of one year in the first instance with the possibility of renewal.²²⁸
- [180]. The criteria for the grant of a temporary residence permit are not yet clear, although they will have to comply with Article 14 of the *CoE Convention on Action against Trafficking in Human Beings*, which provides that a residence permit can be issued either because of the personal circumstances of the subject of the permit or in order to allow that person to co-operate with any criminal proceedings.

E.2.1.2. Asylum, humanitarian protection and discretionary leave to remain.

- [181]. Children who have been trafficked into the UK from outside the EU may apply for asylum, and are then considered within the regime for unaccompanied asylum-seeking children (UASC). The definition of a UASC includes a child who has entered the UK with an adult, but that adult is not their parent or legal or customary carer, which means that children who are trafficked into the UK by any other person are treated as a UASC.²²⁹ Most UASC have arrived in the UK as a result of being smuggled or trafficked.
- [182]. Many child trafficking victims do apply for asylum, or for humanitarian protection, in the UK.²³⁰ The vast majority of claims for asylum from UASC are made after entry to the UK,²³¹ with the consequence that most claims for asylum from UASC are determined at an Asylum Screening Unit rather than by an immigration officer stationed at a port of entry.
- [183]. The situation is complicated by the fact that there are concerns that some trafficked children are told by their traffickers to apply for asylum (or humanitarian protection or discretionary leave) as a mechanism to secure their

²²⁸ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.5-6 and 56.

²²⁹ UK Border and Immigration Authority (2005) *Processing Asylum Applications from Children* p.7, available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/processingasylumapplication1.pdf?view=Binary> (10.07.2008).

²³⁰ HM Government (2007) *Safeguarding children*, p.32.

²³¹ Home Office (2007) *Home Office Bulletin 14/07 Asylum Statistics United Kingdom 2006* shows that of the 3,245 applications for asylum made by those aged 17 or under in 2006, only 390 were made at the port of entry compared to 2,860 applications made by children already in the UK at the time asylum was sought.

entry into the UK.²³² Once in the UK, some trafficked children abscond from accommodation provided by social services authorities and rejoin their trafficker.

- [184]. One measure to be taken in order to break this pattern is the use of a specialist network of local authorities with the expertise necessary to adequately protect trafficked children.²³³ This is partly an administrative measure, designed to take the pressure off local authorities in the south east of England, particularly around the London airports, where most children seeking asylum are currently accommodated. It is also an attempt to develop expertise and high quality inter-agency networks in a number of local authority areas with respect to identifying and providing for the particular needs of trafficked children, for example in respect of healthcare and education services (see paras. 241-259 below); the provision when necessary of secure accommodation (see paras. 217-227 below) in an environment which is sensitive to these needs; and the provision of after care services for trafficked children leaving care (see para. 77 above). The reduction of the number of children absconding from local authority accommodation is a key motivation for the development of this specialist network, in respect of which discussions between the UKBA and selected local authorities are ongoing (see, generally, para. 240 below).
- [185]. Nonetheless, such concerns may impact on the decision-making process undertaken by an immigration officer when determining whether a claim for asylum, humanitarian protection or discretionary leave should be accepted.²³⁴
- [186]. In general terms, the same asylum system that applies to adults applies also to children. Asylum is granted by the Home Secretary in accordance with the provisions of the *Geneva Convention of 1951*,²³⁵ that is to say, the person

²³² Home Office and Scottish Executive (2007) *UK Action Plan*, p.66. Research published by the Home Office and the Border and Immigration Authority found that the UK's systems of child protection and the granting of asylum 'seem to be blatantly exploited by traffickers who evade authorities and keep control of these children': see Child Exploitation and Online Protection (CEOP) Centre (2007) *A Scoping Project on Child Trafficking in the UK*, p. 46.

²³³ Home Office and Border and Immigration Authority (2008) *Better Outcomes: The Way Forward – Improving the care of unaccompanied asylum seeking children*, key reform four. In early 2008 it was reported that although the initial consultation postulated that around 50 or 60 local authorities could constitute a network of specialist provision for UASC, UKBA was in consultation with a much smaller group of local authorities, in Liverpool, Leeds, Glasgow, Swansea and Solihull (Birmingham). See Amy Taylor (2008) *Plans to reduce support for older unaccompanied asylum-seeking children*, available at: www.communitycare.co.uk/Articles (09.07.2008).

²³⁴ According to the Scottish Refugee Council (2007) *Evidence submitted to the Independent Asylum Commission*, para. 4.1.3, available at: http://www.scottishrefugeecouncil.org.uk/pub/Response_IAC_Nov07 (19.08.2008) 'Scottish Refugee Council is concerned that the Border and Immigration Agency perceives the majority of children's claims for asylum to be unfounded and abusive'.

²³⁵ See UK/ Consolidated Immigration Rules (June 2008), Rule 334, made by the Secretary of State under powers given by section 3(2) Immigration Act 1971. See also UK/Refugee or Person in Need of International Protection (Qualification) Regulations 2006 No.2525 (09.10.2006), available at: <http://www.opsi.gov.uk/si/si2006/20062525.htm> (16.07.2008).

seeking asylum does not wish to return to his or her home country ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country’.

- [187]. The person in question must also (i) be in the UK or at a port of entry; (ii) not constitute a danger to the security or to the safety of communities within the UK.²³⁶ These considerations apply in all cases, including those of a UASC.²³⁷
- [188]. If a child trafficking victim seeking asylum does not fall within the Geneva Convention definition of a refugee, he or she may be eligible for humanitarian protection, which includes permission to remain in the UK.²³⁸ The criteria for the provision of humanitarian protection²³⁹ are that the person in question (i) is in the UK or is at a port of entry; (ii) is not eligible for asylum under the terms of the Geneva Convention and (iii) ‘substantial grounds have been shown for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country’.
- [189]. ‘Serious harm’ is defined as comprising (i) the death penalty (ii) unlawful killing (iii) a serious risk to life or person because of indiscriminate violence in situations of armed conflict and, of most relevance here, (iv) torture or inhuman or degrading treatment in the country of return. This will be particularly relevant, for example, if there are concerns that, if returned, the child would again fall into the hands of traffickers and be trafficked again.
- [190]. If a young person under 18 does not meet the criteria for asylum or humanitarian protection, the question is then whether he or she should nonetheless be granted Discretionary Leave (DL) to remain in the UK. DL will only be granted for a maximum of three years in the first instance.²⁴⁰ The criteria for DL are to be found in the policy guidance issued by the Home Office and the UK Border Agency (UKBA) to immigration officers.²⁴¹ This provides that DL to remain should be granted in all cases, whether child or adult, (i) when to organise the removal of that person to the country of return would breach his or her rights under Article 8 ECHR on the basis of family life established in the UK; (ii) when to organise the removal of that person to the country of return would breach his or her rights under Article 3 ECHR in a case

²³⁶ UK/ Consolidated Immigration Rules (June 2008), Rule 334.

²³⁷ UK/ Consolidated Immigration Rules (June 2008), Rule 351.

²³⁸ UK/ Consolidated Immigration Rules (June 2008), Rule 339E.

²³⁹ UK/ Consolidated Immigration Rules (June 2008), Rule 339 C.

²⁴⁰ See UKBA (n.d.) *Asylum Policy Instructions: Discretionary Leave*, p.8, available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/discretionaryleave.pdf?view=Binary>, (04.07.2008).

²⁴¹ See UKBA (n.d.) *Asylum Policy Instructions: Discretionary Leave*, p.8.

where that person is not eligible for humanitarian protection,²⁴² or because the feared breach of Article 3 is not related to a failure to protect that person in the country of return, for example where the breach of Article 3 relates to a serious medical condition or severe humanitarian concerns, such as an absence of basic amenities in the country of return.

- [191]. DL to remain should also be granted, but only to an unaccompanied asylum-seeking child, if there are not appropriate arrangements in the country of return to receive the child if returned.
- [192]. In such a case it is the usual practice for DL to be granted for either three years or one year, depending on the country of origin; or until the child reaches 17.5 years of age, whichever is the shorter period. The age limit was reduced to 17.5 years from 18 years in 2007.²⁴³ This is to enable a final decision to be made on any application for permanent or open-ended leave to remain in the UK to have been conclusively determined by the 18th birthday of the child.
- [193]. If any or all applications made by a trafficked child for asylum, humanitarian protection and DL to remain are rejected, then, although ‘Any decision that a UASC is excluded from DL should be referred to the Children and Families Asylum Policy Team (CFAPT)’ in order for it to be reviewed,²⁴⁴ guidance issued by HM Government in 2008 provides that ‘the child will usually have to return’²⁴⁵ to his or her country of origin.

E.3. Number of children granted temporary stay on grounds of trafficking (2000-2007) [46].

- [194]. According to a study conducted by ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes),²⁴⁶ there were 6000 unaccompanied asylum seeking children in England and Wales between 2002 and 2005. The Home Office believes that at least 10% of the 6000

²⁴² This will usually be because that person has committed a war crime or a crime against humanity, or constitutes a danger to the security of the UK: see UK/ Consolidated Immigration Rules (June 2008), Rule 339D.

²⁴³ See Home Office (2007) APU Notice 3/2007, *Amendment to Discretionary Leave Policy relating to Asylum Seeking Children*, available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/amendmenttodlpolicyasc.pdf?view=Binary> (04.07.2008).

²⁴⁴ UKBA (n.d.) *Asylum Policy Instructions: Discretionary Leave* p.8.

²⁴⁵ HM Government (2007) *Safeguarding children*, para 7.44 and Scottish Executive (2008) *Safeguarding children who may have been trafficked in Scotland*, p. 36.

²⁴⁶ ECPAT UK (2007) *Missing Out - A Study of Child Trafficking in the North-West, North-East and West Midlands*, p.22, available at http://www.ecpat.org.uk/downloads/ECPAT_UK_Missing_Out_2007.pdf (09.07.2008).

unaccompanied asylum seeking children may have been trafficked and as such it is necessary to have a National Referral Mechanism to get a true figure of missing and trafficked children.

- [195]. There is no data available on the number of children granted temporary stay on grounds of trafficking. However, the most recent set of annual asylum statistics available, for 2006,²⁴⁷ show that 2,545 initial decisions (not including any appeals) were made in 2006 in relation to UASC aged 17 or less, of whom 180 (6%) were granted asylum, 10 (0.4%) were granted humanitarian protection, 1,925 (70%) were given DL to remain and 435 (16%) were refused any of the above.²⁴⁸

E.4. Legal Framework concerning administrative detention/detention pending deportation for children [47].

E.4.1.1. Detention under Immigration Law.

- [196]. There is no explicit prohibition of the administrative detention or detention pending deportation of a child trafficking victim in the UK. In general terms, detention by immigration authorities is used (i) to prevent unauthorised entry into the UK; (ii) to facilitate removal or deportation from the UK; (iii) to facilitate investigation of a person's identity or the basis of his or her claim; (iv) where there are reasonable concerns that the person detained would fail to comply with any condition attached to leave to enter the UK; and (v) to facilitate the resolution of claims by the 'fast track' procedure²⁴⁹
- [197]. At the time of writing, the UK's reservation to its ratification of the UN Convention on the Rights of the Child (UNCRC) remains in force. This provides that 'The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under [United Kingdom] law to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time'.²⁵⁰

²⁴⁷ Home Office (2007) *Home Office Bulletin 14/07 Asylum Statistics United Kingdom 2006*.

²⁴⁸ Home Office (2007) *Home Office Bulletin 14/07 Asylum Statistics United Kingdom 2006*, paras. 10 and 12.

²⁴⁹ This explanation was given by the Home Office to the Joint Committee of the Houses of Commons and Lords and was cited by the Joint Committee at para. 210 and Appendix 69 of its Tenth Report of 2006-07, *The Treatment of Asylum Seekers* HL 81-I/HC 60-I available at: <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/8102.htm> (11.07.2008).

²⁵⁰ See <http://www2.ohchr.org/english/bodies/ratification/11.htm#reservations> (04.07.2008).

- [198]. One effect of the UK's reservation is that the various general principles which are found in the UNCRC, in particular the best interests of the child principle in Article 3(1), do not bind the UK for immigration law purposes. The detention of a child victim of trafficking for reasons relating to immigration status or in order to facilitate the removal of that child is therefore not of itself unlawful under UK law.
- [199]. Various parties, including the UN Committee on the Rights of the Child, have called on the UK Government to withdraw the reservation.²⁵¹ In January 2008 the Home Office announced a review of the UK position with a view to deciding whether its reservation to the UNCRC could be withdrawn.²⁵² The process of review is continuing at the time of writing.
- [200]. The administrative detention or the detention pending deportation, of any person, including a child, who is seeking leave to enter the UK or whose leave to enter has been rescinded is authorised by para. 16 of Schedule 2 to the *Immigration Act 1971*.²⁵³ A detained person may be kept in any place authorised by the Secretary of State.²⁵⁴ Detention will in general terms be compliant with Article 5(1)(f) of the European Convention if its use proportionate.
- [201]. The *Nationality, Immigration and Asylum Act 2002* specifically provides that an unaccompanied child seeking asylum cannot be accommodated within an Accommodation Centre (set up under section 17 of the 2002 Act to provide accommodation for asylum-seekers and dependent children if destitute or likely to become destitute without the provision of such accommodation) because an asylum-seeker for these purposes is defined by section 18 as a person who is at least 18 years old, and the only children who can be accommodated in an accommodation centre are the dependent children of that (adult) asylum-seeker.
- [202]. However, some who arrive in the UK, or who are detained at a port of departure from the UK because of concerns that their departure involves the commission of a trafficking offence or because an application for asylum is made at that point, may be below the age of 18 at the time they are trafficked but may pass their 18th birthday whilst matters relating to or responding to their trafficking are still on-going. If in such circumstances that young person sought asylum it is possible that a trafficked child would be accommodated in a centre of the type referred to in section 17 of the 2002 Act.

²⁵¹ See for example UN Committee on the Rights of the Child (1995) *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* CRC/15/Add.34, para. 22. The Committee repeated the point in its following report in 2002, see *Concluding Observations: United Kingdom of Great Britain and Northern Ireland* CRC/C/15/Add.188, paras. 6 and 7, 47 and 48(g).

²⁵² See Home Office Press Release (2008) *Home Secretary Moves to Ratify the Council Of Europe Convention Against Trafficking in 2008*, 14 January 2008.

²⁵³ UK/ Immigration Act 1971 c.77 (28.10.1971).

²⁵⁴ UK/ Immigration Act 1971 c.77 (28.10.1971), schedule 2, para. 18.

- [203]. It is also possible that siblings, one or more of whom is an adult and one or more of whom is a child have been trafficked together. In such circumstances, it is possible that the minor siblings would be regarded as the dependent children of their adult brothers or sisters and, again, might be accommodated in an accommodation centre.²⁵⁵
- [204]. A child whose age is determined as being above 18 by an immigration officer may be detained in an adult facility. The UK government has accepted that this is a possibility and has pledged to improve the system for assessing the age of those seeking asylum who claim to be children, in order to ensure that adults and children are not housed together in any accommodation provided for asylum seekers.²⁵⁶
- [205]. The detention of adults with dependent children will be done only as a last resort²⁵⁷ and will only be done after other possibilities, such as voluntary departure have been explored.²⁵⁸
- [206]. Detention of children by UKBA beyond 28 days must be justified and must be reviewed by a Home Office minister. Detention beyond this point can only be justified if there are no alternatives and will not lead to harm being caused unnecessarily to the child.²⁵⁹ The decision of the Minister is subject to judicial review by the High Court at the instigation of the detained person.
- [207]. On the 29th March 2008 35 children under the age of 18 were detained solely under Immigration Act powers. Of these, 20 of these had been in detention for less than 29 days, 15 for between 29 days and two months and the remainder for between two and three months. None of these was an unaccompanied child.²⁶⁰
- [208]. The policy of the UK is that the detention of a child, whether or not a victim of trafficking, should only occur as a last resort.²⁶¹ If the detention of an unaccompanied child is necessary at a port of entry or departure from or into the UK, the *draft Code of Practice* states that this will be ‘only in exceptional

²⁵⁵ UK Border and Immigration Authority (2005) *Processing Asylum Applications from Children* p. 6.

²⁵⁶ Home Office and Border and Immigration Authority (2008) *Better Outcomes: The Way Forward – Improving the care of unaccompanied asylum seeking children*, key reform 4.

²⁵⁷ Home Office and Border and Immigration Agency (2008) *The Border and Immigration Agency Code of Practice for keeping children safe from harm*, para 3.4.3.

²⁵⁸ Home Office and Border and Immigration Agency (2008) *The Border and Immigration Agency Code of Practice for keeping children safe from harm*, para.3.4.6.

²⁵⁹ Home Office and Border and Immigration Agency (2008) *The Border and Immigration Agency Code of Practice for keeping children safe from harm*, para.3.4.10.

²⁶⁰ Home Office (2008) *Asylum Statistics First Quarter 2008 United Kingdom*, p.10.

²⁶¹ Home Office and Border and Immigration Agency (2008) *The Border and Immigration Agency Code of Practice for keeping children safe from harm*, para. 3.4.1.

circumstances and for their safety whilst alternative care arrangements are made, and even then just normally overnight'.²⁶²

E.4.1.2. Detention by local social service authorities.

- [209]. There will be occasions when the best interests of the particular child might require some form of detention, for example if there are concerns that the child may seek to abscond from accommodation provided, in order to be reunited with his or her trafficker. However, if detention is required it should be provided by the local social services authority.
- [210]. As discussed in paras.73-78, local social services authorities have a duty to provide accommodation on a voluntary basis, and it is the responsibility of Local Safeguarding Children Boards (LSCB) (in England and Wales) or Area Child Protection Committees (CPCs) (in Scotland) to facilitate communication between agencies to ensure trafficked children are appropriately accommodated.
- [211]. In some situations it may be that there is a need to take further steps to prevent the child from absconding, whether or not it is known or suspected that the child intends to abscond in order to meet with his or her trafficker or to avoid removal from the UK. The availability in all UK jurisdictions of Emergency Protection Orders (EPOs, known as Child Protection Orders in Scotland) and Child Assessment Orders (CSAs) has been discussed in an earlier Chapter of this Report.²⁶³ However, both of these Orders are designed for emergency and short-term use.²⁶⁴ If it is necessary to restrict the child's liberties for a period of more than a week or so it will be necessary to use longer-lasting court orders.
- [212]. In England, Wales and Northern Ireland 'care orders' are available, on the application to a court of a local social services authority, and should be made by the court if the child is suffering, or is likely to suffer, significant harm.²⁶⁵ A care order may only be made in respect of a child before his or her 17th birthday.²⁶⁶
- [213]. On the making of a care order, the social service authority obtains parental responsibility for the child and may, amongst other things, therefore regulate the

²⁶² Home Office and Border and Immigration Agency (2008) *The Border and Immigration Agency Code of Practice for keeping children safe from harm*, para 3.4.2.

²⁶³ See paras.68-72.

²⁶⁴ An EPO may be of 8 days maximum duration and is renewable only once: see for example UK/ Children Act 1989 c.41 (16.11.1989), s. 45(1), 45(6) (England and Wales).

²⁶⁵ UK/ Children Act 1989 c.41 (16.11.1989), s. 31; UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art.50.

²⁶⁶ UK/ Children Act 1989 c.41 (16.11.1989), s. 31(6); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art.50 (4). The age limit is 16 if the child is married.

contact of the child with any other person and, with the permission of the court, refuse contact between the child and any person named in the order.²⁶⁷

- [214]. In Scotland the equivalent order is known as a supervision order.²⁶⁸ Such an order may be made by a Children’s Hearing following referral by the Principal Reporter²⁶⁹ in a case in which the Reporter has concluded following investigations that such an order should be made because at least one of the criteria laid out in Section 52 of the *Children (Scotland) Act 1995*²⁷⁰ is satisfied.
- [215]. A supervision order may contain specifications, directed towards the local social work department, as to where the child is to reside and with whom he or she is to have, or not have, contact.²⁷¹
- [216]. These orders may go some way to allow the social services authority to fashion a regime in which the child is accommodated safely and securely and which may involve a, perhaps significant, degree of control. But for some cases a stricter regime of detention may be required. This is known as ‘secure accommodation’.

E.4.1.3. Detention in Secure Accommodation.

- [217]. In all UK jurisdictions, secure accommodation is defined widely, as ‘accommodation which is provided for the purpose of restricting the liberty of children’,²⁷² and it will be a question of fact whether the accommodation in question restricts the liberty of the child to the extent that it is deemed to be secure accommodation.
- [218]. Although local social services have dedicated secure accommodation estate, the accommodation in question does not have to be designated as a place in which children may be detained for it to come within the definition of secure accommodation. In *A Metropolitan Borough Council v DB*,²⁷³ for example, that

²⁶⁷ UK/ Children Act 1989 c.41 (16.11.1989), s. 34(4); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art.53 (4).

²⁶⁸ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.70 (Scotland).

²⁶⁹ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.65 (Scotland).

²⁷⁰ The criteria in section 52 and the investigative powers of the Principal Reporter are discussed in para.71.

²⁷¹ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.70(3), 70(5), 71 (Scotland).

²⁷² UK/ Children (Secure Accommodation) Regulations 1991 No.1505 (14.10.1991) (England and Wales), Reg. 2(1), available at: http://www.opsi.gov.uk/si/si1991/Uksi_19911505_en_1.htm (08.07.2008); UK/ Secure Accommodation (Scotland) Regulations No.1255 (01.04.1997) (Scotland), Reg. 2, available at: http://www.opsi.gov.uk/si/si1996/Uksi_19963255_en_1.htm (08.07.2008); UK/The Secure Accommodation (Northern Ireland) Regulations 1996 No.487 (10.10.1996) (Northern Ireland), Reg.1, available at: http://www.opsi.gov.uk/sr/sr1996/Nisr_19960487_en_2.htm (08.07.2008).

²⁷³ *A Metropolitan Borough Council v DB* [1997] 1 FLR 767.

High Court in England held²⁷⁴ that a hospital ward in which DB, a heavily pregnant 17 year old girl, was held because she was refusing necessary medical care and because of concerns that she would return to her boyfriend and a life of serious drug abuse and prostitution, did constitute ‘secure accommodation’. This was because the ward was locked (albeit to keep undesirable people out rather than to keep the patients in), DB was not given a key, and nursing staff had been instructed to prevent DB from leaving.²⁷⁵

- [219]. Secure accommodation may only be used as a last resort. In England, Wales and Northern Ireland the criteria to be satisfied are that the child ‘is likely to injure himself or other persons’ if housed in any other form of accommodation,²⁷⁶ or because the child has a history of absconding (from being ‘looked after’ by a local authority),²⁷⁷ is ‘likely to abscond’ unless detained in secure accommodation and, if he or she does abscond, is ‘likely to suffer significant harm’.²⁷⁸
- [220]. In Scotland, the criteria are ‘(a) that the child, having previously absconded, is likely to abscond and, if he absconds, it is likely that his physical, mental or moral welfare will be at risk or (b) that the child is likely to injure himself or some other person’.²⁷⁹
- [221]. A child can be placed in secure accommodation for a total of 72 (not necessarily consecutive) hours within any 28 day period without a court order.²⁸⁰ If a longer period of detention is required, a Secure Accommodation Order must be made by a court (or in Scotland, by a Children’s Hearing), it having first determined that the above criteria are satisfied.²⁸¹ In England, Wales and Northern Ireland, the child in question must be legally represented, funded by the state, at a hearing to determine if a secure accommodation order should be made, unless

²⁷⁴ *A Metropolitan Borough Council v DB* [1997] 1 FLR 767, 773E-F.

²⁷⁵ See also *R v Northampton Juvenile Court, ex parte London Borough of Hammersmith and Fulham* [1985] 1 FLR 193.

²⁷⁶ UK/ Children Act 1989 c.41 (16.11.1989), s. 25(1)(b); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 44(2)(b).

²⁷⁷ UK/ Children Act 1989 c.41 (16.11.1989), s. 25(1)(c); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 44(2). This terms refers both to the voluntary provision of accommodation and the formal powers to take a child into local authority care under section 31 Children Act 1989.

²⁷⁸ UK/ Children Act 1989 c.41 (16.11.1989), s. 25(1)(a); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 44(2) (a).

²⁷⁹ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.70(10).

²⁸⁰ UK/ Children (Secure Accommodation) Regulations 1991 No.1505 (14.10.1991) (England and Wales), Reg. 10(1); UK/ Secure Accommodation (Scotland) Regulations No.1255 (01.04.1997) (Scotland), reg. 5; UK/The Secure Accommodation (Northern Ireland) Regulations 1996 No.487 (10.10.1996) (Northern Ireland), reg. 6(1).

²⁸¹ UK/ Children Act 1989 c.41 (16.11.1989), s. 25(3) and (4); UK/ Secure Accommodation (Scotland) Regulations No.1255 (01.04.1997) (Scotland), reg. 5; UK/The Secure Accommodation (Northern Ireland) Regulations 1996 No.487 (10.10.1996) (Northern Ireland), Reg. 6(1).

he or she does not wish to have legal representation.²⁸² In Scotland, legal aid is not available to fund legal representation in a hearing to determine whether a secure accommodation order should be made before a Children's Hearing as such Hearings do not permit legal representation.

- [222]. In Scotland, secure accommodation may be ordered by a Children's Hearing on hearing an application for the use of compulsory measures of supervision, and the accommodation must be supplied by the local authority.²⁸³
- [223]. In England, Wales and Northern Ireland a secure accommodation order is a distinct order, and must be applied for separately,²⁸⁴ whether or not the child in question is in local authority care, and secure accommodation may be utilised by local social services authorities, as well as health and education service providers and the police.²⁸⁵
- [224]. In England, Wales and Northern Ireland, secure accommodation may not be used in respect of a child being looked after by a local authority once that young person has reached the age of 16,²⁸⁶ and no child under the age of 13 may be placed in secure accommodation in a local authority children's home without the consent of the Department of Health and Social Services (in Northern Ireland)²⁸⁷ or the Secretary of State (in England and Wales).²⁸⁸
- [225]. In England, Wales and Northern Ireland an Order must be time-limited²⁸⁹ and in any case cannot extend beyond 3 months in the first instance,²⁹⁰ although an existent order can be extended by a further court order to a maximum of 6

²⁸² UK/ Children Act 1989 c.41 (16.11.1989), s. 25(6); UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 44.

²⁸³ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.70(9), 70(9A), 70(10).

²⁸⁴ UK/ Children Act 1989 c.41 (16.11.1989), s.25; UK/ Children (Northern Ireland) Order 1995 (No. 755 (N.I.2)) (15.03.1995), art. 44.

²⁸⁵ See UK/ Children (Secure Accommodation) Regulations 1991 No.1505 (14.10.1991) (England and Wales), Reg.7(1), which lists health authorities, Primary Care Trusts, National Health Service trusts, foundation trusts, local education authorities, and residential care homes, nursing homes or mental nursing homes which provide accommodation for children as all being entitled to use secure accommodation. In addition reg. 6 permits the use of secure accommodation in respect of children detained by the police. The criteria for detention are modified in such circumstance: see regs 6 and 7.

²⁸⁶ UK/ Children (Secure Accommodation) Regulations 1991 No.1505 (14.10.1991) (England and Wales), Reg. 5(2)(a); UK/The Secure Accommodation (Northern Ireland) Regulations 1996 No.487 (10.10.1996) (Northern Ireland), reg. 3(2). An order made before the child's 16th birthday continues in force for the full extent of its duration notwithstanding that the child turns 16 whilst the order is in force: *Re G (A Child) (Secure Accommodation Order)* [2000] 2 FLR 259.

²⁸⁷ UK/The Secure Accommodation (Northern Ireland) Regulations 1996 No.487 (10.10.1996), reg. 2.

²⁸⁸ UK/ Children (Secure Accommodation) Regulations 1991 No.1505 (14.10.1991), reg. 4.

²⁸⁹ UK/ Children Act 1989 c.41 (16.11.1989), s.25(4) (England and Wales); UK/The Secure Accommodation (Northern Ireland) Regulations 1996 No.487 (10.10.1996), reg. 7.

²⁹⁰ UK/ Children (Secure Accommodation) Regulations 1991 No.1505 (14.10.1991), reg.11(1); UK/The Secure Accommodation (Northern Ireland) Regulations 1996 No.487 (10.10.1996), reg. 7(1).

months.²⁹¹ If the criteria for the use of secure accommodation cease to be met whilst the Order is still in force the child must nonetheless be released: *LM v Essex CC*,²⁹² although it is not currently clear if that must be immediate.²⁹³ In Scotland, a secure accommodation order is not time limited, but continues in force as long as the manager of the accommodation in which the child is placed and the chief social worker of the local authority in question regard the order as necessary,²⁹⁴ although the continued subsistence of the order must be subject to regular reviews.²⁹⁵

[226]. In *Re K (A Child) (Secure Accommodation Order: Right to Liberty)*²⁹⁶ the use of secure accommodation survived challenge under Art 5(1) of the European Convention, in a case in which a child was detained by reason of being beyond parental control. The Court of Appeal held although detention in secure accommodation was of the type covered by Art 5(1),²⁹⁷ its use did not in principle breach that Article. The court made reference to Art 5(1)(d), which permits ‘the detention of a minor by lawful order for the purpose of educational supervision...’. This, held Lady Butler-Sloss, the President of the Family Division of the High Court,²⁹⁸ provides a justification for the use of secure accommodation. In that case, as is usual, K was in fact continuing with his education whilst in secure accommodation, as required by statute, so that it could be said that secure accommodation was ‘for the purposes of educational supervision’ within the meaning of Art 5(1)(d) albeit that section 25 of the Children Act 1989²⁹⁹ makes no mention of education.

[227]. It would also be possible to justify the use of secure accommodation by reference to Art 5(1)(f), which allows ‘the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition’, provided that its use was proportionate.

²⁹¹ UK/ Children (Secure Accommodation) Regulations 1991 No.1505 (14.10.1991), reg.12(1); UK/The Secure Accommodation (Northern Ireland) Regulations 1996 No.487 (10.10.1996), reg. 8(1).

²⁹² *LM v Essex CC* [1999] 1 F.L.R. 988 (High Court).

²⁹³ It is perhaps unlikely that a court would require immediate release in this context, given that for adult patients the European Court has sanctioned delayed release, in cases where a mentally disordered person has been determined eligible for release on the grounds that the patient is no longer mentally disordered, in order to give time for a safe and controlled release to occur: see *Johnson v UK* (1997) 27 EHRR 296. In *A (A Child) v Knowsley BC* [2004] EWHC 491; [2004] 2 FLR 716 it was said by Charles J that judicial review is the most appropriate mechanism to challenge unwarranted detention.

²⁹⁴ UK/ Children (Scotland) Act 1995 c.36 (19.07.1995), s.70(9)(b).

²⁹⁵ UK/ Secure Accommodation (Scotland) Regulations No.1255 (01.04.1997) (Scotland), regs. 11 and 15.

²⁹⁶ *Re K (A Child) (Secure Accommodation Order: Right to Liberty)* [2001] Fam 377; [2001] 2 WLR 1141.

²⁹⁷ *Re K (A Child) (Secure Accommodation Order: Right to Liberty)* [2001] Fam 377 at 392, para 32.

²⁹⁸ *Re K (A Child) (Secure Accommodation Order: Right to Liberty)* [2001] Fam 377 at 386.

²⁹⁹ The same is true of the legislation which applies elsewhere in the UK.

E.5. Special safeguards for children who are detained [48].

- [228]. As explained above, children who are detained will only rarely be detained by immigration authorities and then only for very short periods. If detention is necessary it will be in local authority premises which are used only for the detention of children. As also explained above, detention in secure accommodation is either subject to strict maximum time limits (in England, Wales and Northern Ireland) or to regular review (in Scotland). Any decision to detain, whether by means of a care order or compulsory measures of supervision falling short of secure accommodation, or in secure accommodation, is subject to appeal and judicial review.

E.6. Family tracing [49].

- [229]. In the UK, the government recognises that the best interest of the children should be taken into consideration when deciding to return a child to their country of origin. This includes providing for their safe resettlement and repatriation. As a result of this and in the interest of immigration control, the UKBA only return a child if they are completely satisfied that adequate reception arrangements are in place.³⁰⁰ This process involves a risk assessment process that considers the abusers access to the child and their family. UKBA plan the timing and nature of the return to country of origin.
- [230]. The Government has voluntary return programmes for victims of trafficking from the European Economic Area.³⁰¹ The Government works with the International Organization for Migration, the Poppy project and others to help victims return voluntarily to their home country.
- [231]. Regulation 6 of the *Asylum Seekers (Reception Conditions) Regulations 2005*³⁰² requires the Secretary of State, to endeavour to trace the child's family as soon as possible after the child makes an asylum application.
- [232]. However, the policy of UKBA is that family tracing can only commence once an application for asylum has been determined, unless the child requests earlier commencement. UKBA will enlist the help of British Embassies or High

³⁰⁰ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.22.

³⁰¹ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.31.

³⁰² UK/The Asylum Seekers (Reception Conditions) Regulations 2005 No.7 (05.02.2005), available at: <http://www.opsi.gov.uk/si/si2005/20050007.htm> (14.07.2008).

Commissions and charitable organisations such as the British Red Cross to assist in family tracing.³⁰³

- [233]. A local authority may also engage in family tracing for children that it is looking after. Government guidance to all agencies requires that family tracing only be undertaken if that is consistent with the welfare of the child and that it be done with discretion and caution, and following the performance of a risk assessment of the possible dangers of repatriation.³⁰⁴ In any event local authorities must act in the best interests of the children they are looking after.³⁰⁵

E.7. Existence of specialised shelters [50].

- [234]. The London Refuge for Runaway Children is run in partnership with the National Society for the Prevention of Cruelty to Children (NSPCC)³⁰⁶ and provides secure accommodation for vulnerable children including those that have been trafficked.
- [235]. Outside of local authority care, there are no specific provisions for specialised shelters for trafficked children. However, the Poppy Project, set up in 2003, provides accommodation and support to women who have been trafficked into prostitution. This service is only available to adult victims aged over 18 years of age. It provides 35 bed spaces in houses throughout London. Proposals are being developed to use the Poppy project model for victim support.³⁰⁷

E.8. Statistics of children who leave shelters [51].

- [236]. The UK has made proposals to reduce the number of foreign trafficked children going missing or at risk of being trafficked from Local authority care in its *UK Action Plan 2007*. The Government guidance *Young Runaways Action Plan 2008*³⁰⁸ addresses the issue of runaways, missing and trafficked children. It will

³⁰³ UK Border and Immigration Authority (2005) *Processing Asylum Applications from Children* p. 37. For information about the British Red Cross international family tracing service, see <http://www.redcross.org.uk/standard.asp?id=238> (14.07.2008).

³⁰⁴ HM Government (2007) *Safeguarding children*, paras. 7.39 and 7.40.

³⁰⁵ See paras. 73-78.

³⁰⁶ See <http://www.stchris.org.uk/pages/what-we-do/london-refuge/the-london-refuge.html> (09.07.2008).

³⁰⁷ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.6.

³⁰⁸ HM Government (2008) *Young Runaways Action Plan*, available at: <http://www.dfes.gov.uk/publications/runaways/downloads/YoungRunawaysActionPlan.pdf> (09.07.2008).

be supported by the guidance *Children Missing from Care and Home*³⁰⁹ (currently under revision) and *Every Child Matters* and the *Unaccompanied Asylum Seeking Child Reform Program*.³¹⁰

- [237]. In 2007, ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) released findings of their study into missing children that focussed on three major cities in the UK. The findings³¹¹ by ECPAT showed that there were 80 cases of known or suspected victims of trafficking with 60% (48) of those cases being children who had gone missing from the care of Social Services.
- [238]. The scoping report by the Child Exploitation and Online Protection Centre (CEOP)³¹² provides evidence of child trafficking into and within the UK. 330 children were identified as trafficked cases after CEOP fitted each to a child trafficking profile developed by the LSCB. Within that report, over half of the children identified were found to be missing, some from care.
- [239]. Between 2004 and 2007, London Gatwick Airport children's team at West Sussex County Council admitted 145 unaccompanied minors into care. The council lost 42 of these children.³¹³
- [240]. More than 400 foreign children, many suspected of being trafficked into the sex or drug trade in Britain, have gone missing from local authority care.³¹⁴ According to records in July 2004 and July 2007 from 16 local authorities around England's ports and airports, an estimated 408 unaccompanied asylum seekers children disappeared from care. See also para. 184.

³⁰⁹ Department of Health, Local Authority Circular (2002) *Children missing from care and from home – Good practice guidance*, available at http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4012718.pdf (09.07.2008).

³¹⁰ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.69, action 79.

³¹¹ ECPAT UK (2007) *Missing Out - A Study of Child Trafficking in the North-West, North-East and West Midlands*, available at http://www.ecpat.org.uk/downloads/ECPAT_UK_Missing_Out_2007.pdf (09.07.2008).

³¹² Child Exploitation and Online Protection (CEOP) Centre (2007) *A Scoping Project on Child Trafficking in the UK*.

³¹³ 'Saved from child traffickers, but not for long', *The Guardian*, 23 April 2008, available at <http://www.guardian.co.uk/society/2008/apr/23/child.traffickers> (09.07.2008).

³¹⁴ 'Lost 400 children may have been trafficked into sex or drugs trade', *The Guardian*, 23 April 2008, available at <http://www.guardian.co.uk/society/2008/apr/23/childprotection.immigrationandpublicservices> (09.07.2008).

E.9. Legal provisions ensuring access to health care services [52].

- [241]. There are no legal provisions specifically ensuring the access of trafficked children to health care services. The general situation in the UK is that the National Health Service (NHS) is funded out of general taxation and provides a service in which access to health care services is free at the point of need ‘to the people of’ the jurisdiction in question, by means of imposing a duty on the central government to continue the promotion of a comprehensive health service,³¹⁵ and to provide particular services for care, treatment and aftercare, including rehabilitation.³¹⁶ There is no question, then, that a trafficked child who is a citizen of the UK is eligible to access the full range of medical services on the basis of need.
- [242]. However this right is subject to the availability of resources and to competing demands on services. In *R(B) v Cambridge District Health Authority*,³¹⁷ followed in subsequent cases,³¹⁸ the Court of Appeal held that the decision whether or not to provide treatment to a given individual rests with local health resource managers, and a decision to deny treatment will only be unlawful if it was a decision that was so unreasonable that no reasonable health resource manager would make it.
- [243]. Any decision to deny treatment to a child could however be challenged in court on the basis that this was not in the best interests of the child.³¹⁹ The decisions taken by National Health Services officers must also be compliant with the requirements section 6(1) of the *Human Rights Act 1998*, which prohibits a

³¹⁵ See UK/ National Health Service Act 2006 c.41 (08.11.2006) (in England), s.1, available at http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060041_en_1 (07.07.2008); UK/ National Health Service (Scotland) Act 1978 c. 29(20.07.1978) (in Scotland), s.1, available at <http://www.statutelaw.gov.uk/LegResults.aspx?LegType=All+Primary&PageNumber=48&NavFrom=2&activeTextDocId=2301536> (07.07.2008); UK/ National Health Service (Wales) Act 2006 c.42 (08.11.2006) (in Wales), s.1, available at http://www.uk-legislation.hmso.gov.uk/acts/acts2006/ukpga_20060042_en_2 (07.07.2008); UK/Health and Personal Social Services (Northern Ireland) Order 1972 No. 1265 (N.I.14) (14.08.1972), art. 4, available at [http://www.statutelaw.gov.uk/LegResults.aspx?LegType=All+Legislation&title=Health+and+Personal+Social+Services+\(Northern+Ireland\)&Year=1972&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2938810&PageNumber=1&SortAlpha=0](http://www.statutelaw.gov.uk/LegResults.aspx?LegType=All+Legislation&title=Health+and+Personal+Social+Services+(Northern+Ireland)&Year=1972&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2938810&PageNumber=1&SortAlpha=0) (07.07.2008).

³¹⁶ See UK/ National Health Service Act 2006 c.41 (08.11.2006) (in England), s.3; UK/ National Health Service (Wales) Act 2006 c.42 (08.11.2006) (in Wales), s. 3; UK/Health and Personal Social Services (Northern Ireland) Order 1972 No. 1265 (N.I.14) (14.08.1972), art. 4. There is no comparable duty in the Scottish Act.

³¹⁷ *R(B) v Cambridge District Health Authority* [1995] 1 W.L.R. 898; [1995] 2 All E.R. 129 (Court of Appeal).

³¹⁸ See for example *Rogers v Swindon NHS Primary Care Trust* [2006] EWCA Civ 392; [2006] 1 W.L.R. 2649 (Court of Appeal).

³¹⁹ *Portsmouth NHS Trust v Wyatt* [2005] EWCA Civ 1181; [2005] 1 W.L.R. 3995 (Court of Appeal).

government body from acting in a way incompatible with human rights requirements unless it is required so to act by the terms of a UK statute.

- [244]. Foreign nationals generally have no right to access services provided by the National Health Service free of charge. There are, at EU level, reciprocal arrangements in place for citizens of member states of the European Union,³²⁰ but these arrangements extend only to emergency treatment or treatment planned and approved before travel. The UK also has reciprocal arrangements with other countries,³²¹ but for treatment not covered by reciprocal arrangements with the country of origin, whether that person is an EU citizen or not, the policy, except for emergency or primary care, is to charge for treatment of persons ‘not ordinarily resident’ in the UK.³²² Those who are ‘ordinarily resident’ for the purposes of eligibility to free healthcare include persons who have been granted asylum, humanitarian protection or DL to remain in the UK, as well as those given temporary leave to remain in the UK under the terms of the *Immigration Act 1971* pending the outcome of an application.³²³
- [245]. In Guidance on the interpretation of the 1989 Regulations issued in 2004,³²⁴ the Minister of State for Health in England stated that those (adult) persons who had been denied asylum but in respect of whom removal directions had not yet been made (often because of concerns about the situation into which that person would be placed if returned to their country of origin) were not ‘ordinarily resident’ and would therefore be required to pay for healthcare services provided by a National Health Service provider.
- [246]. The legality of that Guidance was successfully challenged in 2008 in *R(A) v Health Secretary and West Middlesex University Hospital NHS Trust*.³²⁵ The High Court held that Guidance was unlawful insofar as it stated that a person

³²⁰ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community.

³²¹ These are listed at Schedule 2, UK/ National Health Service (Charges to Overseas Visitors) Regulations 1989 SI No. 306. (01.04.1989).

³²² See, in England and Wales, UK/National Health Service Act 2006 c.41 (08.11.2006), s. 175 and the UK/ National Health Service (Charges to Overseas Visitors) Regulations 1989 SI 1989/306 (01.04.1989). SI 1989/306 as amended, available at: http://www.opsi.gov.uk/si/si1989/Uksi_19890306_en_1.htm (14.07.2008); in Scotland UK/ National Health Service (Scotland) Act 1978 c. 29(20.07.1978), s.98 and The NHS (Charges to Overseas Visitors) (Scotland) Regulations 1989 SI 1989/364 (05.04.1989), as amended, available at: http://www.opsi.gov.uk/si/si1989/Uksi_19890364_en_1.htm (14.07.2008). There are presently no charging arrangements in Northern Ireland.

³²³ See UK/ National Health Service (Charges to Overseas Visitors) Regulations 1989 SI 1989/306, para. 4; UK/ Immigration Act 1971 c.77, schedule 2, para.21 and *Szoma v the Secretary of State for the Department of Work and Pensions* [2006] 1AC 564 (House of Lords).

³²⁴ Department of Health (2004) *Guidance on implementing the overseas visitors hospital charging regulations*, available at: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4080313 (16.07.2008).

³²⁵ *R(A) v Health Secretary and West Middlesex University Hospital NHS Trust* [2008] EWHC 855 (Admin).

whose application for asylum had been rejected could never been ‘ordinarily resident’ in the UK. An application to the Court of Appeal by the Government challenging that decision is currently pending, but in the meantime the Department of Health intends to issue further Guidance.³²⁶

- [247]. The pending appeal is relevant only to England. In Northern Ireland there is no provision to charge for treatment. The Welsh Assembly has recently announced that it intends to make regulations exempting failed asylum seekers from charges.³²⁷ In Scotland, guidance issued in 2008 advises healthcare providers that because a course of treatment commenced before an application for asylum has been rejected must be completed even if or when that application is rejected ‘For all practical purposes this is likely to mean that failed asylum seekers who have previously been resident in Scotland and remain in Scotland will remain in the care of the NHS in Scotland until arrangements for their return home can be made’.³²⁸
- [248]. New Guidance will provide that it will be a question of fact, to be determined by the service provider before offering treatment, whether or not a person who has had an application for asylum rejected, but has temporary leave to be in the UK pending the making of removal directions, is to be deemed to be ‘ordinarily resident’ in the UK. In the *Health Secretary and West Middlesex University Hospital NHS Trust* case the High Court adopted the approach of the House of Lords in the case of *Shah*,³²⁹ holding that ‘I can see no reason why a person lawfully in the United Kingdom... should not become ordinarily resident by dint of his voluntary wish to settle, coupled with residence for a significant period’.³³⁰
- [249]. The new Guidance will also make it clear that a person who has been lawfully in the UK for more than 12 months is entitled to free healthcare services whatever his or her immigration status.³³¹ It is also suggested by the Department of Health that it is less likely that a person who has been in the UK for less than 6 months will be deemed to be ordinarily resident, but it is emphasised that each case turns on its facts. There is no specific guidance as to what is meant by ‘a significant period’.

³²⁶ Department of Health (2008) *Letter of 1 May 2008 from the Department of Health to the Chief Executives of NHS Trusts*, available at http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_084479 (07.07.2008).

³²⁷ See <http://wales.gov.uk/publications/accessinfo/drnewhomepage/healthdrs/Healthdrs2008/amendoverseasvisitorchargesregs/?lang=en> (16.07.2008).

³²⁸ Scottish Government (2008) *Overseas Visitors – Shortened Guidance CEL 9 (2008)*, available at: <http://www.scotland.gov.uk/Resource/Doc/216038/0057750.pdf> (15.05.2008).

³²⁹ *Shah v Barnet London Borough Council* [1983] 2 AC 309 (House of Lords).

³³⁰ *Shah v Barnet London Borough Council* [1983] 2 AC 309 (House of Lords), para. 25.

³³¹ See UK/ National Health Service (Charges to Overseas Visitors) Regulations 1989 SI 1989/306 (01.04.1989). reg 4(1)(b).

- [250]. This decision in the *Health Secretary and West Middlesex University Hospital NHS Trust* case has implications for child trafficking victims who have been granted temporary leave to stay in the country pending the making of arrangements for their departure to the country of removal. Provided that it can be said that the child has been in the UK for a ‘significant period’ he or she will be deemed ‘ordinarily resident’ and so be able to access healthcare services on the same basis as British citizens.
- [251]. Regardless of the legal position, however, the provision of necessary healthcare services to child trafficking victims is an integral part of the overall policy to safeguard the welfare of trafficked children. The Guidance *Safeguarding children who may have been trafficked* published by HM Government in 2007 sees the provision of healthcare services as part of the integrated multi-agency response to child-trafficking, and refers all agencies including health service providers to Guidance produced by HM Government on inter-agency working published in 2006, which requires a ‘joined-up response’ to child trafficking.³³²
- [252]. The rules relating to healthcare for foreign nationals in England are currently being reviewed jointly by the UKBA and the Department of Health.³³³
- [253]. There is no data regarding the number of trafficked children who are provided with healthcare services in general or with psychosocial care and rehabilitation in particular.

E.10. Legal provisions ensuring access to education and vocational training [53].

- [254]. There are no legal provisions specifically ensuring the access of trafficked children to education or vocational training. Instead, the general law applies as it does to all children. In general terms every child of school age in the UK should attend school or otherwise have appropriate provision made for his or her education.
- [255]. There is a legal duty placed on Local Education Authorities (LEAs) in England, Wales and Scotland, and on Education Boards in Northern Ireland, to provide education for all children in their area.³³⁴ Guidance on the provision of good

³³² HM Government (2006) *Working Together to Safeguard Children: a guide to inter agency working to safeguard and promote the welfare of children*, para. 11.79.

³³³ Independent Asylum Commission (2008) *Safe Return: How to improve what happens when we refuse people sanctuary*, available at: <http://www.independentasylumcommission.org.uk/> (11.07.2008).

³³⁴ UK/Education Act 1996 c.56 (24.07.1996) (England and Wales), s.13-14, available at: http://www.opsi.gov.uk/Acts/acts1996/ukpga_19960056_en_1 (11.07.2008); UK/Education (Scotland) Act 1980 c.44 (01.08.1980), s.1, available at: http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1980/cukpga_19800044_en_1 (11.07.2008); UK/The Education and Libraries (Northern Ireland) Order 1986 (No. 594 (N.I.

quality education to children seeking asylum, was published in England in 2004.³³⁵ In Scotland, the duty placed on LEAs is to provide ‘adequate and efficient’ education and further education services and facilities.

- [256]. As mentioned above, government policy, most recently stated in Parliament on 11 June 2008 is that ‘Education is made available to all children of asylum seekers who are of compulsory school age’.³³⁶ The policy also extends to unaccompanied asylum seeking children, by virtue both of the relevant LEA or Education Board’s legal obligations to provide education to all children of school age and also by virtue of the legal obligations of local social services authorities who are accommodating children, whether under voluntary or compulsory powers imposed by child protection legislation.
- [257]. Further (post-16) and vocational training is available to a trafficked child on the same terms as it is available to a UK citizen. There are schemes in each jurisdiction to pay an allowance to certain children who undertake further or vocational training. This is known as the Educational Maintenance Allowance (EMA).
- [258]. In the Welsh scheme,³³⁷ which is typical of what also happens in England and Northern Ireland,³³⁸ a payment of currently up to £30 each week in which the education or training is attended, is available to children living in households with income of currently less than £30,810 who undertake full time education or vocational training and are either citizens of the EEA or who have been granted refugee status. The payment is also available to those with leave to remain in the UK if that person has been ordinarily resident in the UK for three years.³³⁹
- [259]. In the Scottish scheme, which is in all other ways very similar to that which operates elsewhere in the UK, the three year requirement was removed on 1 January 2008.³⁴⁰ The implication of the *Health Secretary and West Middlesex*

3)) (26.03.1986), art. 5-6, available at:

http://www.opsi.gov.uk/RevisedStatutes/Acts/nisi/1986/cnisi_19860594_en_1 (11.07.2008).

³³⁵ Department for Education and Science (2004) *Aiming High: Guidance on the Support of Asylum Seeking and Refugee Children*, available at: http://www.standards.dfes.gov.uk/ethnicminorities/links_and_publications/AH_Gdnc_AS_RF_G_Apr04/asylumguidance.pdf (14.07.2008).

³³⁶ See the statement made by Liam Byrne, Minister of State for Borders and Immigration at HM Treasury and the Home Office in the House of Commons, HC Hansard 11 Jun 2008: Column 334W, available at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmhansrd/cm080611/text/80611w0021.htm> (14.07.2008).

³³⁷ See UK/Education Maintenance Allowances (Wales) Regulations 2007 No.2311 (31.08.2007), available at: http://www.opsi.gov.uk/legislation/wales/wsi2007/plain/wsi_20072311_en (15.07.2008).

³³⁸ For information about all national schemes, see <http://ema.direct.gov.uk/> (15.07.2008).

³³⁹ See UK/Education Maintenance Allowances (Wales) Regulations 2007 No.2311 (31.08.2007), regs. 3, 4, 5 and Schedule 1.

³⁴⁰ UK/Education Maintenance Allowances (Scotland) Regulations 2007 No. 156(01.08.2007), reg. 2(1) and para. 6, schedule 1, available at: http://www.oqps.gov.uk/legislation/ssi/ssi2007/ssi_20070156_en_1 (14.07.2008); modifying the UK/Education Maintenance Allowances (Scotland) Regulations 2004 No. 273

University Hospital NHS Trust case is that such provision may also be available to those who have been refused leave to remain but in respect of whom a removal direction has not yet been made.

E.11. Legal provisions ensuring access to legal assistance [54].

- [260]. Although there are no specific legal provisions ensuring access to legal assistance for trafficked children solely by reason of them being trafficked children, a child seeking asylum is entitled to legal assistance in connection with his or her claim.³⁴¹
- [261]. The provision of information about and help with access to legal assistance for trafficked children is integrated into the obligations placed on all agencies and professionals working with children³⁴² and falls in particular within the remit of the Children's Panel of the Refugee Council (see para.145). Legal assistance may be applied for by the child personally or by a third party on behalf of the child.³⁴³
- [262]. Guidance published by UKBA notes that unaccompanied asylum seeking children are entitled to legal assistance with their application for asylum, and immigration officers dealing with asylum claims are required to notify the Refugee Council Children's Panel in instances where the child has no legal representative.³⁴⁴ Guidance issued by the Chief Adjudicator of the Asylum and Immigration Tribunals Service to adjudicators hearing appeals from decisions made by immigration officials requires that an unaccompanied child appearing before an asylum and immigration tribunal should be legally represented and the legal representative must attend the tribunal hearing (and the child must also be accompanied by an appropriate adult).³⁴⁵

(02.07.2004), available at :

<http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040273.htm> (14.07.2008).

³⁴¹ See

http://www.legalservices.gov.uk/civil/remuneration/immigration_asylum_graduated_fee_scheme.asp (14.07.2008).

³⁴² See HM Government (2007) *Safeguarding children* para 7.39 (England), and equivalent guidance for Wales (para.72) and Scotland (page 16).

³⁴³ See for example UK/ Civil Legal Aid (Scotland) Regulations 1996 No.2444 (07.10.1996), para.6, available at: http://www.opsi.gov.uk/si/si1996/Uksi_19962444_en_3.htm#mdiv5 (14.07.2008).

³⁴⁴ UK Border and Immigration Authority (2005) *Processing Asylum Applications from Children*.

³⁴⁵ See Chief Adjudicator of the Immigration Appellate Authority (2004) *Unaccompanied Children*, paras 3.1., 3.7., available at: <http://www.ait.gov.uk/Documents/CaseLaw/PracticeDirections/GuideNoteNo8.pdf> (08.07.2008).

- [263]. In England and Wales, section 4 of the *Access to Justice Act 1999* places the obligation for promoting the availability of legal services (other than in relation to criminal proceedings) to individuals, and for securing that individuals have access to services which effectively meet their needs, on the Legal Services Commission (LSC). In Northern Ireland, article 3(3)(a) of the *Access to Justice (Northern Ireland) Order 2003* places a similar responsibility on the Northern Ireland Legal Services Commission (NILSC). In Scotland, section 1 of the *Legal Aid (Scotland) Act 1986* places a similar responsibility on the Scottish Legal Aid Board (SLAB).
- [264]. Each of these bodies publishes detailed information about the legal services to be funded, and enters into contracts with providers of legal services including legal advice and legal representation in various contexts.
- [265]. The sum effect of the relevant provisions³⁴⁶ is that children who have been trafficked are eligible for funded legal assistance in relation to the following matters (i) advice and assistance on immigration, nationality, asylum, deportation and terms of entry to stay in the UK (Legal Help); (ii) preparation and advocacy for proceedings before the Asylum and Immigration Tribunal (AIT) (Controlled Legal Representation) and (iii) full representation for judicial review and onward appeals (under different arrangements).
- [266]. Funding is also available for (i) the Home Office Interview (when within scope); (ii) an oral Case Management Review Hearing (CMRH); (iii) a telephone CMRH; (iv) a substantive Asylum and Immigration Tribunal (AIT) hearing and (iv) adjourned hearings which are part-heard or re-listed.
- [267]. Contracts for the provision of legal services to unaccompanied children seeking asylum in England and Wales are only made by the LSC with specialist providers of such services.³⁴⁷ Lawyers providing these services must be approved for the work in question under the terms of the Immigration and Asylum Accreditation Scheme and must be registered with the Solicitors Regulatory Association as an approved provider.³⁴⁸ Reimbursement to legal

³⁴⁶ See, for example, England and Wales sections 13.1-13.5 of LSC (2007) *The Funding Code Part A: Criteria*, available at http://www.legalservices.gov.uk/civil/guidance/funding_code.asp (14.07.2008) and section 12.3.2 of the Legal Services Commission (2004) *General Civil Contract*, available at: http://www.legalservices.gov.uk/docs/civil_contracting/general_civil_contract_july04.pdf (14.07.2008).

³⁴⁷ Legal Services Commission (2007) *Legal Aid Reform: Final Immigration and Asylum Fee Schemes*, para. 2.64, available at: http://www.legalservices.gov.uk/docs/civil_contracting/Legal_Aid_Reform_Final_Immigration_and_asylum_fees.pdf (14.07.2008).

³⁴⁸ See UK/The Community Legal Service (Asylum and Immigration Appeals) Regulations 2005 No.966 (04.04.2005) and Legal Services Commission (2007) *Letter to Immigration and Asylum Practitioners 26 June 2007*, available at: http://www.legalservices.gov.uk/docs/immigration_docs/Letter_to_Suppliers_26th_June_2007.pdf (14.07.2008).

advisers is paid at an hourly rate rather than by way of fixed fee.³⁴⁹ This is designed to ensure that children receive all the legal help that they require.

[268]. There are no legal provisions which provide specifically for access by trafficked children to legal assistance for claiming compensation. However, compensation is available to trafficked children in certain circumstances. There circumstances and the forms of compensation available are discussed in paras. 348-350).

E.12. Special needs of children coming from different ethnic backgrounds and of children with disabilities [55].

[269]. Provision to take the special needs of children by reason of ethnic background or disability in legal contexts and in relation to legal procedures is made in the following ways:

- A court hearing any case relating to the upbringing of a child must treat the welfare of the particular child, including his or her ethnicity and any disability, as paramount.³⁵⁰
- A court official appointed by a court to safeguard and protect the welfare of a child will have to take the particular circumstances of the individual child into account.³⁵¹
- Local authority social services authorities who are providing accommodation for children are required to draw up a care plan which must protect and promote the welfare of the particular child.³⁵²
- Local authority social workers³⁵³ and immigration officers³⁵⁴ who interview children are required by guidance to, when necessary, use professional interpreters, who have been checked by the Criminal Records Bureau, in any case where English is not the child's preferred language.³⁵⁵ As a matter

³⁴⁹ See Legal Services Commission (2007) *Unified Contract, Civil Specification: Section 11 Immigration Category of Law Specific Provisions*, para. 11.2.j., available at: http://www.legalservices.gov.uk/docs/civil_contracting/070813_Civil_Specification_Section_11_ImmigrationSpecification.pdf (14.07.2008).

³⁵⁰ See para.64.

³⁵¹ See section on appointment of a legal guardian, paras.141-145.

³⁵² See paras.73-78.

³⁵³ HM Government (2007) *Safeguarding children*, para. 7.41.

³⁵⁴ UK Border and Immigration Authority (2005) *Processing Asylum Applications from Children* p.17.

³⁵⁵ HM Government (2007) *Safeguarding children* para. 7.31.

of good practice, where it is necessary to use an interpreter, that person should be present at the interview³⁵⁶

- *Better Outcomes: The Way Forward. Improving the Care of Unaccompanied asylum seeking Children 2008*³⁵⁷ gives guidance on care support arrangements for unaccompanied asylum seeking children.

E.13. Existence of EU 116 000 hotline [56].

- [270]. The UK hotline is expected to be fully operational by September 2008. *Missing People* is the UK member of Missing Children Europe. They will be the UK operator of the 116 000 service to report children missing.³⁵⁸

E.14. Existence of similar hotlines in the UK [57].

- [271]. Crimestoppers is a UK charity independent of the police and government. Crimestoppers have a free phone number (0800 555 111)³⁵⁹ that people can call with criminal information 24 hours a day, 7 days a week. The service is accessible in the UK and operates on an entirely anonymous basis where callers have the option not to give their name and number. Callers from abroad can also reach Crimestoppers on 0044 1883 731 336. Successful cases, some of which relate to human trafficking, can be found on their webpage.³⁶⁰ Crime Stoppers also works with the multi-agency project, Operation Pentameter 2, which was launched in October 2007 to protect victims of the sex trafficking industry.
- [272]. In October 2007, The Home Office, in partnership with the National Society for the Prevention of Cruelty to Children (NSPCC),³⁶¹ End Child Prostitution, Pornography and Trafficking (ECPAT UK), CEOP and Comic Relief,³⁶² launched a *National Child Trafficking Advice and Information Line (CTAIL)*. CTAIL is a new phone line service for anyone with concerns about human

³⁵⁶ See *R (B) v London Borough of Merton* [2003] at para. 52, discussed in the section on age assessment policies (paras.147 - 158).

³⁵⁷ Home Office/ Border and Immigration Agency (2008) *Better Outcomes: The Way Forward. Improving the care of unaccompanied asylum seeking children and trafficked children*.

³⁵⁸ See <http://www.missingpeople.org.uk/news-and-events/news/detail.asp?dsid=1369> (09.07.2008).

³⁵⁹ See <http://www.crimestoppers-uk.org/how-we-help/who-are-crimestoppers> (09.07.2008).

³⁶⁰ See <http://www.crimestoppers-uk.org/how-we-help/our-achievements/success-stories> (09.07.2008).

³⁶¹ See <http://www.nspcc.org.uk/> (09.07.2008).

³⁶² See <http://www.comicrelief.com/all-about-us/> (09.07.2008).

trafficking.³⁶³ A free phone number (0800 107 7057) is available and open from 9.30am-4.30pm. The phone line targets children's practitioners, police and immigration officers. The service which works collaboratively on a national and international basis, provides a range of services that include guidance, case consultancy to professionals and data gathering on trafficked children.

- [273]. In May 2008, the NSPCC launched a poster campaign targeting hospitals, ports and transport companies in the UK. 364 Posters have been sent to nearly 2000 airlines, airports, accident and emergency departments, and bus and coach services asking staff to keep a lookout for vulnerable children. The free phone number 0800 107 7057 is given as an emergency contact for any suspicions of trafficking.
- [274]. Though not directly linked to trafficking, Missing People supports missing people, young runaways, unidentified people and their families. There is a free phone service³⁶⁵ for all categories of children.
- [275]. The UK branch of the Salvation Army has a confidential 24 hour helpline that targets trafficking victims.³⁶⁶ The Salvation Army provides a range of services that range from welfare to assistance to emergency services and is involved with the Inter-Departmental Ministerial Group (IDMG) on trafficking.
- [276]. Child Line³⁶⁷ operates out of 11 counselling centres around the UK and offers help to vulnerable children and young teenagers. A 24 hour helpline (0800 1111) is available for their use.
- [277]. AFRUCA is currently researching the possibility of establishing a free Community Hotline for Child Victims of Trafficking. The hotline will target the African community who may know victims of trafficking and exploitation in the London area and may be reluctant to contact the authorities.³⁶⁸
- [278]. EU Justice Ministers have not been able to agree on a Child alert system (CRA).³⁶⁹ However, Police Forces in England and Wales will use a new CRA³⁷⁰ scheme, to contact the media at the earliest stage of suspected child abduction.

³⁶³ See

http://www.nspcc.org.uk/inform/resourcesforprofessionals/freshstart/ctail/ctail_wda51323.html (09.07.2008).

³⁶⁴ National Society for the Prevention of Cruelty to Children (NSPCC) press release, *Alert for 'Invisible' Children and Young People*, 5 May 2008.

³⁶⁵ See <http://www.missingpeople.org.uk/> (09.07.2008).

³⁶⁶ See http://www.salvationarmy.ie/uki/www_uki.nsf/vw-dynamic-index/29402C651FEEF6B802570C70053D6FA?Opendocument (08.07.2008).

³⁶⁷ See <http://www.childline.org.uk/Pages/default.aspx> (09.07.2008).

³⁶⁸ See http://www.afruca.org/work_trafficking.php (09.07.2008).

³⁶⁹ See 'EU unable to agree child alert system, boosts cooperation' *EU Business*, 08 July 2008, available at <http://www.eubusiness.com/news-eu/1215507722.06> (09.07.2008).

³⁷⁰ 'Missing child alert system starts' *BBC news*, 26 March 2006, available at <http://news.bbc.co.uk/1/hi/uk/4847750.stm> (09.07.2008).

CRA's will be sent out if the missing person is under 18 and believed to have been kidnapped, abducted or are in danger of serious harm.

F. Best interests determination and durable solutions, including social inclusion/return

F.1. Best Interest Determination [58].

- [279]. The best interest of the child is outlined in the *Every Child Matters* agenda where practitioners have to carry a thorough assessment of the child, basing provisions for children on the five outcomes³⁷¹ of the *Every Child Matters* agenda.
- [280]. Formal processes for identifying, safeguarding and promoting the welfare of the child in the form of durable solutions have been discussed in paras.61-78 above.

F.2. Availability of Asylum/subsidiary protection for child victims of trafficking [59].

- [281]. The process by which asylum, humanitarian protection or discretionary leave to remain is decided is explained in the section on asylum, humanitarian protection and discretionary leave to remain (paras.181-193).
- [282]. The National Register of Unaccompanied Children (NRUC)³⁷² is a partnership project involving the Home Office, the Department for Children, Schools and Families, London Councils, the London Asylum Seekers Consortium, the Association of Directors of Children's Services (ADCS) and local authorities. NRUC contains information on all unaccompanied asylum seeking children, missing and separated children supported by local authorities. It ensures that appropriate placements can be given to asylum seeking children. Local authorities provide care and support for unaccompanied children and access to NRUC is via Local Authority registrations to the system.

³⁷¹ HM Government (2004) *Every Child Matters: Change for Children*, p.9, available at: <http://www.everychildmatters.gov.uk/files/F9E3F941DC8D4580539EE4C743E9371D.pdf> (08.07.2008).

³⁷² See <http://www.nruc.gov.uk/index.html> (09.07.2008).

F.3. Evidence of respect for participation of the child in decision-making [60].

- [283]. The requirement that a child participates in, and is consulted on, decisions made by local authorities regarding that child has been discussed elsewhere in this Report,³⁷³ as has the obligation placed on courts to listen to children and in certain circumstances appoint a court official and a lawyer to represent the child in the proceedings in question.³⁷⁴
- [284]. Guidance issued to immigration officers, for example on the conduction of screening and other interviews with children who may have been trafficked, similarly requires that interview are a dialogue rather than an inquisition, with the views of the child being taken into account.³⁷⁵ As mentioned in the section on family tracing above (paras.229-233), the UK Border Agency (UKBA) will commence family tracing at an earlier point than would otherwise be the case at the instigation of the child.
- [285]. Translators are routinely available where the child prefers to speak in a language other than English. See also the consideration of special needs for children coming from different ethnic backgrounds and for children with disabilities (para.269).

F.4. Access to integration programmes including access to full health care, education and vocational training [61].

- [286]. *Every Child Matters: Change for children 2004*³⁷⁶ provides guidance on bringing about change to the needs of all children. The five outcomes,³⁷⁷ outlines information to statutory, voluntary and community agencies relating to access for children to health care and education. Failed asylum seekers in Wales are given free health care.³⁷⁸

³⁷³ See paras.73-78.

³⁷⁴ See section on detention by local social service authorities (paras.209-216) and detention in secure accommodation (paras.217-227).

³⁷⁵ UKBA (2008) *Victims of Trafficking*.

³⁷⁶ HM Government (2004) *Every Child Matters: Change for Children*.

³⁷⁷ HM Government (2004) *Every Child Matters: Change for Children*, p.9.

³⁷⁸ See 'Failed asylum seekers' free NHS', *BBC news*, 20 May 2008, available at: <http://news.bbc.co.uk/1/hi/wales/7409265.stm> (09.07.2008).

F.5. Establishment of specialised integration programmes for trafficked children [62].

[287]. See previous paragraph.

F.6. Special needs of children coming from ethnic backgrounds and of children with disabilities [63].

[288]. The Public Service Agreement 13 (PSA 13), *Improve children and young people's safety 2007*³⁷⁹ is a delivery strategy by the Government to improve the safety of children and young people. This strategy includes addressing issues of trafficked children through the *UK Action Plan*. Para 3.24 of PSA 13 refers to disabled children and the Governments' attempt to raise awareness of safeguarding disabled children.

[289]. The Government also recognises the need to provide coordinated services to disabled children with long term health conditions. *Aiming High for Disabled Children: Better Support for families 2007*³⁸⁰ and *Working Together to Safeguard Children 2006*³⁸¹ are both government guidance that recognise the needs of disabled children. Disabled children are viewed as the same as non-disabled children though attention is paid to higher risks of harm for disabled children. A dedicated website is also available for disabled children.³⁸² The guidance applies to all children in the UK, without making specific reference to trafficked children. The guidance does not specifically mention children from different ethnic backgrounds.

³⁷⁹ HM Government (2007) *PSA Delivery Agreement 13: Improve children and young people's safety*, available at http://www.hm-treasury.gov.uk/media/8/7/pbr_csr07_psa13.pdf (09.07.2008).

³⁸⁰ HM Treasury/ Department for Education and Skills (2007) *Aiming High for Disabled Children: Better Support for families 2007*, available at: <http://www.everychildmatters.gov.uk/files/64301A568B221580F3F449A098CB3CE9.pdf> (09.07.2008).

³⁸¹ HM Government (2006) *Working Together to Safeguard Children*, para.11.28-11.29, available at http://www.oxford.anglican.org/files/docs/Working_Together_2006_final.pdf (09.07.2008).

³⁸² See <http://www.edcm.org.uk/Page.asp> (09.07.2008).

G. Prosecution

G.1. Legal Provisions offering child-sensitive procedures in front of police, prosecutors and courts [64].

- [290]. There are no special legal provisions to offer child-sensitive procedures before police, prosecutors and courts that are designed solely for victims of child trafficking. However, there are legal provisions which are designed to protect vulnerable and/or intimidated witnesses in police stations, prosecutors' offices, and courts, and there are particular measures in place for child victims of sexual or violent or certain other crimes. All of these provisions are relevant to the protection available to victims of child trafficking.
- [291]. *Child trafficking victims as witnesses in police investigations and prosecution decisions.* There are no specific legal provisions guaranteeing child trafficking victims that child-sensitive procedures will be used by police officers who are investigating child trafficking offences, whether in police stations or elsewhere. However, in all parts of the UK, guidance is issued to police and prosecutors in relation to the identification and subsequent treatment of vulnerable witnesses.³⁸³ All child witnesses, defined as those under the age of 17,³⁸⁴ are treated as vulnerable witnesses. Guidance drafted by an expert group of police officers with experience of child trafficking work will shortly be published.³⁸⁵
- [292]. In each instance, this national guidance is concerned with the identification of particular vulnerabilities and barriers to effective communication between investigating officers and child witnesses. Topics covered in detail in the guidance include

³⁸³ See, for England and Wales, Home Office (2006) *Vulnerable witnesses: A police service guide*, available at <http://www.homeoffice.gov.uk/documents/police-guide-vlnrbl-witness.pdf> (09.08.2008) and Home Office (2006) *Achieving Best Evidence in Criminal Proceedings Guidance for Vulnerable or Intimidated Witnesses, including Children*, available at: <http://www.homeoffice.gov.uk/documents/achieving-best-evidence/guidance-witnesses.pdf?view=Binary> (09.07.2008); for Scotland, Scottish Executive (2003) *Guidance on interviewing child witnesses in Scotland*, available at <http://www.scotland.gov.uk/Resource/Doc/47176/0025087.pdf> (09.07.2008); for Northern Ireland, Northern Ireland Office (2006) *Achieving Best Evidence in Criminal Proceedings (Northern Ireland) Guidance for Vulnerable or Intimidated Witnesses, including Children* available at: http://www.nio.gov.uk/achieving_best_evidence_in_criminal_proceedings_ni_guidance_for_vulnerable_and_intimidated_witnesses.pdf (09.07.2008)

³⁸⁴ See for example, Home Office (2006) *Vulnerable witnesses: A police service guide*, para. 2.1.

³⁸⁵ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.33.

- The detection and response to possible trauma in the witness as a result of the offence against them or for other reasons;
- Relevant racial, ethnic, religious or cultural factors impacting on effective communication between the officer and the child, including English language skills;³⁸⁶
- Awareness that, for example, hostility or diffidence on the part of the witness might be the consequence of previous unhappy experiences with police officers or other state officers in their home country;
- Interview techniques and consideration of the impact of the place where any interview takes place on the witness.³⁸⁷

- [293]. Police officers should also be aware of the ‘special measures’ that may be used to protect child trafficking victims when giving evidence to a court (see below) and should discuss the situation with officers of the Crown Prosecution Service (in England and Wales) or the Crown Office and Procurator Fiscal (in Scotland) or the Public Prosecution Office (in Northern Ireland) at an early stage³⁸⁸ so that any special measures required to enable a witness to give evidence in court can be put in place.
- [294]. UK police services and the UKBA should be represented on Local Safeguarding Children Boards (LSCB) (or Child Protection Committees (CPC) in Scotland),³⁸⁹ and are required by government guidance to work effectively with other agencies to offer an integrated service to child trafficking victims and to safeguard and protect the welfare of the child.³⁹⁰
- [295]. Some police forces have specialist teams with expertise in child trafficking issues, but in every police force, except in Scotland, guidance requires that there is a named dedicated officer who is the single point of contact for outside agencies in relation to any issue relating to child trafficking.³⁹¹ In Scotland, a police officer has a legal duty under section 53(3) of the *Children (Scotland)*

³⁸⁶ There is a protocol agreed by a non-statutory collection of criminal justice, legal and victim support bodies for the provision of interpreters in the course of criminal investigations and prosecutions: see Trials Issues Group (2002) *Revised Agreement on the Arrangements for the Attendance of Interpreters in Investigations and Proceedings within the Criminal Justice System*, available at <http://www.cps.gov.uk/publications/agencies/index.html> (09.07.2008)

³⁸⁷ See for example Home Office (2006) *Vulnerable witnesses: A police service guide*, paras. 2.1., 2.2, 4.1, 4.2.

³⁸⁸ See for example Home Office (2006) *Vulnerable witnesses: A police service guide* para. 4.7.

³⁸⁹ See paras.61-62.

³⁹⁰ See HM Government (2007) *Safeguarding children*, in particular Chapter 5; and Scottish Executive (2008) *Safeguarding children who may have been trafficked in Scotland*, in particular Chapter 4.

³⁹¹ See HM Government (2007) *Safeguarding children*, para. 5.21.

Act 1995 to refer any case in which compulsory measure of protection might be required to the Principal Reporter.³⁹²

- [296]. The various prosecution services have also produced guidance for prosecutors dealing with cases involving children as victims and/or witnesses of crime.³⁹³ This guidance to prosecutors emphasises the need to treat child victims and witnesses of crime with sensitivity, and refers prosecutors to the special measures discussed in the next section of this Report, as it will usually fall to prosecutors to instigate an application for the use of those measures.³⁹⁴
- [297]. *Child witnesses in court. England, Wales and Northern Ireland.* It is contrary to government policy to coerce a child into testifying in court against a trafficker.³⁹⁵
- [298]. Section 16 *Youth Justice and Criminal Evidence Act 1999*³⁹⁶ provides that certain categories of witness³⁹⁷ are eligible for assistance in giving evidence, in the form of ‘special measures’, by reason of their vulnerability. All children under the age of 17 at the time of the hearing are covered by the section.³⁹⁸ The protection offered by the court will end on the child’s 17th birthday unless the child has already begun to give evidence in the proceedings, or if giving

³⁹² See section on the duty to investigate suspected cases of abuse, paras.68-72.

³⁹³ Director of Public Prosecutions (2004) *The Code for Crown Prosecutors*, chapter 8, available at: http://www.cps.gov.uk/victims_witnesses/code.html (England and Wales) (09.07.2008); Crown Office and Procurator Fiscal Service (2001) *Prosecution Code*, available at <http://www.copfs.gov.uk/Resource/Doc/13423/0000034.pdf> (09.07.2008) (Scotland); Public Prosecution Office (2004) *Code for Prosecutors*, chapter 6, available at <http://www.ppsni.gov.uk/site/default.asp?CATID=77> (Northern Ireland) (09.07.2008).

³⁹⁴ On this, see also Home Office/ Crown Prosecution Service and Association of Chief Police Officers (2001) *Early Special Measures Meetings Between the Police and the Crown Prosecution Service and Meetings Between the Crown Prosecution Service and Vulnerable or Intimidated Witnesses: Practice Guide*, available at: <http://www.homeoffice.gov.uk/documents/guidance-special-measures.pdf?view=Binary> (09.07.2008).

³⁹⁵ HM Government (2007) *Safeguarding children who may have been trafficked*, para. 7.42.

³⁹⁶ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), available at: http://www.opsi.gov.uk/Acts/acts1999/ukpga_19990023_en_1 (09/08/2008). This Act only applies, for these purposes, to England and Wales. The law in Northern Ireland is, however, the same in substance and is contained in the UK/ Criminal Evidence (Northern Ireland) Order 1999/2789, available at: http://www.opsi.gov.uk/si/si1999/uksi_19992789_en.pdf (09.07.2008). For the situation in Scotland, see paras.302-313.

³⁹⁷ A witness is defined to include all persons, including the victim of the alleged offence, but excluding the accused: UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s. 16(1), 17(1). However, a defendant aged under 18 or who would otherwise be eligible for special measures if not a defendant may give evidence by live-link where that would enable him or her to participate more effectively as a witness in the proceedings. See the revised section 33A of the 1999 Act, inserted by section 47 of the UK/ Police and Justice Act 2006 c.48 (08.11.2006), available at: http://www.opsi.gov.uk/acts/acts2006/ukpga_20060048_en_1 (08.07.2008).

³⁹⁸ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.16(1)(a).

evidence by way of recorded video, has made the video recording, by that time.³⁹⁹

- [299]. Decisions as to what protection will be made available are taken at a preliminary hearing, although there is no need for such a hearing if there is no dispute as to what special measures are appropriate.⁴⁰⁰ An application for a special measures order must be made, if the case is to be heard in the Crown Court, within 28 days of the committal of the defendant for trial; or if it is to be heard in the Youth Court, within 28 days of the time the defendant first appears before the court; or, if it is to be heard in a Magistrates' Court, within 14 days of the defendant indicating an intention to plead not guilty.⁴⁰¹
- [300]. Protection is also offered to all witnesses, of any age, the 'quality' of whose evidence is likely, in the view of the court, to be 'diminished'. The 'quality' of evidence is measured by reference to its likely completeness, coherence, and accuracy, and to the witness's ability to understand questions put and provide coherent answers.⁴⁰² There is no word modifying the requirement for that quality to be 'diminished': evidence does not have to be 'significantly' or 'seriously' diminished for example, and so the test for the court, which under section 16 is merely that it 'considers' it 'likely' that the evidence will be diminished, is not particularly hard to satisfy.
- [301]. However, the evidence of the witness in question, not being a child under the age of 17, must be diminished by reason of either physical disability or physical disorder, or mental disorder (as defined by the *Mental Health Act 1983*) or because that witness 'otherwise has a significant impairment of intelligence of social functioning'.⁴⁰³ Thus a child trafficking victim aged 17 or older will usually only be protected by section 16 if (i) he or she falls into one of these three categories or (ii) he is she is 'in need of special protection' because of the nature of the offence (see below).
- [302]. Section 17 of the same Act provides that certain categories of witness are eligible for assistance in the form of special measures by reason of fear or distress on the part of the witness. A witness who is the victim in proceedings

³⁹⁹ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.21(8), (9). Section 22 provides that, although a video recording made before the child's 17th birthday may be accepted as satisfactory evidence in chief, a person aged 17 or above will have to give any subsequent evidence in person, unless deemed 'in need of special protection' (as defined in section 21, see below), in which case any subsequent evidence may also be given by way of recorded video.

⁴⁰⁰ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.20(6) and UK/Criminal Procedure Rules 200 No. 384 (04.04.2005) para. 29.1(9), available at <http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=criminal+procedure+rules&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=1665573&PageNumber=1&SortAlpha=0> (08.07.2008).

⁴⁰¹ UK/Criminal Procedure Rules 200 No. 384 (04.04.2005) para. 29.1(9).

⁴⁰² UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.16(5).

⁴⁰³ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.16(1)(b) and 16(2).

relating to a sexual offence against him or her is automatically covered by this section, unless the witness informs the court that he or she does not wish to be.⁴⁰⁴ For all others, adult or child, again the test that the court must apply is whether it is ‘satisfied’ that the quality of that witness’s evidence is likely to be diminished. In considering whether a witness falls within this section the court must consider:⁴⁰⁵ (i) the nature and alleged circumstances of the offence; (ii) the age of the witness; (iii) if it appears relevant to the court, social, cultural and ethnic factors, religious and political opinions, and the domestic and employment circumstances of the witness; (iv) any behaviour towards the witness by the accused person, his or her family and associates, or any other person likely to be an accused or a witness;⁴⁰⁶ and (v) the views of the witness.

- [303]. The forms of assistance which a witness who comes within section 16 or section 17 is eligible to receive are listed in sections 23 to 28. These comprise: (i) screening the witness from the accused in court (section 23); (ii) the giving of evidence by live video link (section 24); (iii) the giving of evidence in private, although this does not allow the exclusion from court of the accused or his or her legal representative (section 25); (iv) the removal by legal personnel of wigs and gowns (section 26); (v) the giving of evidence in chief by recorded video (section 27) and (vi) the cross-examination or re-examination of that witness by recorded video (section 28).
- [304]. A person eligible for assistance by reason of section 16⁴⁰⁷ may also be assisted by way of (i) the examination of the witness through an intermediary (section 29) and (ii) the provision of aids to communication (section 30).
- [305]. Section 18(2) of the 1999 Act provides that special measures can only be implemented by a court if the court has been notified by the Secretary of State that provision has been made for their implementation in the area in which the court in question is located, but in 2008 in the case of *R v R(SA)*⁴⁰⁸ the Court of Appeal held that a special measures direction could be made by a court even if it not been notified of the availability of, in that case, video recording of evidence. Arrangements refers to both or either the technological capacity to use live-links or video recordings, and the availability of professionals with training and expertise in questioning children in relation to criminal proceedings.
- [306]. The question of eligibility for the use of special measures may be raised by a party to the case in question or by the judge.⁴⁰⁹ It is then for the judge to determine, through a consideration of all the circumstances of the case, with

⁴⁰⁴ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.17(4).

⁴⁰⁵ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.17(2), 17(3).

⁴⁰⁶ UK/ Criminal Justice and Police Act 2001 c.16 (11.05.2001), s. 39, available at: http://www.opsi.gov.uk/Acts/acts2001/ukpga_20010016_en_1 (08.07.2008) makes it a criminal offence to intimidate a person who is or may be a witness, whether in criminal or civil proceedings.

⁴⁰⁷ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.18(1).

⁴⁰⁸ *R v R(SA)* [2008] EWCA Crim 678; [2008] 2 Cr. App. R. 10.

⁴⁰⁹ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.19(1).

particular reference to the views of the witness in question, and the degree to which the implementation of any particular special measure might inhibit the ability of that evidence to be effectively tested,⁴¹⁰ which, if any, of the available special measures should be utilised in order to maximise the quality of that person's evidence.⁴¹¹ If the judge decides to order the use of special measures, his or her order is known as a 'special measures direction'. Any special measures direction made must specify the particulars of which measure, or measures, is to be used.⁴¹²

- [307]. The court has a general discretion to vary or discharge any order made either on the request of a party to the proceedings or on its own initiative,⁴¹³ and powers to suspend the use of specific special measures notwithstanding that a direction has been made authorising their use, if that would hinder the fair conduct of the proceedings.⁴¹⁴
- [308]. The 1999 Act contains further provision concerned with child witnesses. The starting presumption of the law is that a child witness eligible for the use of special measures under the terms of section 16 should be made subject to a special measures direction to the effect that the measures available in section 27 and 24 should be implemented.⁴¹⁵ This means that evidence in chief should be given by way of recorded video and any other evidence by way of a live link. Such a direction may not be given, however, unless the measures in question are available in the area in which the court is located.⁴¹⁶ Furthermore, a direction will not be issued if in the opinion of the judge to do so is not in the interests of justice,⁴¹⁷ or if its issuance would not be to maximise the quality of the evidence so far as practicable.⁴¹⁸
- [309]. A child witness will be deemed to be 'in need of special protection' under the terms of section 21, if the offence in question is a sexual offence, including offences of making or possessing child pornography, or involves an assault or threatened assault, kidnapping or false imprisonment of a child.⁴¹⁹ In such circumstances, a special measures direction should, in addition to requiring the measure contained in section 27 (see above), also require the use of the measure

⁴¹⁰ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.19(3).

⁴¹¹ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.19(2), 19(3).

⁴¹² UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.19(4).

⁴¹³ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.20(2).

⁴¹⁴ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), ss. 24(2)(3), 27(4)-(7) and 28(4)-(7).

⁴¹⁵ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.21(3).

⁴¹⁶ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.21(4)(a).

⁴¹⁷ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.21(4)(b) and 27(2).

⁴¹⁸ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.21(4)(c).

⁴¹⁹ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.21(1)(b) and 35(3).

Section 35(3) refers in turn to Part 1 of the Sexual Offences Act 2003 and Protection of Children Act 1978 (for which, see para.41-51), the Child Abduction Act 1984 and section 1 of the Children and Young Person's Act 1933, which contains offences of cruelty towards a child under the age of 16 and child neglect.

contained in section 28.⁴²⁰ This means that a direction that both evidence in chief and any subsequent evidence obtained by cross-examination or other subsequent examination of the witness *must* be obtained by way of recorded video *must* be made by the court. Again, however, such a direction may not be issued unless the measures in question are available in the area in which the court is located.⁴²¹

- [310]. Section 21(5) provides that the question of whether a special measure should not be implemented because it will not maximise the quality of the witness's evidence should not be explored by the judge, as would otherwise be the case, if a child witness is in need of special protection. This means that the policy of the Act is that special measures should be used in such a case even if they do not maximise the quality of that evidence, provided that the judge has determined (using the test in section 19(2)) that they are likely to improve the quality of that evidence.
- [311]. The apparent inflexibility of section 21(5) was challenged in the House of Lords in *R (D) v Camberwell Green Youth Court* in 2005,⁴²² on the basis that the prohibition placed on the court making an assessment, of the need for evidence to be given by means of video recording by reference to the particular circumstances of the case rendered section 21(5) incompatible with the right to a fair trial guaranteed by Article 6 of the *European Convention on Human Rights*, in particular Article 6(3)(d), which gives an accused person a right to confront his accusers.
- [312]. The House of Lords rejected this argument. The court held that although the operation of section 21(5), and of section 21 generally, gave no discretion to the court at the time of making the required special measures direction, section 20(2), as seen above, gives the court a power to vary or discharge any existing special measures direction if it appears to the court that it is in the interests of justice to do so.
- [313]. The court also pointed out that the making of a special measures direction did not prevent an accused person from cross-examining the witness. The trial judge could use the power in section 20(2) to require the witness to be present in court for cross-examination, or it could require that the witness respond to points put in cross-examination by way of a further video recording. Furthermore, the judge will be view the video recording before it is played in court, and has powers under section 27(2) of the 1999 Act to direct that a video recording or some part of it should not be admitted as evidence if he or she is of the view that to admit it would be contrary to the interests of justice. In

⁴²⁰ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.21(6).

⁴²¹ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.21(7)(a).

⁴²² *R (D) v Camberwell Green Youth Court* [2005] UKHL 4; [2005] 1 W.L.R. 393; [2005] 1 All E.R. 999; [2005] 2 Cr. App. R. 1., available at: <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050127/camb-1.htm> (03.07.2008).

summary, the court decided that there was sufficient flexibility in the system to satisfy the requirements of the *European Convention*.

- [314]. A special measures direction may also not be issued if the witness has informed the court that he or she does not want that special measure to be applied. The Act provides that all persons, of any age, are presumed competent to give evidence,⁴²³ and permits the consideration of medical evidence when the competency of a witness to give evidence is at issue.⁴²⁴ However the presumption of competence can be rebutted if it appears to the court that the witness cannot understand questions posed to him or her or give comprehensible answers to those questions.⁴²⁵ It is likely that the courts have regard to the test of capacity for children developed by the House of Lords in the case of *Gillick*.⁴²⁶ The thrust of this test is that a child has legal capacity to make a decision ‘when the child achieves a sufficient understanding and intelligence to understand fully what is proposed’.⁴²⁷
- [315]. All evidence obtained through the use of special measures is as valid as evidence obtained through oral testimony in court,⁴²⁸ although a Crown Court judge hearing a (serious) case on indictment (but not a Magistrates’ court hearing a (less serious) case) must warn the jury that the evidence was obtained through the use of special measures if he or she considers that such a warning is necessary so as to avoid prejudice to the accused person.⁴²⁹
- [316]. The 1999 Act contains other provisions which may offer protection to child trafficking victims who are not eligible for protection through the use of special measures. No person charged with a sexual offence may cross-examine a child witness⁴³⁰ under the age of 17 in person,⁴³¹ and no person charged with any other offence listed in section 35(3) other than a sexual offence may cross-examine a child witness under the age of 14 in person.⁴³² The criminal courts also have a general discretion to prohibit an accused person in any criminal proceedings from cross-examining a particular witness.⁴³³

⁴²³ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.53.

⁴²⁴ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.54(5).

⁴²⁵ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.53(3).

⁴²⁶ *Gillick v W. Norfolk and Wisbech AHA* [1986] AC 112.

⁴²⁷ Lord Scarman in *Gillick* [1986] AC 112, at para.186.

⁴²⁸ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.31.

⁴²⁹ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.32.

⁴³⁰ Which for these purposes only includes a child charged with an offence in those proceedings (UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.35(5).)

⁴³¹ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), ss. 35(1), 35(3)(a) and 35(4)(a).

⁴³² UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), ss. 35(1), 35(3)(b)-(d) and 35(4)(b).

⁴³³ UK/Youth Justice and Criminal Evidence Act 1999 c.23 (27.07.1999), s.36.

- [317]. *Scotland*. As in the rest of the UK, it is contrary to government policy to coerce a child into testifying in court against a trafficker.⁴³⁴
- [318]. In Scotland, the *Vulnerable Witnesses (Scotland) Act 2004*,⁴³⁵ which inserted new sections (sections 271-271M) into the *Criminal Procedure (Scotland) Act 2005*, has established a slightly different framework from that which operates in the rest of the UK.
- [319]. There is only one category of witness eligible for protection. Section 271 of the 1995 Act defines a ‘vulnerable witness’ as either a child under the age of 16 (not, as in the rest of the UK, 17) on the date that the proceedings commenced,⁴³⁶ or as a person, not being a child (but including young people aged 16 or 17), in respect of whom there is a ‘significant risk’ that the quality of his or her evidence will be diminished⁴³⁷ by reason of mental disorder (within the meaning of section 328 of the *Mental Health (Care and Treatment) (Scotland) Act 2003*) or by reason of ‘fear or distress in connection with giving evidence at the trial’.⁴³⁸ As such, in the Scottish legislative scheme, witnesses in fear of intimidation are treated as a subset of the category of vulnerable witnesses rather than, as in the rest of the UK, constituting a category distinct from vulnerable witnesses.
- [320]. The criteria for determining whether a witness aged 16 or older is vulnerable are contained in section 271(2) of the 1995 Act. The court must consider (i) the nature and alleged circumstances of the offence; (ii) the nature of the evidence the witness is likely to give; (iii) the age and maturity of the witness; (iv) if it appears relevant to the court, social, cultural and ethnic factors, religious and political opinions, sexual orientation, and the domestic and employment circumstances of the witness; (v) any behaviour towards the witness by the accused person, his or her family and associates, or any other person likely to be an accused or a witness and (vi) the views of the witness.
- [321]. The special measures that may be used in respect of a child witness, as a vulnerable witness, are listed in section 271H as follows: (i) taking of videorecorded evidence by a commissioner (section 271I); (ii) use of a live television link (section 271J); (iii) use of a screen (section 271K); (iv) use of a ‘supporter’, this being a person who may be present alongside the witness as he or she gives evidence in court (section 271L) and (v) giving evidence in chief in the form of a prior statement (section 271M).

⁴³⁴ Scottish Executive (2008) *Safeguarding children who may have been trafficked in Scotland*, p.36.

⁴³⁵ UK/ Vulnerable Witnesses (Scotland) Act 2004 asp.3 (14.04.2004), available at: http://www.opsi.gov.uk/legislation/scotland/acts2004/asp_20040003_en_1 (08.07.2008).

⁴³⁶ UK/ Criminal Procedure (Scotland) Act 2005 c.46 (08.11.1995), section 271(1)(a), available at: http://www.opsi.gov.uk/Acts/acts1995/ukpga_19950046_en_1 (08.07.2008).

⁴³⁷ As in the legislation which applies in the rest of the UK, there is no word modifying the requirement that the quality of evidence given be ‘diminished’.

⁴³⁸ UK/ Criminal Procedure (Scotland) Act 2005 c.46 (08.11.1995), s. 271(b).

- [322]. The measures in sections 271J, 271K and 271L are defined as ‘standard special measures’.⁴³⁹ Further measures may be added by statutory instrument.⁴⁴⁰
- [323]. A child witness is entitled to benefit from the deployment of one or more of these special measures.⁴⁴¹ The question of which measures should be used is initially for the party seeking their use. That party must apply to the court, with notice also given to the other parties to the pending case, for the permission to use a specified special measures or measures, usually no later than 14 days before the start of the trial.⁴⁴² That application must refer to the views of the child, if any.⁴⁴³
- [324]. If that application specifies a standard special measure, the court must make an order for the use of that measure or measures.⁴⁴⁴ If the application specifies a non-standard special measure, the court may order the use of that measure if it appears appropriate to do so for the purposes of taking the child’s evidence, and must do so within seven days of the making of the application.⁴⁴⁵ If no application for the use of a special measure has been made and it appears to the court that a child witness will be called, the court has powers to postpone the trial in order for a hearing to determine whether any special measure should be used, and should.⁴⁴⁶ The court should usually order the use of special measures considered appropriate (i) unless the child has expressed a wish to give evidence without the use of any special measure and the court decides it is appropriate that no special measure be used,⁴⁴⁷ or (ii) because the use of a special measure would create a significant risk or prejudice to a fair trial and that risk outweighs any risk of prejudice to the interests of the child.⁴⁴⁸
- [325]. A similar regime applies to vulnerable witnesses other than child witnesses, with the exception that the concept of ‘standard special measures’ has no application and the court has a discretion in all cases whether to make an order for the use of the special measure sought.⁴⁴⁹ This is the regime that applies to all those of 16 years of age and above.
- [326]. Further provision is made for child witnesses under the age of 12 in cases where the offence in question is a homicide offence, a sexual, violent, or child cruelty

⁴³⁹ UK/ Criminal Procedure (Scotland) Act 2005 c.46 (08.11.1995), s. 271A(14).

⁴⁴⁰ UK/ Criminal Procedure (Scotland) Act 2005 c.46 (08.11.1995), s. 271H(f): any new measure must be approved by a resolution of the Scottish Parliament: section 271(2).

⁴⁴¹ UK/Criminal Procedure (Scotland) Act 2005, s.271A(1).

⁴⁴² UK/Criminal Procedure (Scotland) Act 2005, s.271A(2).

⁴⁴³ UK/Criminal Procedure (Scotland) Act 2005, ss. 271A(3) and 271E(2)(b). Section 271E(3) provides that a child of 12 years of age is presumed old and mature enough to form a valid view.

⁴⁴⁴ UK/Criminal Procedure (Scotland) Act 2005, s.271A(5)(a).

⁴⁴⁵ UK/Criminal Procedure (Scotland) Act 2005, s.271A(5).

⁴⁴⁶ UK/Criminal Procedure (Scotland) Act 2005, s.271A(6)-(10).

⁴⁴⁷ UK/Criminal Procedure (Scotland) Act 2005, s.271A(10)(a).

⁴⁴⁸ UK/Criminal Procedure (Scotland) Act 2005, s.271A(10)(b).

⁴⁴⁹ UK/Criminal Procedure (Scotland) Act 2005, s.271C.

offence, abduction or kidnapping.⁴⁵⁰ In such circumstances the court may not make an order which requires the child to be either in court or in the building in which the court is situated unless (i) the child wishes to be present and his or her presence is appropriate, or (ii) the absence of the child would create a significant risk or prejudice to a fair trial and that risk outweighs any risk of prejudice to the interests of the child.

- [327]. In all cases the court retains a general discretion to review the arrangements, if any, regarding the use of special measures and may make, vary or revoke an order at any stage of proceedings,⁴⁵¹ although it may only revoke an order where (i) the witness wishes to give evidence without the use of the special measure or measures and that it is appropriate that he or she do so, or (ii) the continued use of the special measure create a significant risk or prejudice to a fair trial and that risk outweighs any risk of prejudice to the interests of the child.⁴⁵²
- [328]. As in the legislation that applies in the rest of the UK, the law of Scotland prohibits cross-examination of witnesses by the accused in person in certain circumstances. Section 6 of the *Vulnerable Witnesses (Scotland) Act 2004* inserts various further provisions into the *Criminal Procedure (Scotland) Act 2005*. An accused person may not conduct his or her own defence in person if (i) a witness under the age of 12 is to give evidence and the offence where the offence in question is a homicide offence, a sexual, violent, or child cruelty offence, abduction or kidnapping⁴⁵³ or (ii) a vulnerable witness of any age is to give evidence in respect of any offence and in the view of the court it is in the interests of that person to disallow the accused from conducting his own defence, unless to do so would give risk to a significant risk of prejudice to a fair trial and that risk significantly outweighs any risk of prejudice to the interests of the vulnerable witness if the order is not made.⁴⁵⁴
- [329]. *The legal framework for witness protection*. Part 2, Chapter 4 and Schedule 5 of the *Serious Organised Crime and Police Act 2005*⁴⁵⁵ provides the statutory basis for providing protection to witnesses before, during, and subsequent to criminal investigations and prosecutions in the UK.
- [330]. Section 82 of this Act gives a power to a ‘protection provider’ to ‘make such arrangements as he considers appropriate’ for the purposes of protecting a person of a description specified in Schedule 5 of the Act, and section 82(5) defines a ‘protection provider’ as the chief officer of any police force in

⁴⁵⁰ UK/Criminal Procedure (Scotland) Act 2005, s.271B.

⁴⁵¹ UK/Criminal Procedure (Scotland) Act 2005, s.271D.

⁴⁵² UK/Criminal Procedure (Scotland) Act 2005, s.271D(4).

⁴⁵³ UK/Criminal Procedure (Scotland) Act 2005, s.288E. This applies also to any pre-trial examination of the witness by the accused: see section 291(6),(7).

⁴⁵⁴ UK/Criminal Procedure (Scotland) Act 2005, s. 288F.

⁴⁵⁵ UK/Serious Organised Crime and Police Act 2005 c.15 (07.04.2005), available at: http://www.opsi.gov.uk/acts/acts2005/plain/ukpga_20050015_en#pt2-ch4-11g94 (09.07.2008).

England, Scotland, Northern Ireland or Wales, and other leading law enforcement officers in specialist agencies relating to serious organised crime, drug offences, and revenue and customs.

- [331]. Schedule 5 to the 2005 Act contains a long list of persons eligible for protection including criminal justice officers from all agencies, judges, lawyers and jurors, as well as any person who is, or has, or might, act as a witness or give evidence in criminal proceedings. However, it is also a requirement for eligibility for protection that the person in question is ordinarily resident in the UK.
- [332]. On the basis of the decision of the High Court in *R(A) v Health Secretary and West Middlesex University Hospital NHS Trust*,⁴⁵⁶ it would seem that any child trafficking victim who is in the UK, whether having been granted asylum, humanitarian protection or DL to remain in the UK, or who has been denied any or all of those applications but in respect of whom removal directions have yet to be made, will qualify for witness protection, provided that it can be said as, a question of fact and circumstance, that he or she has spent ‘a significant period’ of time in the UK.
- [333]. Two or more protection providers can act together to make joint protection arrangements;⁴⁵⁷ and responsibility for providing protection may be transferred from one provider to another.⁴⁵⁸ This allows a witness or other person in need of protection to be moved from one area of the UK to another as a means of securing protection. Moreover, a protection provider can call on another public authority to assist in making protection arrangements, and that public authority is under a duty to take reasonable steps to comply with such a request.⁴⁵⁹ This could be, for example, a local housing authority, which eases the difficulties in moving a witness out of the immediate area, by securing accommodation in the form of social or other housing for that witness elsewhere.
- [334]. Protection providers may also call on other public agencies to assist, for example, in the protection of the witness by helping to provide that witness with a new identity.
- [335]. The efficacy of the scheme is buttressed by the creation of criminal offences, of disclosing information relating to the making, variation or cancellation of any arrangement,⁴⁶⁰ and of disclosing information relating to the assumption of a new identity by a protected person.⁴⁶¹ Moreover, a person who lies to or misleads another person in order to protect a witness who has assumed a new

⁴⁵⁶ *R(A) v Health Secretary and West Middlesex University Hospital NHS Trust* [2008] EWHC 855 (Admin), discussed at Chapter E.6.1. above.

⁴⁵⁷ UK/Serious Organised Crime and Police Act 2005 c.15 (07.04.2005), s.83.

⁴⁵⁸ UK/Serious Organised Crime and Police Act 2005 c.15 (07.04.2005), s.84.

⁴⁵⁹ UK/Serious Organised Crime and Police Act 2005 c.15 (07.04.2005), s.85(2).

⁴⁶⁰ UK/Serious Organised Crime and Police Act 2005 c.15 (07.04.2005), s.86.

⁴⁶¹ UK/Serious Organised Crime and Police Act 2005 c.15 (07.04.2005), s.88.

identity is protected from any criminal or civil liability for the consequences of that false or misleading statement.⁴⁶²

G.2. Number of convictions for child trafficking offences [65].

- [336]. This data does not appear to be available. Criminal statistics only provide a breakdown of number of final convictions for a limited range of offences. Immigration offences appear in the ‘other offences’ category⁴⁶³ and immigration offences are not further broken down into sub-categories.
- [337]. The revised *UK Action Plan on Tackling Human Trafficking* does reveal that there were 84 convictions for trafficking for sexual exploitation under the Sexual Offences Act 2003⁴⁶⁴ between May 2004 and May 2008.⁴⁶⁵ However, this Act applies to adults as well as children and it is not clear how many of these 84 convictions related to child trafficking. Moreover, as the revised Action Plan notes, ‘traffickers may not necessarily be charged with specific trafficking offences’.⁴⁶⁶
- [338]. As mentioned elsewhere in this Report (see paras. 91-96), steps have been taken to begin to collate systematic data on trafficking. The collection of data began in April 2008.

G.3. Legal Provisions granting access to justice for trafficked children [66].

- [339]. There are no legal provisions which provide access to justice specifically for trafficked children. However there are a number of legal mechanisms by which compensation may be provided for them.
- [340]. *Criminal Injuries Compensation*. Victims of violent crime in Scotland, England, Wales⁴⁶⁷ and Northern Ireland⁴⁶⁸ may make an application for compensation to

⁴⁶² UK/Serious Organised Crime and Police Act 2005 c.15 (07.04.2005), s.90.

⁴⁶³ See <http://www.crimestatistics.org.uk/output/Page79.asp> (07.07.2008).

⁴⁶⁴ See para.67 above. The 2003 Act applies only in England, Wales and Northern Ireland. Thus, these statistics do not include convictions in Scotland.

⁴⁶⁵ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.16.

⁴⁶⁶ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.16.

⁴⁶⁷ UK/Criminal Injuries Compensation Act 1995 c.53 (08.11.1995), s.13(2), available at: http://www.opsi.gov.uk/ACTS/acts1995/ukpga_19950053_en_1 (07.07.2008).

⁴⁶⁸ Northern Ireland has its own scheme, the details of which can be found in the UK/ Criminal Injuries Compensation (Northern Ireland) Order 2002 No. 796 (NI.1) (26.03.2002), available at: <http://www.opsi.gov.uk/si/si2002/20020796.htm> (09.07.2008). It is

the Criminal Injuries Compensation Authority (CICA). It is possible to apply on line.⁴⁶⁹ In 2007 a package of ‘enhanced services’ for trafficking victims was piloted, which included assistance with applying to the CICA for compensation.⁴⁷⁰ There is no requirement that the perpetrator be convicted in order for the victim to be compensated.⁴⁷¹ The CICA is sponsored by the Ministry of Justice and pays compensation according to a tariff those who suffer criminal injuries. To be eligible for compensation under this scheme the applicant

- Must have been in England, Scotland or Wales (in the scheme which applies to those countries) or Northern Ireland (in the Northern Ireland Scheme) at the time of the incident;
- Must have reported the incident to the police without delay⁴⁷² (unless there is a good reason for the delay);
- Must co-operate with law enforcement agencies (para 13);
- Must be of such character that compensation is appropriate (para 13);
- Must apply for compensation within two years of the incident (para 18);
- In addition, if the applicant is below the age of 18 years, the claims officer must be satisfied that ‘that it would not be against his interest for an award to be made’ (para 16).

[341]. The scheme compensates for a ‘criminal injury’, which is defined as a personal injury sustained and directly attributable to a crime of violence.⁴⁷³ A ‘personal injury’ is defined in turn as ‘physical injury (including fatal injury), mental injury (that is temporary mental anxiety, medically verified, or a disabling

in essence similar to the scheme that operates in the rest of the UK, although tariff levels are generally higher in the Northern Ireland scheme. In 2008 the Northern Ireland Office consulted on the possibility of introducing a new scheme in the province in 2009: see Northern Ireland Office (2008) *Proposed Northern Ireland Criminal Injuries Compensation Scheme 2009*, available at http://www.nio.gov.uk/consultation_document_-_proposed_northern_ireland_criminal_injuries_compensation_scheme.pdf (07.07.2008)

⁴⁶⁹ See

https://www.cica.gov.uk/portal/page?_pageid=33.1&_dad=portal&_schema=PORTAL (07.07.2008).

⁴⁷⁰ Home Office and Scottish Executive (2007) *UK Action Plan*, p. 54.

⁴⁷¹ Home Office (2001) *Criminal Injuries Compensation Scheme 2001 TSI* (Issue Number One 4/01), para. 10, available at: <http://www.govanlc.com/2001cics.pdf> (15.07.2008).

⁴⁷² Para 13. The Criminal Injuries Compensation Authority interprets this to mean 48 hours: see https://www.cica.gov.uk/portal/page?_pageid=33.278559&_dad=portal&_schema=PORTAL (07.07.2008).

⁴⁷³ Home Office (2001) *Criminal Injuries Compensation Scheme 2001 TSI* (Issue Number One 4/01), para. 8.

mental illness confirmed by psychiatric diagnosis) and disease (that is a medically recognised illness or condition).⁴⁷⁴

- [342]. No compensation is payable for a mental injury unless that is a consequence of physical injury, nor in respect of a sexual offence, unless the applicant for compensation was put in reasonable fear of immediate physical harm to his own person or, in the case of a sexual offence only, was a non-consenting victim of that offence.⁴⁷⁵
- [343]. Claims are handled by claims officers and decisions of officers, about eligibility and the amount of any award of compensation, are open to reconsideration,⁴⁷⁶ review by a senior claims handler,⁴⁷⁷ and appeal against the outcome of that review to the Criminal Injuries Compensation Appeal Panel.⁴⁷⁸ The decisions of officers and of the appeal panel are subject to judicial review.
- [344]. It can be seen that this scheme has a limited remit and does not provide compensation to a trafficked child to compensate for that trafficking, although it may compensate for criminal injuries suffered by that trafficking victim at the hands of his or her traffickers within the UK.
- [345]. *Compensation Order made by a court on conviction for a criminal offence.* On the conviction of a person for a criminal offence, including a child trafficking offence, the convicting court has powers to order the payment of compensation to the victim or victims of that offence for any personal injury, loss or damage caused by the offence. In England and Wales these powers are found in section 130 *Powers of Criminal Courts Sentencing Act 2000*,⁴⁷⁹ Compensation can be ordered as well as or instead of passing another sentence on the convicted person, except for some serious violent offences, when compensation is only payable in addition to the passing of a conventional sentence.⁴⁸⁰ The amount of compensation payable is in the discretion of the court.⁴⁸¹
- [346]. In Scotland, section 249 *Criminal Procedure (Scotland) Act 1995* provides that compensation is payable by an offender on conviction to a victim of the offence to make amends for personal injury, loss or damage whether caused directly, or

⁴⁷⁴ Home Office (2001) *Criminal Injuries Compensation Scheme 2001 TSI* (Issue Number One 4/01), para. 9.

⁴⁷⁵ Home Office (2001) *Criminal Injuries Compensation Scheme 2001 TSI* (Issue Number One 4/01), paras. 9(a), 9(c).

⁴⁷⁶ Home Office (2001) *Criminal Injuries Compensation Scheme 2001 TSI* (Issue Number One 4/01), para. 53.

⁴⁷⁷ Home Office (2001) *Criminal Injuries Compensation Scheme 2001 TSI* (Issue Number One 4/01), paras. 58-60.

⁴⁷⁸ Home Office (2001) *Criminal Injuries Compensation Scheme 2001 TSI* (Issue Number One 4/01), paras. 61-71.

⁴⁷⁹ UK/Powers of Criminal Courts Sentencing Act 2000 c.6 (25.05.2000), available at: http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000006_en_1 (10.07.2008).

⁴⁸⁰ UK/Powers of Criminal Courts Sentencing Act 2000 c.6 (25.05.2000), s.130(2).

⁴⁸¹ UK/Powers of Criminal Courts Sentencing Act 2000 c.6 (25.05.2000), s.130(4). Compensation is not payable until any appeal process has been exhausted: section 132.

indirectly or for alarm or distress caused directly. As in England and Wales, compensation can be ordered as well as or instead of passing another sentence on the convicted person,⁴⁸² although in Scotland, a compensation order may not be made together with a probation order or an order for absolute discharge.⁴⁸³ The amount of compensation payable is in the discretion of the court,⁴⁸⁴ and there is no limit on the amount which the senior criminal courts may impose.⁴⁸⁵

- [347]. The law in Northern Ireland is to be found in Articles 14 to 17 of the *Criminal Justice (Northern Ireland) Order 1994*.⁴⁸⁶ It is substantively similar to that which applies in Scotland.
- [348]. *Compensation through Civil Action*. The trafficking of children usually involves the possible commission of various torts (civil wrongs) against the child by the trafficker for which the child may sue in a civil court. Examples include trespass to the person, unlawful imprisonment and deceit (deceit is a false and dishonest statement that is relied on to his or her detriment by some other person). If successful the applicant will be entitled to damages to compensate for any loss suffered as a result of the tort. If he or she has already been compensated by a criminal court following the conviction of a person for the criminal offence which also constitutes the tort, any award of damages (compensation) in a civil court will be reduced by that extent.⁴⁸⁷ Financial assistance for legal representation in court will be available but only if there is a very good chance of success and likely damages will exceed likely costs, or a good chance and damages will equal costs, or there is a moderate prospect of success and damages are likely to exceed costs. If there is a significant wider public interest in the outcome of the action the likely benefits to others apart from the applicant may also be taken into account. This may be applicable in child trafficking cases.⁴⁸⁸
- [349]. It is to be noted that in Scotland, the *Vulnerable Witnesses (Scotland) Act 2004* provides for the protection of vulnerable witnesses in civil proceedings in a scheme similar to that which operates in criminal proceedings, discussed above.⁴⁸⁹

⁴⁸² UK/Criminal Procedure (Scotland) Act 1995 c.46 (08.11.1995), s. 249(1).

⁴⁸³ UK/Criminal Procedure (Scotland) Act 1995 c.46 (08.11.1995), s.249(2).

⁴⁸⁴ UK/Criminal Procedure (Scotland) Act 1995 c.46 (08.11.1995), s.249(5). Compensation is not payable until any appeal process has been exhausted: section 250(4).

⁴⁸⁵ UK/Criminal Procedure (Scotland) Act 1995 c.46 (08.11.1995), s.249(7).

⁴⁸⁶ UK/ Criminal Justice (Northern Ireland) Order 1994 No. 2795 (N.I. 15) (02.11.1994), available at: http://www.opsi.gov.uk/SI/si1994/Uksi_19942795_en_1.htm#tcon (07.07.2008).

⁴⁸⁷ UK/ Powers of Criminal Courts Sentencing Act 2000 c.6 (25.05.2000) (England and Wales), s.134; UK/Criminal Procedure (Scotland) Act 1995 c.46 (08.11.1995), s.253; UK/ Criminal Justice (Northern Ireland) Order 1994 No. 2795 (N.I. 15) (02.11.1994), art.17.

⁴⁸⁸ See Legal Services Commission (2007) *The Funding Code Part A: Criteria*, para 5.7.

⁴⁸⁹ UK/ Vulnerable Witnesses (Scotland) Act 2004 asp.3 (14.04.2004), part 2.

G.4. Amounts of compensation paid to trafficked children [67].

- [350]. Data on the total amount, average amount and range of amounts of compensation paid to trafficked children, per year (2000-2007) does not appear to be available.

H. Miscellaneous

H.1. Current issues in the debate relating to child trafficking [68].

- [351]. UK Parliament debates on Human Trafficking.⁴⁹⁰
- [352]. In July 2008, a discussion on Human Trafficking took place in Westminster.⁴⁹¹ It was acknowledged that human trafficking three years ago was not discussed within government at the same level as it is today. The work of the UK Human Trafficking Centre (UKHTC) was acknowledged, in particular Operation Pentameter 2. Also discussed was the plight of missing children, with the example of Wales' 35 missing children and a further 400 children missing from local authority care in the UK. It was recognised that comprehensive statistics for trafficked victims are currently not available. It is anticipated that parliamentary groups would be set up to work with the rest of Europe and support the many initiatives on trafficking.
- [353]. January 2008:⁴⁹² UK Minister for Women and Equality was asked to provide an estimate for the number of trafficked people who arrived in the UK in the last five years, broken down by (a) country of origin and (b) sex; and how many of these were (i) British and (ii) foreign nationals. No estimates available though data from Poppy Project suggest 17-25 year olds from Lithuania, Albania, Nigeria and Thailand had the highest number of victim referrals.

⁴⁹⁰ See <http://www.publications.parliament.uk/cgi-bin/search.pl> (09.07.2008).

⁴⁹¹ See <http://www.theyworkforyou.com/whall/?id=2008-07-08a.369.0> (09.07.2008).

⁴⁹² *Hansard* (House of Commons), 14.01.2008, column 817W, available at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmhansrd/cm080114/text/80114w0001.htm> (09.07.2008).

- [354]. July 2008:⁴⁹³ Minister for Justice, Equality and Law Reform was asked what the budget allocated to prevent human trafficking with specific reference to child trafficking was. Funding for the human trafficking activities does not require an allocated budget and is paid for as part of the general expenditure from the Department of Justice, Equality and Law Reform and Garda Votes. See also unrevised report on trafficking.⁴⁹⁴

H.2. Additional Information [69].

- [355]. An award of £62,000 from the Criminal Injuries Compensation Authority (CICA) was made to a Romanian national who was forced into prostitution.⁴⁹⁵
- [356]. In July 2008, Operation Pentameter 2⁴⁹⁶ which focussed on rescuing and protecting victims trafficked to the UK for the purpose of sexual exploitation led to 167 being identified and 528 criminals arrested.
- [357]. In April 2008, the National Police Improvement Agency (NPIA)⁴⁹⁷ became responsible for missing persons in the UK. NPIA works with police and other law enforcement agencies to improve services provided to missing persons. No statistics are available on victims of child trafficking who leave shelters.
- [358]. Though not directly linked to trafficking, the Missing People charity supports missing people, young runaways, unidentified people and their families.⁴⁹⁸ Missing People and the National Society for the Prevention of Cruelty to Children (NSPCC) work together to locate missing children/runaways through various measures that include a helpline, media publicity and a register of missing people. No statistics are available for trafficked children.
- [359]. In Scotland, the equivalent to the *Every Child Matters* agenda is *Getting it right for every child 2006*.⁴⁹⁹
- [360]. *Sentencing policy for trafficking offences*. The UK courts have taken a robust attitude towards the sentencing of persons convicted of child trafficking

⁴⁹³ See Answers to Written Parliamentary Questions, *What is the budget allocated to prevent human trafficking with specific reference to child trafficking*, available at: http://www.jcfj.ie/pqs/index.php?option=com_sobi2&sobi2Task=sobi2Details&catid=141&sobi2Id=1266&Itemid=27 (09.07.2008).

⁴⁹⁴ See Official Report (Unrevised) on Trafficking, available at: http://www.jcfj.ie/pqs/index.php?option=com_sobi2&catid=141&Itemid=27 (09.07.2008).

⁴⁹⁵ Home Office and Scottish Executive (2007) *UK Action Plan*, p.28.

⁴⁹⁶ Home Office press release *Major police probe into trafficking leads to 528 arrests*, 02 July 2008, available at: <http://press.homeoffice.gov.uk/press-releases/police-probe-trafficking> (09.07.2008).

⁴⁹⁷ See <http://www.npia.police.uk/en/10200.htm> (09.07.2008).

⁴⁹⁸ See <http://www.missingpeople.org.uk/> (09.07.2008).

⁴⁹⁹ Scottish Executive (2006) *Getting it right for every child. Implementation Plan*, available at: <http://www.scotland.gov.uk/Resource/Doc/131460/0031397.pdf> (09.07.2008).

offences. Sentences increased or upheld by the Court of Appeal, which has responsibility for giving the lead on sentencing policy for the lower courts include:

- *Attorney-General's Reference No. 6 of 2004*⁵⁰⁰ (23 years imprisonment for trafficking seven young women, five of them children, for the purposes of prostitution).
- *R v. Maka (Shaban)*⁵⁰¹ (18 years imprisonment for trafficking and re-trafficking one 15 year old girl for prostitution).
- *R v Ramaj and Atesogullari*⁵⁰² (five years imprisonment for one offence of trafficking an 18 year old woman for the purposes of prostitution, defendant young and of previous good character).
- *Attorney-General's Reference Nos. 129 and 132 of 2006*⁵⁰³ (five years imprisonment for trafficking adult women to work as prostitutes, with the consent of the women concerned).
- *R v Roci*⁵⁰⁴ (nine years imprisonment for trafficking adult women to work as prostitutes, with the consent of the women involved).
- *R v Atilla Makai*⁵⁰⁵ (30 months imprisonment for marginal involvement in trafficking, in the form of meeting women at a UK airport and driving them to brothels to work as prostitutes, with the consent of the women involved).

⁵⁰⁰ *Attorney-General's Reference No. 6 of 2004* [2004] EWCA Crim 1275; [2005] 1 Cr. App. R. (S.) 19.

⁵⁰¹ *R v. Maka (Shaban)* [2005] EWCA Crim 3365; [2006] 2 Cr. App. R. (S.) 14.

⁵⁰² *R v Ramaj and Atesogullari* [2006] 2 Cr. App. R. (S.) 83.

⁵⁰³ *Attorney-General's Reference Nos. 129 and 132 of 2006* [2007] EWCA Crim 762.

⁵⁰⁴ *R v Roci* [2006] 2 Cr. App. R. (S.)15.

⁵⁰⁵ *R v Atilla Makai* [2008] 1 Cr. App. R. (S.)73, [2007] EWCA Crim 1652.

I. Good Practice [70].

- [361]. **NRUC** - National Register of Unaccompanied Children (See para. **[282]**) which ensures continuity of care for unaccompanied asylum seeking children.
- [362]. **Operation Paladin**⁵⁰⁶ - The Terms of reference for a best practice model for Paladin is in the process of being agreed by the Association of Chief Police Officers (ACPO).⁵⁰⁷ This will be replicated at all ports of entry in the UK in the near future, to address the needs of migrating children.
- [363]. **CTAIL** – the Child Trafficking Advice and Information Line is a unique phone in service that works for trafficking victims and professionals on a national and international basis.
- [364]. **ECPAT E-Learning Tool** – A high-impact piece of learning, using a mini-website that provides models of good practice that could be applied successfully in the field by practitioners to reduce the risks faced by trafficked children.
- [365]. **AFRUCA training on African Children and their families** - AFRUCA is committed to facilitating and developing the learning and skills of those who work with African children and their families and those who provide services to meet their needs.⁵⁰⁸
- [366]. **UK Human Trafficking Centre (UKHTC) sub groups** in Research, Prevention, Victim Care, Learning and Development, Operations and Intelligence as well as the UKHTC Overview and Advisory Group, the child protection victim care group of the UKHTC and the Independent Advisory Group to the UKHTC.
- [367]. **Local Safeguarding Children Boards’ (LSCB) subgroups** – Active subgroups in each local authority addressing the needs of trafficked children
- [368]. **Child protection system** – addresses the needs of all children and legally supported by the Children’s Act.
- [369]. **Every Child Matters** – A Government approach that places a responsibilities on all practitioners ensuring that every child has the support it needs to ‘Be healthy, Stay safe, Enjoy and achieve, Make a positive contribution and Achieve economic well-being’.

⁵⁰⁶ See <http://www.mpa.gov.uk/committees/ppr/2007/070712/07.htm> (09.07.2008).

⁵⁰⁷ Information provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on 17.07.08.

⁵⁰⁸ See Africans Unite Against Child Abuse (AFRUCA) (2008) *Training Programme*, available at: <http://www.afruca.org/documents/afruca%202008-2009%20training%20courses.pdf> (09.07.2008).

- [370]. **Protocols**⁵⁰⁹ - Model protocol for action between children's services and the police concerning under 18s who are identified as part of Operation Pentameter 2.

⁵⁰⁹ Copies provided by David Macdonald (Vulnerable Persons Coordinator, Home Office) on 17.07.08, on file with the authors.

Annex 1 - Tables and Statistics

	2000	2001	2002	2003	2004	2005	2006	2007
Number of children being granted temporary stay on grounds of trafficking								
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)								
Number of trafficked children receiving education/training, in particular secondary education and vocational training								
Number of trafficked children receiving legal assistance (e.g. for claiming compensation)								
Number of final convictions based on child trafficking cases, per year								

Total of amount of compensation paid to trafficked children, per year								
Average of amounts of compensation paid to trafficked children, per year								
Range of amount of compensation paid to trafficked children, per year								

No data fitting the above categories are available. However, estimates suggest that in 2003 there were up to 4,000 women in the UK that had been trafficked for sexual exploitation. There is no definitive data available as to the scale of trafficking into and within the UK.⁵¹⁰

Please see Annex 2 for a breakdown of available recorded statistics provided by various organisations.

⁵¹⁰ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.75.

Annex 2 - Tables and Statistics

	RESEARCH REPORT	2003	2004	2006	2007	2008
UNICEF(UK)	Stop the traffic ⁵¹¹	250 trafficked women and children				
New Scotland Yard	Operation PALADIN child ⁵¹²		28 untraced children (14 subsequently found)			
ECPAT UK	Cause for concern ⁵¹³	35 cases of child trafficking				
UKHTC	Operation Pentameter ⁵¹⁴			88 trafficked victims 232 arrests 134 charged		
ECPAT UK	Missing Out ⁵¹⁵	80 cases of known or suspected child victims of trafficking (48 missing)				
CEOP	A Scoping Project on Child				330 cases of possible	

⁵¹¹ UNICEF UK (2003) *Stop the traffic*, p.17, available at <http://www.unitarmy.org/mm/File/8%20UNICEF%20UK%20Child%20Trafficking.pdf> (09.07.2008).

⁵¹² Metropolitan Police and Reflex (2004) *Paladin Child. The Safeguarding children strand of MAXIM funded by Reflex*, p.25, available at: <http://www.mpa.gov.uk/downloads/committees/ppr/ppr-040712-14-appendix01.pdf> (09.07.2008).

⁵¹³ ECPAT UK (2004) *Cause for concern? London social services and child trafficking*, p.28, available at <http://www.antislavery.org/homepage/antislavery/Cause%20for%20Concern.pdf> (09.07.2008).

⁵¹⁴ See Home Office Press Release, Major Police probe into trafficking leads to 528 arrests, 2 July 2008, available at: <http://press.homeoffice.gov.uk/press-releases/police-probe-trafficking> (09.07.2008).

⁵¹⁵ ECPAT UK (2007) *Missing Out - A Study of Child Trafficking in the North-West, North-East and West Midlands*, p.5, available at http://www.ecpat.org.uk/downloads/ECPAT_UK_Missing_Out_2007.pdf (09.07.2008).

	Trafficking in the UK ⁵¹⁶				child trafficking	
UKHTC	UK Action Plan on Trafficking (Update) ⁵¹⁷					84 convictions for trafficking

⁵¹⁶ Child Exploitation and Online Protection (CEOP) Centre (2007) *A Scoping Project on Child Trafficking in the UK*, p.6.

⁵¹⁷ Home Office and Scottish Executive (2008) *Update to the UK Action Plan*, p.16.