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The Council of Europe Convention on
Action against Trafficking in Human
Beings and a National Referral
Mechanism for the UK

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Council of Europe Convention

- The main purposes of the Convention are:-
 - To prevent and combat trafficking in human beings;
 - To protect the human rights of victims of trafficking;
 - To design a comprehensive framework for the identification, protection and assistance of victims and witnesses (an NRM); and
 - To ensure effective investigation and prosecution of traffickers.



State obligations under the Convention


- The premise of the Convention is that if victims' human rights are respected and protected they will be more willing to cooperate with the authorities and will make better witnesses in criminal prosecutions against their traffickers.
- The Convention provides for a reflection period of at least 30 days for potential trafficked persons and for the issuance of a renewable residence permit on certain grounds.
- The provisions of the Convention came into force on 1 April 2009.



Article 10

Article 10(1) provides that state parties to the convention collaborate with each other as well as relevant support organisations, so that victims can be identified in a procedure duly taking into account the special status of women and child victims.


Article 10(2)
If the **competent authorities** have **reasonable grounds** to believe that a person has been a victim of trafficking in human beings, that person will not be removed from its territory until the identification process as a victim of an offence has been completed by the competent authorities



Article 12


Article 12(1)

- a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
- b) access to emergency medical treatment;
- c) translation and interpretation services, when appropriate;
- d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
- e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- f) access to education for children.




Article 13

- Article 13 of the Council of Europe Convention provides for a reflection period of no less than 30 days for persons who are in the UK illegally or who are legally present on a short term permit (i.e. a holiday visa) where the competent authority has "reasonable grounds" to believe that they are a victim of trafficking.
- A reflection period is a period of time in which the presumed/potential trafficked person is referred to NGOs for support without having to make an immediate statement to the police or other government agencies with respect to their status.




What is a reflection period

- A reflection period is recognition that identification of victims takes time as identification can be complex due to the nature of trafficking and that victims are more likely to disclose their experiences to non-state agencies, as opposed to the police or immigration.
- During the reflection period an assessment as to whether or not the person has been trafficked can be made.



Article 14

- To allow the victim to cooperate with the police. The reason behind this is that it was considered that victims are deterred from contacting the national authorities by fear of being returned to their countries of origin as illegal immigrants.
- Because of the victims "personal circumstances" i.e. not safe to go back, health, family situation etc.



THE UK NATIONAL REFERRAL MECHANISAM



The process of identification

- Potential victims are identified by an agency [The First Responder] e.g. police, UKBA, local authorities and designated NGOs
- Referral made to the "competent authority" (on pro forma referral form.)
- Within 5 days of the referral the "competent authority" will issue a decision as to whether "*there are reasonable grounds*" to consider that the individual is a potential victim of trafficking.



Two "Competent Authorities"

- The "Central Competent Authority" will be housed within the UKHTC. This is described as a multi-agency authority including UKBA, CPS, police and local authorities
 - a select group of secondees will act as an expert advisory body. NGOs may be consulted by this body.
 - Formal determination of status is taken by the Crown through the UKBA members of this competent authority.
- A separate but linked Competent Authority where the individual is subjected to immigration control is UKBA.
- There will be shared practice guidance and protocols between the 2 competent authorities and joint quality assurance.



Two "Competent Authorities"

- If the "Competent Authority" decides that the person is not a potential victim of trafficking there is no appeal procedure. The only legal remedy is to challenge the decision by Judicial Review.
- If the decision is YES: The individual is entitled to a
 - a 45 day reflection period
 - appropriate and secure accommodation
 - Psychological assistance
 - Material support
 - Information about their legal rights
 - Access to medical treatment



Temporary Resident Permits

- After the 45 day reflection period the individual will either be removed from the UK or granted a residence permit.
- A permit will only be granted if the individual is cooperating with the police or *"is in need of continuing support"*. The form of the grant will be discretionary leave.
- This is covered by "existing provisions" (asylum, humanitarian protection, discretionary leave to remain). UKBA guidance and instructions are to be updated accordingly.



Impact Assessment

- In their Impact Assessment Home Office/UKBA have projected, based on data from the Poppy Project, Pentameter I & II and Operation Tolerance and other research that:-
 - 500 cases/year will be referred to the Competent Authority (300 sex trafficking, 200 labour trafficking).
 - 70% of individuals referred to the Competent Authority will be granted the 45 day reflection period.
 - Expected that 70% of those granted a reflection period will apply for a temporary resident permit and 40% will be granted.



Impact Assessment

- For children:-
 - 325 victims are expected to be identified
 - 90% of child victims are expected to apply for a residence permit, 60% will be successful (as the added criteria of the best interests of the child has to be considered in such cases.)
- UKBA note in their impact assessment that the above percentages are *"subject to change as we develop our working criteria required for temporary residence"*.



Useful website

- <http://www.crimereduction.homeoffice.gov.uk/humantrafficking005.htm> (Links to the referral form, guidance and process map.)
