



EU Directive on Human Trafficking: Why the UK Government should opt-in

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Introduction

In May 2010 the Conservatives and Liberal Democrats committed in the Coalition Agreement to make tackling human trafficking a priority. However, shortly afterwards the British Government decided not to opt-in to the EU Directive on Human Trafficking but to review its position once the Directive had completed its passage through the European institutions. When questioned about this on 15 September, the Prime Minister said that the reason for not opting-in was that the Directive would add nothing of value to British law; ‘We have put everything that is in the Directive in place.’ He also said, however, that he was prepared to ‘look again’.¹

CARE responded by producing a clause by clause analysis of the Directive and of the compliance/non-compliance of British law with it. This demonstrated that whilst Britain was indeed compliant with some aspects of the Directive, it was not compliant in a number of key areas and that without the Directive (or some other identical provision) British provisions for the victims of trafficking would become weaker than those of other Member States.

On 14 December the European Parliament (including all present British Conservative and Lib Dem MEPs) voted overwhelmingly for the Directive by 643 votes to 10, introducing amendments. Whilst some of the amendments have meant the UK is now in compliance with a couple of articles about which CARE was originally concerned, there are: a) still significant ongoing areas of non-compliance with the Directive and b) an important new provision in relation to support for child trafficking victims where the UK is now significantly less compliant than previously.

Key areas of non-compliance

In what follows we will consider *some* key areas in which the UK would lose out by not opting-in to the Directive. (For a comprehensive assessment of *all* areas of non-compliance please see the Appendix - ‘Adopted EU Directive on Trafficking in Human Beings Compared with Current UK Law and Practice – Non-Compliant Articles only’):

Support for child victims

Article 14 states that all trafficked children must be provided with assistance and support over the short and long term for their physical and psycho-social recovery. At present, far from meeting this demand trafficked children identified by the Government in the UK are being lost in disturbingly large numbers. In the UK, out of 330 trafficked children identified by CEOP in 2007, it was found that 183 (55%) had gone missing¹. The Directive would provide a means of confronting this problem more effectively.

Articles 14-15 of the Directive require that a child be provided with a guardian or representative in a situation where the parents cannot represent the child because of a conflict of interest between them, or because they are absent. **During European Parliamentary scrutiny, a new requirement was added in Article 14 that, in cases where a child has no-one with parental responsibility advocating for them, a guardian or representative should be appointed ‘from the moment a child is identified by the authorities’ so that they are provided with all the services that are in their best interest.**

¹ Hansard, House of Commons, 15 September 2010, column 873.

At present in the UK no special representative or guardian is appointed to put forward the trafficked child's best interests in these situations. Current social work provisions often fall short of the care that is needed². This is inconsistent with government policy to appoint a so-called 'guardian ad litem' for vulnerable children in situations of abuse or neglect by their parents. Trafficked children, without their parents, are equally vulnerable and should be treated in a similar manner and given similar resources and support.

Widening of trafficking definition

The definition of trafficking in Article 2 includes 'forced begging' which is not included in domestic legislation or any of the definitions in other international anti-trafficking instruments. As trafficking for forced begging is an issue in the UK - particularly the trafficking of Roma people³ - it is imperative that legislation recognises this aspect of exploitation. The Directive also defines vulnerability as occurring 'when the person has no real or acceptable alternative but to submit to those involved'. The inclusion of these definitions would make cases involving cannabis cultivation and forced begging more readily identifiable as trafficking cases by authorities.

Jurisdiction

At present, while the UK has the power to prosecute in cases where trafficking occurs into, within, or out of the country, it has no power to prosecute in cases involving British citizens where the trafficking occurs outside its borders. This is addressed by Article 10 of the Directive which has also been made less demanding with respect to prosecution in cases of trafficking into, within or out of the UK when the offender is a habitual resident or when the victim is a UK national. In these contexts there is no longer an absolute obligation to prosecute.

Assistance to victims

The Directive specifies in Article 11 that assistance and support, including safe accommodation and medical treatment, should be provided for victims. It also requires that early indication of victims, in cooperation with NGOs, must be sought. Whilst the UK currently has no legal requirement to fulfill this, in theory the UK operational policy on this is compliant. However, in practice there are problems with the current system⁴ e.g.

- 'accessing medical treatment can be challenging',
- care cover between the time when a victim approaches an NGO and when they are determined to be 'a victim' and access to accommodation,
- barriers caused by the process of the National Referral Mechanism (NRM), leading to fewer people referred than people going to agencies for help,
- identification based on immigration status not on victim status.⁵

Counter trafficking Rapporteur

The European Convention on Human Trafficking already requires the UK to *consider* appointing a National Rapporteur. The Directive goes further and *requires* a rapporteur or similar body 'to carry out assessments of

²In October, Damien Green MP said, "Local authorities already have a statutory duty to ensure that they safeguard and promote the welfare of all children, and each child is allocated an independent reviewing officer who is responsible for regularly chairing reviews of their care plans." However, the current care provision is not adequate – in some cases appointed social workers have not even shown up to court proceedings, Child Trafficking in the UK: A Snapshot, ECPAT, October 2010.

³'Children removed in Ilford People-trafficking raids' BBC News, 14th October 2010. <http://www.bbc.co.uk/news/uk-england-london-11524732>

⁴Wrong Kind of Victim?, Op Cit, pages 9, 99-104, 106.

⁵ Out of all victims referred to the National Referral Mechanism, 76% of cases referred involving UK citizens are positively identified as trafficking. In comparison, only 29.2% of EU nationals from other EU states receive official victim status. Cases involving nationals from countries outside the EU are positively identified as trafficking cases at a rate of only 11.9% - *Wrong Kind of Victim*, The Anti Trafficking Monitoring Group (June 2010).

trends in trafficking in human beings, gather statistics, measure the results of anti-trafficking actions, and regularly report.⁶

The Government argues that it meets the demands of the rapporteur Article via its Inter-Departmental Ministerial Group on Trafficking.⁷ This group, however, is, by definition, part of the Government and so cannot constitute the conventional meaning of a rapporteur which is supposed to be independent. In this case being a rapporteur would mean being independent of both the Government and the current authorities who assess whether an individual is identified as a victim of trafficking (the UK Human Trafficking Centre and the UK Borders Authority). A common role of a rapporteur is to produce reports assessing policy and practice. However, the Home Office has stated that the Group does not produce reports.⁸

An independent National Rapporteur function could improve policy implementation and monitoring by acting more independently than the UK Human Trafficking Centre and could provide evidence for the Government and anti-trafficking agencies to take into account when considering future changes. It could request certain data be collected or collated.

Investigation and prosecution

Article 9 of The Directive goes further than the obligations that the UK has already agreed to under the European Convention in that:

- investigation shall occur even if the victim has withdrawn his or her statement,
- it enables prosecution of an offence for a sufficient period of time after the victim has reached the age of majority,
- it requires training for those investigating or prosecuting offences,
- it provides effective investigative tools such as those which are used in organised crime or other serious crime.

There are currently fewer prosecutions in the UK than expected.⁹ As of 30 June 2010, there had been 270 arrests and 10 convictions for trafficking for labour exploitation and 558 arrests for sexual exploitation and 139 convictions for human trafficking.¹⁰ These additional requirements will aid prosecutions.

Protection of victims in criminal proceedings

Article 12 requires, among other things, that:

- if allowed within a legal system, identity of a victim acting as a witness is not disclosed,
- appropriate physical protection (e.g. through witness protection),
- prevent secondary victimisation by specific rules on investigation and proceedings (e.g. no visual contact between victim/offender, unnecessary questioning about private life).

⁶ European Parliament legislative resolution of 14 December 2010 on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (COM(2010)0095 – C7-0087/2010 – 2010/0065(COD)), Preamble to the Directive, para 27.

⁷ On 14th October 2010 Lord De Mauley said the UK is compliant with this requirement because of the “*Inter-Departmental Ministerial Group on Trafficking which the Government believe fulfils the function of a rapporteur and that scrutiny by this group satisfies the requirements as set out in the directive. In terms of data gathering, the UK Human Trafficking Centre acts as a central repository for intelligence and data on human trafficking.*”

⁸ Hansard, House of Commons, 24 January 2011, column 58W.

⁹ *Wrong Kind of Victim?, Op Cit*, page 10.

¹⁰ Hansard, House of Commons, 20 October 2010, columns 756W-757W. Note that there were also convictions for other lesser offences – 16 in the case of forced labour and 94 for sexual exploitation offences.

This article would address some of the concerns reported about the treatment of victims:

- no guarantee of anonymity when a victim testifies in court,¹¹
- difficulty in getting appropriate protection/special measures e.g. Use of video technology in court.¹²

Summary

Given:

1. The significant areas in which the Directive would benefit both victims of trafficking and the successful prosecution of the perpetrators.
2. The fact that in May the Coalition Agreement committed the government to ‘tackling human trafficking a priority’.¹³
3. Britain should be at the cutting edge of addressing trafficking and protecting the victims of trafficking, not falling behind the rest of the international community.
4. The important inclusion of the important new child trafficking provision on 14 December, with which Britain is not compliant.

...CARE argues that there is both the clear need, and opportunity, for Britain to opt-in to the Anti-Trafficking Directive as soon as it has completed its passage through the European institutions this year.

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¹¹ Forced Migration Review, Combating trafficking in the UK, Wendy Young & Diane Quick, Issue 25, Pages 41-2, May 2006

¹² *Wrong Kind of Victim?*, *Op Cit*, page 108

¹³ The Coalition Agreement, May 2010, p. 17

ADOPTED EU DIRECTIVE ON TRAFFICKING IN HUMAN BEINGS COMPARED WITH CURRENT UK LAW AND PRACTICE - NON-COMPLIANT ARTICLES ONLY

This table sets out where the UK remains in non-compliance with the EU Directive on Trafficking in Human Beings as adopted by the European Parliament on 14 December 2010.¹ If the UK opted into the Directive, it would be required to comply with the requirements within two years of the Directive’s adoption by bringing into force “laws, regulations and administrative provisions”.² The Appendix lists all the articles in the Directive.

EU Directive (EUD)	Does UK Law match the Directive?	How EUD will help victims in the UK
<p>Article 2: Offences concerning trafficking in human beings³</p> <p>Contains similar definitions to other international treaties/protocols⁴ on trafficking but in addition:</p> <ul style="list-style-type: none"> – Defines trafficking “including exchange or transfer of control over that person“ – Defines vulnerability as “occurs when the person has no real or acceptable alternative but to submit to the abuse involved.” – Exploitation includes forced begging, which “should be understood as a form of forced labour or service” and “the exploitation of criminal activities”, such as pick-pocketing and shop-lifting which are subject to penalties themselves.⁵ – The consent of a victim of trafficking is deemed irrelevant. <p>No changes to this Article during Parliamentary scrutiny.</p>	<p>Semi-Compliant</p> <p>Government policy has followed the UN protocol definitions for trafficking and introduced various offences.⁶</p> <p>If adopted by the UK:</p> <ul style="list-style-type: none"> – Forced begging would need to be recognised under forced labour (ie under the Asylum and Immigration (Treatment of Claimants etc) Act 2004); – the issue of “the exploitation of criminal activities” would also need to be addressed in relation to non-prosecution under Article 8. 	<p>If adopted:</p> <ul style="list-style-type: none"> – there should be reductions in “incorrect application of the trafficking definition when assessing a victim.”⁷ – there would no longer be acceptance of the use of the consent of a person to come to the UK meaning the person cannot be a victim.⁸ – Forced begging by Roma children could be treated as trafficking in situations where it occurs.⁹

EU Directive (EUD)	Does UK Law match the Directive?	How EUD will help victims in the UK
<p>Article 8: Non-prosecution or non-application of penalties to the victim</p> <ul style="list-style-type: none"> - Requirement that “in accordance with... <i>basic principles</i> of their legal system...take the necessary measures to ensure...entitled not to prosecute or impose penalties”. - Specifically intended to exclude prosecution or punishment for offences related to “use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking.” - It does not exclude prosecution for offences that person has "wilfully committed or participated in".¹⁰ <p>Substantial changes to this Article during Parliamentary scrutiny lead to less demanding obligations</p>	<p>Compliant in theory</p> <ul style="list-style-type: none"> - CPS “cannot issue a blanket policy of not prosecuting”. CPS required to review each case received from police under Prosecution of Offences Act 1985.¹¹ - CPS Human Trafficking and Smuggling Guidance:^{12 13} “if trafficked victim has committed a criminal offence whilst in a coerced situation, there is a strong public interest to stop the prosecution. Where there is clear evidence that the suspect has a credible defence of duress, the case should be discontinued on evidential grounds.”¹⁴ <p>Practice seems to be different (see next column)</p>	<p>This article would address some of the concerns reported about the treatment of victims:¹⁵</p> <ul style="list-style-type: none"> - court taking no further action in a case of immigration offences and stolen documents but “the exception rather than the rule”. - adult victims being prosecuted for cannabis cultivation under duress; - despite the guidance on child victims, children are being prosecuted for cannabis production.
<p>Article 9: Investigation and prosecution</p> <p>The Directive goes further than obligations that the UK has already agreed to under the European Convention:</p> <ul style="list-style-type: none"> - investigation shall occur even if the victim has withdrawn his or her statement; - enable prosecution of an offence for a sufficient period of time after the victim has reached the age of majority; - training stipulated for those investigating or prosecuting offences; - effective investigative tools available, such as those which are used in organised crime or other serious crime. <p>No changes to this Article during Parliamentary scrutiny.</p>	<p>Semi-compliant</p> <p>No specific legislation addresses these requirements but the UK has the UK Human Trafficking Centre as “central point for the development of law enforcement expertise in relation to all forms of trafficking”.¹⁶</p> <p>The CPS has recently consulted on its policy of how it prosecutes cases of human trafficking.¹⁷ The consultation closed on 31 October.</p>	<p>There are currently fewer prosecutions in the UK than expected.¹⁸ These additional requirements should aid prosecutions.</p>

EU Directive (EUD)	Does UK Law match the Directive?	How EUD will help victims in the UK
<p>Article 10: Jurisdiction</p> <p>Obligatory for a State to take jurisdiction when the offender is a national and the offence occurs outside of the territory, even if the act is not a criminal offence when committed abroad, ie should operate extra-territoriality.</p> <p>Jurisdiction may be taken when offence is committed outside of territory:</p> <ul style="list-style-type: none"> – when offender is a habitual resident; – victim is a national or a habitual resident; – offence is committed for benefit of corporate entity that is established in Member State. <p>Substantial changes to this Article during Parliamentary scrutiny lead to less demanding obligations.</p>	<p>Semi-Compliant</p> <p>Sexual Exploitation: Sexual Offences Act 2003 and Criminal Justice (Scotland) Act 2003 covers movement in, out and within the UK. Applies to any British citizen, wherever the action is taken (see above) and outside of the UK by a body incorporated in the UK.</p> <p>An offence is committed even if the act in question is not an offence in the country where it is carried out.</p> <p>Does not cover action totally outside of UK.</p> <p>Labour Exploitation: Asylum and Immigration (Treatment of Claimants etc) Act 2004 covers movement in, out and within the UK. Does not appear to cover acts in other countries if the act is not an offence in that country.</p> <p>Does not cover action totally outside of UK.</p>	<p>This would provide added protection for British citizens. This would also make UK nationals who commit trafficking offences abroad, unrelated to the UK, subject to prosecution thus increasing protection for citizens of other countries.</p>
<p>Article 11: Assistance and support for victims of trafficking in human beings</p> <ul style="list-style-type: none"> – early identification of victims in cooperation with NGOs; – Preamble (but not Article) says assistance and support “should be provided unconditionally at least during the reflection period”;¹⁹ – Preamble (but not Article) says no obligation to provide alternative services if assistance is refused;²⁰ – not conditional on victim acting as witness; <p>Services should be provided “as soon as reasonable grounds for believing” person may be trafficked, on consensual & informed basis, including:</p>	<p>Semi-compliant</p> <p>There is no legal requirement in UK laws to provide for victims of trafficking, although assistance to victims is part of the European Convention which the UK has ratified and the UN Protocol.</p> <p>CPS has recently consulted on its policy of how it prosecutes cases of human trafficking. The draft policy recognises that there may be times when a victim is unable to act as a witness, but it may mean prosecution of a lower offence, depending upon the evidence.²¹</p> <p>In the UK, the UK Border Agency acts as the “competent authority” to identify a victim of</p>	<p>This article would address some of the criticism of UK practice:²²</p> <ul style="list-style-type: none"> – funding issues between time of contacting an organization and being recognised as a trafficked person, – placement of suitable accommodation around the country; – barriers caused by the process of the National Referral Mechanism (NRM), leading to fewer people referred than people going to agencies for help. – “minimal training” on NRM; – identification based on immigration status not on victim status; – “accessing medical treatment can be

EU Directive (EUD)	Does UK Law match the Directive?	How EUD will help victims in the UK
<ul style="list-style-type: none"> - assistance during criminal proceedings; - appropriate & safe accommodation, medical treatment, counselling, translation & interpretation services etc. <p>Some changes to this Article during Parliamentary scrutiny.</p>	<p>trafficking if the person is within the immigration or asylum system. In all other cases, the UK Human Trafficking Centre acts as the competent authority.</p>	<p>challenging”</p> <p>Note: £3.9m was allocated 2009/10 and 2010/11 for “the provision of specialist accommodation and support for adult victims of human trafficking”.²³</p>
<p>Article 12: Protection of victims of trafficking in human beings in criminal investigation and proceedings</p> <p>How a case should be investigated and managed in court, includes:</p> <ul style="list-style-type: none"> - access to free legal counselling without delay and to free legal representation, including to claim compensation (free if they do not have resources); - if allowed within legal system, identity of a victim acting as a witness is not disclosed; - Appropriate physical protection (eg through witness protection); - Prevent secondary victimisation by specific rules on investigation and proceedings (eg no visual contact between victim/ offender, unnecessary questioning about private life). <p>Some changes to this Article during Parliamentary scrutiny.</p>	<p>Semi Compliant</p> <p>No specific mention of protection within the law, but CPS completed consultation on its policy of how it prosecutes cases of human trafficking. Policy recognises that there needs to be “protection and specialist support” for victims, especially children.²⁴</p> <p>Victims of any crime have certain rights within the law under the CPS Code of Practice for Victims of Crime (Section 32 of the Domestic Violence, Crime & Victims Act 2004).</p> <p>Youth Justice & Criminal Evidence Act 1999 requires assistance to intimidated witnesses and witnesses under the age of 17. CPS can employ “special measures” in court including screening victim from defendant and not revealing victim’s identity in some cases (eg. where trafficker did not know the identity of the victim).²⁵</p>	<p>This article would address some of the concerns reported about the treatment of victims in the UK:</p> <ul style="list-style-type: none"> - No guarantee of anonymity when a victim testifies in court;²⁶ - Provision of free legal aid is determined on case by case basis. Difficulty getting free legal representation at all stages of the case;²⁷ - Getting appropriate protection/special measures eg. use of video technology in court.²⁸

EU Directive (EUD)	Does UK Law match the Directive?	How EUD will help victims in the UK
<p>Article 13: General provision on assistance, support and protection measures for child victims of trafficking in human beings</p> <ul style="list-style-type: none"> – children to be provided with assistance, support and protection, with best interests of the child as “a primary consideration”; – A person shall be presumed to be a child if age is unknown but there is good reason to assume that person is a child. <p>Some changes to this Article during Parliamentary scrutiny.</p>	<p>Semi-Compliant</p> <p>Care and protection of all children covered by Children Acts 1989 & 2004.</p> <p>Care, protection and accommodation of child trafficking victims falls within the designated responsibilities of local authorities.²⁹</p> <p>Borders, Citizenship & Immigration Act 2009 requires UK Border Authority to safeguard and promote welfare of children.³⁰</p> <p>CPS Policy on Prosecuting Trafficking is line with UN Convention on the Rights of the Child and the CEC in presuming person is child if there is uncertainty.³¹</p> <p>See next column for areas of non-compliance.</p>	<p>The EUD would raise the profile of the need to protect child victims of trafficking.</p> <p>There is a need to address the treatment of children going through National Referral Mechanism and concerns that children are treated as criminals rather than victims.³²</p>
<p>Article 14: Assistance and support to child victims of trafficking in human beings</p> <p>In addition to Article 11:</p> <ul style="list-style-type: none"> – child to be provided with assistance and support over short and long-term for their physical and psycho-social recovery, “with a view to finding a durable solution for the child”; – access to education for child victims and child children of victims; – assistance and support to family of child if they are in the Member State; – guardian or representative “shall” be appointed “from the moment [child] is identified by the authorities”, if there is a conflict with holders of parental responsibility. (A guardian is also required in these circumstances in Article 15 which is about the court process, whereas Article 14 is about services). <p>Significant changes to this Article during Parliamentary scrutiny.</p>	<p>Semi-Compliant</p> <p>Care and protection of all children covered by Children Acts 1989 & 2004.</p> <p>Care, protection and accommodation of child trafficking victims falls within the designated responsibilities of local authorities.³³ Each child is allocated an independent reviewing officer who is responsible for regularly chairing reviews of their care plans.³⁴</p> <p>In Scotland, the Children (Scotland) Act 1995 requires local authorities “to provide support to unaccompanied children... which would include victims of trafficking.”³⁵</p> <p>See next column for areas of non-compliance.</p>	<p>This article would address the concerns that:</p> <ul style="list-style-type: none"> – there is a lack of suitable accommodation, interpreters and suitably trained supervisors and foster parents to care for trafficked children;³⁶ – No special representative or guardian is appointed for a child to put forward their best interests.³⁷ <p>Note:</p> <ul style="list-style-type: none"> – Guardian ad litem is provided for non-trafficked children in situations of abuse or neglect.³⁸ “Children’s Guardians are there to help achieve the best possible outcomes for the child they represent.”³⁹ – Trafficked children who have no parent with them or able to advocate for them, face the same sort of vulnerabilities as abused or neglected children.

EU Directive (EUD)	Does UK Law match the Directive?	How EUD will help victims in the UK
<p>Article 15: Protection of child victims of trafficking in human beings in criminal investigations and proceedings</p> <p>In addition to Article 12:</p> <ul style="list-style-type: none"> – representative for child should be appointed in criminal proceedings where parents cannot represent child because of conflict of interest; – immediate access to free legal counselling and free legal representation, (free if they do not have resources). Note that role of guardian and legal representative “may be carried out by the same person or by a legal person, an institution or an authority.”⁴⁰ – Specific requirements on dealing with children in investigation (eg. interviews take place, where necessary, in premises designed or adapted for this purpose) – Take measures to ensure interviews may be video-taped and used as evidence – Court hearings should take place without the public & child does not need to be present to give evidence. <p>Some changes to this Article during Parliamentary scrutiny.</p>	<p>Semi-Compliant</p> <p>Care and protection of all children covered by Children Acts 1989 & 2004.</p> <p>CPS Trafficking Prosecution Policy specifically covers child victims:</p> <ul style="list-style-type: none"> – Child witnesses under 17 will automatically be eligible for “special measures” in court;⁴¹ – hearings to be held in private and familiarisation visits; – Presumption that child should give evidence through video recorded evidence and a live link to keep the child out of the courtroom.⁴² <p>Home Office Guidance provides detailed procedure for interviewing child witnesses based on legal requirements.⁴³</p> <p>See next column for areas of non-compliance.</p>	<p>This article would address the concern that:</p> <ul style="list-style-type: none"> – No special representative or guardian is appointed for a child to put forward their best interests.⁴⁴ (See comments under Article 14)
<p>Article 16: Assistance, support and protection for unaccompanied child victims of trafficking in human beings</p> <p>Article focuses on unaccompanied children and in addition to Articles 14 and 15, but repeats much of their requirements.</p> <p>Points to note:</p> <ul style="list-style-type: none"> – assistance shall “take due account of the personal and special circumstances of the unaccompanied child victim”; 	<p>Semi-Compliant</p> <p>Care and protection of all children covered by Children Acts 1989 & 2004.</p> <p>Care, protection and accommodation of child trafficking victims falls within the designated responsibilities of local authorities.⁴⁵ Each child is allocated an independent reviewing officer who is responsible for regularly chairing reviews</p>	<p>This article should raise the protection of unaccompanied children.</p> <p>The Anti-Trafficking Monitoring Group reports that:</p> <ul style="list-style-type: none"> – 153 unaccompanied children whose cases where reported to the NRM between 1 April 2009 and 13 Jan 2010 went missing.⁴⁷ – In May 2009, the High Court examined the cases two unaccompanied children

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<ul style="list-style-type: none"> – “where appropriate”, a guardian is appointed. This seems a lower standard than in Article 14 where a guardian is required immediately if there is a conflict with the holders of parental responsibility; – requirement for representative in criminal investigations and proceedings. <p>New article added during Parliamentary scrutiny</p>	<p>of their care plans.⁴⁶</p> <p>See next column for areas of non-compliance.</p>	<p>who had been returned to their country of origin without consideration of their best interests and without a durable solution.⁴⁸</p> <p>Unaccompanied children are especially vulnerable but currently no special representative or guardian is appointed for a child to put forward their best interests.⁴⁹</p>
<p>Article 17: Compensation to Victims</p> <p>States should ensure that victims of trafficking "have access to existing schemes on compensation to victims of violent intentional crimes."</p> <p>New article added during Parliamentary scrutiny</p>	<p>Compliant in theory</p> <p>UK has a Criminal Injuries Compensation Scheme, which is in theory accessible to victims of trafficking if they have “sustained physical or mental injuries as a result of a violent crime.”⁵⁰</p> <p>CPS consultation document on prosecuting cases of human trafficking sets out options for seeking compensation.⁵¹</p> <p>Practice seems to be different (see next column)</p>	<p>If adopted, this article would assist victims. Current reports on access to compensation are that:</p> <ul style="list-style-type: none"> – Victims of trafficking do not receive compensation from the Criminal Injuries Compensation Scheme on the basis of being victims of trafficking.⁵² – “The Government is also failing to provide access to compensation to those trafficked. In the first instance by failing to provide information about compensation to those identified, and secondly by preventing them from staying in the UK to pursue compensation.”⁵³ – “The Monitoring Group did not learn of any case that had been referred through the NRM in which a trafficked person had received compensation.”⁵⁴
<p>Article 18: Prevention</p> <p>Article objective is to discourage <i>and reduce</i> demand</p> <p>Requirements are to:</p> <ul style="list-style-type: none"> • promote regular training for officials likely to come into contact with victims and potential victims, so they can identify and deal with victims and potential 	<p>Semi-compliant</p> <p>Policing and Crime Act 2009: offence to use <i>sexual services</i> of someone subjected to force. Extent: England, Wales & Northern Ireland.</p> <p>UK Human Trafficking Centre prevention work encompasses “increasing our knowledge and understanding of the problem, working to</p>	<p>If adopted, a training requirement should ensure better treatment of victims since, “in some areas, frontline police have not received sufficient training to respond appropriately when there are signs that an individual has been trafficked. However, there is also a concern that the police in general do not</p>

EU Directive (EUD)	Does UK Law match the Directive?	How EUD will help victims in the UK
<p>victims of trafficking</p> <ul style="list-style-type: none"> consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation. <p>Some changes to this Article during Parliamentary scrutiny.</p>	<p>identify and address the issues that impact on the supply and demand sides of human trafficking, and finally maximising the collective preventative effort”⁵⁵</p> <p>No training requirement in UK law or other international instruments.</p>	<p>respond appropriately when information about cases of domestic servitude or forced labour, involving men as well as women, is brought to their attention.”⁵⁶</p>
<p>Article 19: National Rapporteurs or equivalent mechanisms</p> <p>Requires States to “take the necessary measures to establish National Rapporteurs or equivalent mechanisms.”</p> <p>Preamble states that the Rapporteur can be set up “in the way they consider appropriate” and that the purpose is “to carry out assessments of trends in trafficking in human beings, gather statistics, measure the results of anti-trafficking actions, and regularly report.”⁵⁷</p> <p>No changes to this Article during Parliamentary scrutiny, although some changes to Preamble.</p>	<p>Semi-compliant</p> <p>The UK does not have an <i>independent</i> national rapporteur (which is the normal understanding of a rapporteur) or “tsar” for this area but it does have the UK Human Trafficking Centre, which is a central point for:</p> <ul style="list-style-type: none"> – the collation of data information and intelligence on all forms of trafficking; – development of law enforcement expertise. <p>It also publishes statistical data and develops victim centred protection measures.⁵⁸</p> <p>There is also the Inter-Departmental Ministerial Group on Trafficking.⁵⁹</p>	<p>An independent National Rapporteur could improve policy implementation and monitoring by acting more independently than the UKHTC and could provide evidence for the government and anti-trafficking agencies to take into account when considering future agencies. It could request certain data be collected or collated.⁶⁰</p> <p>The only group independent of the Government is the Voluntary Anti-Trafficking Monitoring Group set up in May 2009 but it has a limited role and ability to collect information (eg. through Freedom of Information requests).⁶¹</p>

ARTICLES IN THE EURO TRAFFICKING DIRECTIVE

- Article 1: Subject matter
- Article 2: Offences concerning trafficking in human beings
- Article 3: Instigation, aiding, abetting and attempt
- Article 4: Penalties
- Article 5: Liability of legal persons
- Article 6: Sanctions on legal persons
- Article 7: Seizure and Confiscation
- Article 8: Non-prosecution or non-application of penalties to the victim
- Article 9: Investigation and prosecution
- Article 10: Jurisdiction
- Article 11: Assistance and support for victims of trafficking in human beings
- Article 12: Protection of victims of trafficking in human beings in criminal investigation and proceedings
- Article 13: General provision on assistance, support and protection measures for child victims of trafficking in human beings
- Article 14: Assistance and support to child victims of trafficking in human beings
- Article 15: Protection of child victims of trafficking in human beings in criminal investigations and proceedings
- Article 16: Assistance, support and protection for unaccompanied child victims of trafficking in human beings
- Article 17: Compensation to Victims
- Article 18: Prevention
- Article 19: National Rapporteurs or equivalent mechanisms
- Article 20: Coordination of the EU strategy on trafficking in human beings
- Article 21: Repeal of Framework Decision
- Article 22: Transposition
- Article 23: Reporting

NOTES

1 European Parliament legislative resolution of 14 December 2010 on the proposal for a directive of the European Parliament and of the Council on preventing and
2 combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (COM(2010)0095 – C7-0087/2010 – 2010/0065(COD))
3 Article 22 of the Directive
4 Article 5(3) of the EU Charter explicitly prohibits trafficking in human beings.
5 Council of Europe Convention on Action Against Trafficking in Human Beings 2005, Treaty Series No 197 and UN Protocol to Prevent, Suppress and Punish
6 Trafficking in Persons, Especially Women and Children, 2000
7 See Preamble to the Directive, para 11
8 UK Action Plan on Tackling Human Trafficking, Home Office, March 2007, page 14
9 *Wrong Kind of Victim? One Year on: An Analysis of UK Measures to Protect Trafficked Persons*, The Anti-Trafficking Monitoring Group, June 2010, page 12
10 *Ibid*, page 12
11 *Ibid*, page 97
12 See Preamble to the Directive, para 14
13 Public consultation on the CPS Public Policy Statement on Prosecuting Cases of Human Trafficking, Crown Prosecution Service, July 2010, pages 31-32
14 http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a32
15 http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a29
16 CPS Policy on Prosecuting Cases of Human Trafficking, *Op Cit*, page 31
17 *Wrong Kind of Victim?*, *Op Cit*, pages 12, 110-111, 63
18 <http://www.soca.gov.uk/about-soca/about-the-ukhtc/prosecution>
19 CPS Policy on Prosecuting Cases of Human Trafficking, *Op Cit*
20 *Wrong Kind of Victim?*, *Op Cit*, page 10
21 See Preamble to the Directive, para 18
22 See Preamble to the Directive, para 21
23 CPS Policy on Prosecuting Cases of Human Trafficking, *Op Cit*, pages 15-16
24 *Wrong Kind of Victim?*, *Op Cit*, pages 9, 99-104, 106
25 Hansard, House of Commons, 13 Jan 2010, Col 1011W; 22 Feb 2010, Col 255W; 29 March 2010, col 685W
26 CPS Policy on Prosecuting Cases of Human Trafficking, *Op Cit*, page 15
27 *Ibid*, pages 20-1
28 Forced Migration Review, Combating trafficking in the UK, Wendy Young & Diane Quick, Issue 25, Pages 41-2, May 2006
29 *Wrong Kind of Victim?*, *Op Cit*, page 108
30 *Ibid*, pages 114-116
31 Hansard, House of Commons, 29 March 2010, col 685W
32 *Wrong Kind of Victim?*, *Op Cit*, page 89
33 CPS Policy on Prosecuting Cases of Human Trafficking, *Op Cit*, pages 25-6
34 *Wrong Kind of Victim?*, *Op Cit*, pages 10-11
35 Hansard, House of Commons, 29 March 2010, col 685W
36 Hansard, House of Commons, 12 October 2010. Col 48WH
37 The Scottish Parliament, Written Question S3W-7041, 5 December 2007
38 *Wrong Kind of Victim?*, *Op Cit*, page 11
39 *Ibid*, page 11
40 CAFCASS in England, CAFCASS Cymru in Wales
41 http://www.cafcass.gov.uk/cafcass_and_you/info_for_families/care_questions_answered.aspx#what

40 See Preamble to the Directive, para 24
41 Youth Justice and Criminal Evidence Act 1999
42 CPS Policy on Prosecuting Cases of Human Trafficking, *Op Cit*, pages 20, 22-24
43 *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Special Measures*, Home Office, 2007
44 *Ibid*, page 11
45 Hansard, House of Commons, 29 March 2010, col 685W
46 Hansard, House of Commons, 12 October 2010. Col 48WH
47 *Wrong Kind of Victim?*, *Op Cit*, page 50
48 *Wrong Kind of Victim?*, *Op Cit*, page 120
49 *Ibid*, page 11
50 CPS Policy on Prosecuting Cases of Human Trafficking, *Op Cit*, page 31
51 *Ibid*, pages 30-1
52 Hansard, House of Commons, 14 January 2008, col 947W
53 *Wrong Kind of Victim?*, *Op Cit*, page 68
54 *Ibid*, page 117
55 <http://www.soca.gov.uk/about-soca/about-the-ukhtc/prevention>
56 *Wrong Kind of Victim?*, *Op Cit*, page 70
57 See Preamble to the Directive, para 27
58 See About the UKHTC, <http://www.soca.gov.uk/about-soca/about-the-ukhtc>
59 See Home Office Letter to CARE, 10 Nov 2010, Ref M15342/10
60 *Wrong Kind of Victim?*, *Op Cit*, page 72
61 *Ibid*