

<b>Institution:</b> University of Abertay		
<b>Unit of Assessment:</b> 18 - Law		
<b>Title of case study:</b> Changing the law on human trafficking in Scotland		
<b>Period when the underpinning research was undertaken:</b> 2010 to 2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name:</b>	<b>Role (e.g. job title):</b>	<b>Period employed by submitting HEI:</b>
Dr. Maria O'Neill	Senior Lecturer in Law	16/9/1997 to date.
<b>Period when the claimed impact occurred:</b> February 2015 – December 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<b>1. Summary of the impact</b>  <p>Existing complex legislation was hindering the investigation and prosecution of human trafficking in Scotland. New legislation needed to be internally and trans-jurisdictionally effective. Research by O'Neill underpinned oral and written contributions to the Scottish Parliament Justice Committee during the drafting of the Human Trafficking and Exploitation (Scotland) Act 2015.</p> <p>O'Neill's oral and written evidence was used in the drafting of the Committee's final report into the Bill and their final recommendations on the Bill. O'Neill's main contributions were on ensuring a clear crime definition, ensuring that there were no transnational or inter-jurisdictional gaps in definition, and addressing the issue of child victims, which had been missing from the previous Scottish Human Trafficking and Exploitation (Scotland) Bill.</p>		
<b>2. Underpinning research</b>  <p>"Human trafficking is a highly profitable criminal activity", estimated to generate "\$150 billion around the world" (Scottish Trafficking and Exploitation Strategy – First Annual Progress Report, 2018). The UK is obliged to legislate for trafficking in human beings (THB) under, <i>inter alia</i>, the UN's <i>Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children</i>, attached to the <i>UN Convention on Transnational Organised Crime</i>, and the EU <i>Directive 2011/36/EU</i> on preventing and combating trafficking in human beings and protecting its victims. THB is predominantly a matter for the devolved UK administrations.</p> <p>Underpinning research was conducted by O'Neill into international (UN and Council of Europe) and EU provisions on THB, known in England and Wales as Modern Slavery (MS).</p> <p>In addition, the enactment of the E&amp;W Act and the NI Act informed O'Neill's contributions to the Scottish Parliament Justice Committee during the enactment of the Scottish Act.</p> <p>Research was started by O'Neill in 2010 and is ongoing. It has used comparative critical legal research using a black letter law methodology. It focused on the UK, international and EU legal requirements, and the gaps and lack of clarity in the drafting of the different legal texts. This library-based research was then contextualised, and issues prioritised, through informal discussions with serving police officers and other practitioners in Scotland. This</p>		

approach informed O'Neill's legal research and ensured the resulting research outputs were more relevant to practitioners.

Having initially addressed how the law on THB operated in the UK under the pre-2011 regime [3.1], research then progressed to the content of the *Directive 2011/36/EU*. This was inspired by a request from the Austrian Ministry of Interior to write a paper for their SIAK journal, (which has a policing and criminal justice readership – a practitioner journal). This was first published in 2012 and republished in their annual (2013) international edition. This research and subsequent published outputs [3.1, 3.2, 3.3] were disseminated to police officers and prosecutors in Scotland currently working on THB, which further fed the informal feedback loop between the library-based research and relevant practitioners.

Both the initial publications and practitioners' feedback informed O'Neill's input, in and around Tuesday 10<sup>th</sup> March 2015, to the legislative process during the passing of the Scottish Act.

### 3. References to the research

**3.1 Journal Article:** O'Neill, M. (2011) The EU legal framework on trafficking in human beings, where to from here – the UK perspective, in *Journal of Contemporary European Research*, 7, 4, p.552-467, <https://www.jcer.net/index.php/jcer/article/view/376>

**3.2 Book chapter:** O'Neill, M. (2013) Trafficking in human beings and the European neighbourhood policy: new challenges for the EU justice and law enforcement framework, In: O'Neill, M., Swinton, K, and Winter, A. (eds.), *New challenges for the EU Internal Security Strategy*, 1<sup>st</sup> ed. Newcastle upon Tyne, Cambridge Scholars Publishing, p.188-217. To be supplied by HEI on request.

**3.3 Journal Article:** O'Neill, M. (2018) International business encounters organised crime: the case of trafficking in human beings, *German Law Journal*, Vol. 19 No. 5 p.1125-11470. <https://doi.org/10.1017/S2071832200022975> (REF2).

### 4. Details of the impact

The Scottish Human Trafficking and Exploitation (Scotland) Bill (SP Bill 57) was introduced on the 11 December 2014. Scottish pre-2015 legislation was highly complex, fragmented, and difficult to operate, leading to very few successful prosecutions for human trafficking (THB) in Scotland. Scotland, as a devolved UK jurisdiction, needed to implement the provisions of EU Directive on THB (2011/36/EU). Clarity of definition and coherent legislation was required to properly address the crime of THB.

O'Neill's research informed the Scottish policy and legislative process through the provision of written (submitted) and oral (invited) evidence (to the Justice Committee 8<sup>th</sup> Meeting in 2015, session 4 -Tuesday 10<sup>th</sup> March 2015). As a result of her written evidence, O'Neill was invited to give oral evidence to the Committee. She was the only legal academic to contribute to the oral evidence session and was the only witness to focus predominantly on legal obligations under EU law [5.1, 5.2, 5.3].

At that time the Committee was very interested in hearing evidence on how the proposals went "*far enough in comparison to other [EU] member states*", whether O'Neill had "*any concerns in particular areas, and what is missing from the Bill.*" [5.4].

Acknowledgement of O'Neill's contribution to the Committee was received after the session, from Christine Lambourne, convenor of the Justice Committee stating:

*"Members found your oral evidence very helpful in informing their understanding of the key issues and are most grateful to you for your assistance to the Committee"* [5.5].

A subsequent letter of support documenting O'Neill's contribution to the Committee states that:

*"The written evidence that you provided to the MSPs was informative and thorough" and "both your oral and written evidence were used as an important contribution to the drafting of the Committee's final report into the Bill and their final recommendations on the Bill".*

*"The issues of the smuggling of migrants, the EU's legislative framework and comparative legislation at a UK level were all important parts of the Committee's scrutiny and which your evidence covered in depth".* Stephen Imrie, Clerk to the Justice Committee [5.6]

O'Neill's oral evidence on the 10<sup>th</sup> of March 2015, informed by her legal research (including published outputs 3.1, 3.2, and 3.3), focused on:

- Developing a clear crime definition for the law in Scotland
- Ensuring that there were no transnational or inter-jurisdictional gaps in definition
- Ensuring that the issue of child victims was properly addressed

### **Clear crime definition**

On the day the Justice Committee were refining and finalising the bill for enactment. O'Neill's discussion with the Justice Committee focused on the need for a clear and sufficiently broadly defined offence in order to cover a wide range of situations, to cover new forms of exploitation not anticipated at the time of drafting of the legislation. The subsequent Act contained a catch all clause in section 3.7, which allowed for services or benefits of any kind to be associated with the crime.

### **No transnational or inter-jurisdictional gaps in definition**

O'Neill led the discussion on the possible consequences for both combatting transnational crime and protecting its victims if transnational and inter-jurisdictional gaps in definitions arose. The different pieces of UK legislation on human trafficking and modern slavery were examined, together with transnational (EU and international) provisions [5.3, 5.7]. The Justice Committee was anxious that no such gaps would arise, and that all EU legal obligations were complied with. A particular issue which arose in this context was the issue of child victims.

### **Child victims**

There was a lack of express reference to children in the then draft legislation. The age of a "child" met with considerable debate on the 10<sup>th</sup> of March 2015, with O'Neill advising that a child should be defined as someone under the age of 18, a definition which was subsequently inserted into s.40 of the Act. This would be in line with EU and international law commitments. The issue arose as other Scottish legislation, such as the Children's Hearings (Scotland) Act 2011 define a child as being under the age of 16 or of school age. O'Neill emphasised that there was a requirement under the EU directive for support and assistance for children. Consequently, the Justice committee changed their approach. The Act now contains a definition that a child shall be someone under the age of 18 years (s.40 of the act), a presumption that an individual is under the age of 18 until the contrary is proven (s.12), provisions on child trafficking guardians (s.11) and provisions on aggravation involving a child (s.6).

### **Implementation of the law**

Since 2015 there has been a "significant rise" [5.8] in human trafficking cases reported and investigated in Scotland, with Police Scotland recording an increase in THB crimes of 85.5% 2017/18 to 2018/19 [5.8]. Child trafficking is a key work stream of Scottish Government.

There has been more streamlined interaction between national and international agencies to combat this crime [5.8]. Transnational law enforcement has also become key to the proper

investigation and prosecution of this crime, something which is facilitated by ensuring that there are no transnational or inter-jurisdictional gaps in definition [5.9].

## **5. Sources to corroborate the impact**

- 5.1** Minutes for Meeting of the Justice Committee, 8<sup>th</sup> Meeting, 2015 (Session 4) Tuesday 10 March 2015.
- 5.2** Agenda for Meeting of the Justice Committee, 8<sup>th</sup> Meeting, 2015 (Session 4) Tuesday 10 March 2015.
- 5.3** Scottish Parliament Official Report Justice Committee Tuesday 10 March 2015 Session 4 (official transcription of session).
- 5.4** Request from Joanne Clinton, Senior Assistant Clerk, Justice Commission, to give evidence to the Justice Committee.
- 5.5** Email from Christine Lambourne, Convenor of the Justice Committee on the 10<sup>th</sup> March 2015.
- 5.6** Letter from Stephen Imrie on behalf of the Justice Committee of the Scottish Parliament dated the 14<sup>th</sup> September, 2018).
- 5.7** Video of oral evidence session given to the Scottish Parliament on the 10<sup>th</sup> March 2015 on the Human Trafficking and Exploitation (Scotland) Bill (video).  
<https://www.youtube.com/watch?v=U38lvfFYOqc>
- 5.8** Trafficking and Exploitation Strategy – Third Annual Progress Report, Scottish Government. 2020.
- 5.9** Trafficking and Exploitation Strategy – Second Annual Progress Report, Scottish Government, 2019.