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Human Trafficking and Exploitation (Scotland) Bill

Consultation response on behalf of the Scottish Council on Human Bioethics:

The **Scottish Council on Human Bioethics** (SCHB) is an independent, non-partisan registered Scottish charity composed of doctors, lawyers, biomedical scientists, ethicists and other professionals from disciplines associated with medical ethics.

The principles to which the Scottish Council on Human Bioethics subscribe are set out in the **United Nations Universal Declaration of Human Rights** which was adopted and proclaimed by the UN General Assembly resolution 217A (III) on the 10th of December 1948.

The name and address of the SCHB can be made available to the public.

The SCHB is very grateful to the Justice Committee of the Scottish Parliament for this opportunity to respond to the consultation on the **Human Trafficking and Exploitation (Scotland) Bill**. It welcomes the Justice Committee's intention to promote public consultation, understanding and discussion on this topic.

Note: The SCHB will only address the human trafficking consultation with respect to **organ trafficking** since this is the only issue within its remit of medical ethics.

Response from the Scottish Council on Human Bioethics

Welcomes the Human Trafficking and Exploitation (Scotland) Bill and its coverage of organ trafficking

1. The SCHB welcomes the *Human Trafficking and Exploitation (Scotland) Bill*. It supports the inclusion of Part 1(3)(6) (Removal of organs etc.) and the position that a person commits an offence if this person arranges or facilitates another person's travel with a view to this other person being exploited for organ trafficking including (but not limited to):

- recruiting the person with a view to transporting or transferring the person;
- transporting or transferring the person;
- transferring or exchanging control of the person;
- harbouring or receiving the person.

2. British patients are reportedly being offered illegally trafficked kidneys by international organ dealers. According to *The Times* newspaper in November 2013¹, a Bangalore-based dealer was reported to have recommended a hospital in Sri Lanka as a suitable place to receive an organ purchased for tens of thousands of pounds on the black market.

International organ trafficking is a growing trade. According to the World Health Organisation, around one in ten

¹Robinn Pagnamenta and John Simpson, Cash for kidneys offer lures Britons, *The Times*, 12 November 2013

organ transplants involves a trafficked human organ, which amounts to around 10,000 each year. Kidneys are the most commonly traded organ.

3. Donor countries include impoverished nations in South America, Africa, Asia and Eastern Europe, according to a Harvard College study², while recipient countries include the US, Canada, Australia, the UK and Japan. Trafficking involves a whole host of offenders, from recruiters who identify the victims to transporters and hospital or clinic staff.

Extra-territorial Provisions

4. The SCHB notes that a person commits an offence if this person is a habitual resident in Scotland and arranges or facilitates another person's travel with a view to the other person being exploited for organ trafficking.

5. But the SCHB believes that the provisions in the ***Human Trafficking and Exploitation (Scotland) Bill*** do not go far enough and that an offence should also be committed if a person from Scotland knowingly goes abroad to purchase a trafficked organ for personal use (even if the trafficker is not a UK national or a habitual resident in Scotland).

Precedent for such an offence already exists in Articles 1 - 4 of the United Nations' ***Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography***³ (which was ratified by the United Kingdom in 2009) which states that:

Article 1

States Parties shall prohibit ... child prostitution ... as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol ... (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration ...;

Article 3

Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis ... (b) ... obtaining, procuring or providing a child for child prostitution, as defined in article 2; ...

Article 4

... 2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory; ...

Clarification of the Explanatory Notes

6. In paragraph 24 of the Explanatory Notes of the ***Human Trafficking and Exploitation (Scotland) Bill*** it should be made clear that gametes and reproductive cells are not covered by the Bill. Indeed, people from Scotland are already buying such human cells abroad.

Observing international legislation

7. In drafting new legislation relating to organ trafficking, the SCHB is of the view that the Scottish Parliament should ensure that it complies with the following **Council of Europe** legislation which addresses organ trafficking inside a country:

² James Dotimas, Innovations in Stem Cell Research: The Solution to Organ Trafficking?, 27 April 2013, <http://www.hcs.harvard.edu/hghr/online/innovations-in-stem-cell-research-the-solution-to-organ-trafficking/>

³ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, <http://www.unhcr.ch/html/menu2/dopchild.htm>

Convention on Human Rights and Biomedicine CETS No.: 164⁴,

**Additional Protocol to the Convention on Human Rights and Biomedicine concerning
Transplantation of Organs and Tissues of Human Origin CETS No.: 186⁵.**

8. Moreover, as with the Hague Convention on the International Protection of Adults⁶, the SCHB would like to see the United Kingdom ratify, as soon as possible, the above Council of Europe legal instruments on behalf of Scotland.

⁴ Convention on Human Rights and Biomedicine, <http://conventions.coe.int/Treaty/en/Treaties/Word/164.doc> - Entered into force on 1 December 1999 - Legally binding if ratified by a country - The United Kingdom has not signed nor ratified this Convention

⁵ Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin, <http://conventions.coe.int/Treaty/en/Treaties/Word/186.doc> - Adopted on 24 January 2002 but has not yet entered into force - Legally binding if ratified by a country - The United Kingdom has not signed nor ratified this additional Protocol

⁶ Convention on the International Protection of Adults, http://www.hcch.net/index_en.php?act=conventions.text&cid=71 - Legally binding if ratified by a country - Adopted on 13 January 2000 but has not yet entered into force - The United Kingdom has ratified the Convention on 5 November 2003 (but for Scotland only) - <http://www.scotland.gov.uk/health/mentalhealthlaw/millan/Report/rnhs-37.asp>