

Child Impact Assessment for the Human Trafficking and Exploitation Bill

HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) BILL – CHILD IMPACT ASSESSMENT

This document relates to the Human Trafficking and Exploitation (Scotland) Bill introduced in the Scottish Parliament on 11 December 2014. It has been prepared by the Scottish Government and the contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament.

Introduction and Purpose of the Child Impact Assessment (CIA)

1. This is the first Child Impact Assessment that the Scottish Government has produced following the passage of the Children and Young People's (Scotland) Act 2014. It has therefore been drafted in advance of agreement between the government and key stakeholders of the model template that will be used for all such impact assessments. This document should be read in conjunction with the draft Bill and the accompanying documents, notably the Policy Memorandum which provides more detail of the proposed provisions.

2. This impact assessment is based on the following principles:

- That children's rights and wellbeing should be considered in relation to all Government decisions. The weight of consideration should be reflective of the likely impact that a policy is likely to have on children. Nevertheless, all Ministerial decisions should be the subject of a screening process as a minimum.
- The Child Impact Assessment is a policy development tool which supports officials to strengthen policies, assess alternatives and identify mitigating actions which result in the improved realisation of children's rights and wellbeing. It is not simply a policy evaluation tool.
- The Child Impact Assessment should consider structural and process factors linked to children's rights as well as looking at children's outcomes.

3. The Child Impact Assessment is intended to:

- support Ministers in pursuing the Scottish Government's Purpose;
- support Ministers in the satisfaction of their legal responsibilities under the Equality Act 2010 and the Children and Young People (Scotland) Act 2014;
- support Ministers in their responsibility to fulfil the requirements of the UN Convention of the Rights of the Child, to which the UK is a signatory.

Methodology

4. This Child Impact Assessment will follow these key steps:

i) Screen and scope

We will:

- summarize the proposal under scrutiny, in this case the proposed Human Trafficking and Exploitation (Scotland) Bill;
- identify where and how the proposal is expected to impact on children; how many children are likely to be affected and the degree of the positive/negative impact to be anticipated;
- establish how success will be measured in relation to the initiative, linking explicitly to the Government's Purpose and Scotland's national outcomes.

ii) Assess and analyse

Using the rights expressed in the UNCRC and wellbeing defined as SHANARRI (safe, healthy, achieving, nurtured, active, respected, responsible and included) in the Getting It Right For Every Child (GIRFEC) approach, as a framework, we will assess the various options identified for addressing the issue in question, considering the impact that each would have on children's rights and wellbeing, taking into account (in no particular order):

- the number of children likely to be affected
- groups of children likely to be affected and competing interests of those groups
- length of the impact (short-term, medium-term, long-term)
- nature of the impact (e.g. in developmental terms) and compatibility with UNCRC and wellbeing defined as SHANARRI in the GIRFEC approach
- probability of the impact occurring
- whether there will be a consequential impact on other policies and what those impacts will be
- are disadvantaged/marginalised groups more severely affected
- risk mitigation – ensuring the resilience and capability of children to cope with any negative impact.

iii) Improve:

Following completion of the assessment, we will consider options for improving proposals to strengthen and promote children's rights and wellbeing.

iv) Review and seek feedback:

We will seek feedback and review:

- when this CIA will/should be revisited
- how the CIA will be used to support further development of existing policy and legislation.

SECTION 1: Screening for Relevance

5. The Human Trafficking and Exploitation (Scotland) Bill is to be introduced to the Scottish Parliament in the fourth year of the legislative programme (2014-15). It is a core plank in the Scottish Government's approach to tackling the abhorrent crime that is the trafficking of humans, adult and children, within Scotland and the UK (internal trafficking) and internationally. The Scottish Government's aims as regards human trafficking may be summarized as follows:

- to reduce the incidence of trafficking of adults and children including by putting in place robust criminal law measures for those who traffic in human lives;
- to improve identification of those who have been trafficked and improve data about trafficking; with the intention
- to support those who have experienced trafficking and who are in need of appropriate interventions, whether adults or children.

6. The overarching policy objectives of the Human Trafficking and Exploitation (Scotland) Bill contribute to these wider strategic aims by consolidating and strengthening the existing criminal law against human trafficking and enhancing the status and support for adult victims. The Bill will also give statutory responsibility to relevant agencies to work with the Scottish Government to develop and implement a Scottish Trafficking & Exploitation Strategy. The Bill, will therefore, benefit both adult and child victims of trafficking.

7. During the development of the Bill detailed consideration has been given to the relative current position of children and adult victims of trafficking, with reference to access to immediate support services. At present, there is no statutory provision to underpin the basis for providing immediate support and assistance to the adult victims of trafficking. In contrast, support and services for child victims of trafficking are already provided for (and are capable of being enhanced or extended) under existing legislation - the Children (Scotland) Act 1995, the Children's Hearings (Scotland) Act 2011 and the Children and Young People (Scotland) Act 2014 and thus the provisions for adult support contained in the Bill are not replicated for children; indeed, there has been a conscious decision not to do so. In line with the broader Scottish Government approach of Getting It Right for Every Child and the provisions of the Scottish child protection system, it is considered essential that the needs of a vulnerable child be considered holistically to ensure appropriate provision is made, taking account of the many needs a child may have, some of which may derive from a trafficked status and some of which may reflect the wider environment.

8. Notwithstanding this key principle, we assess that provisions of the Bill will impact on the following groups of children:

i) child victims of trafficking

The data about the number of children who have been trafficked within Scotland or internationally is thought to be unreliable and to substantially underestimate the number of children who may be affected by this crime. According to the NRM, only 22 children were identified as having been trafficked in the UK in 2013. All stakeholders

agree that this is likely to be a significant underestimate. We anticipate that elements of the Bill, in particular the requirement for a co-ordinated Trafficking & Exploitation Strategy will result in the identification of more children requiring access to services. We do not anticipate that this will have a detrimental impact on overall children's service provision. Measures to ensure tough criminal sanctions against traffickers and to prevent further trafficking activity by individuals should also help to reduce the risk of children becoming victims of trafficking.

ii) **children of individuals who have been trafficked**

As data about the number of trafficked individuals is incomplete, information about their children is also very limited. However, it is thought likely that a number of those people who are trafficked do have children who are affected by the disappearance of their parent.

iii) **children of individuals who have been arrested and/or prosecuted for trafficking**

We do not currently have statistics about how many children might be affected by an increase in prosecutions however, it is noted that, as set out in the Financial Memorandum, it is estimated that only an additional 8-21 prison places per annum after 4 years are likely to be required as a consequence of the increase in the penalty for a trafficking offence. Our best estimate is that very few children would therefore fall into this category annually. These children would form a subset of the wider set of children whose needs are affected by having a parent in prison.

The extent of these potential impacts are discussed at Section 2 below. It is to be noted also that children affected in groups (ii) and (iii) would not necessarily be resident in Scotland if the trafficked parent or prosecuted parent came from outside of Scotland and that they might therefore be reliant on support services provided in other countries. Children in group (i) are likely to be identified in Scotland and may/may not wish to remain here depending on individual circumstances.

9. The policy aims of the Bill contribute to the following National Outcomes:

- We live our lives safe from **crime**, disorder and danger.
- We have strong, resilient and supportive **communities** where people take responsibility for their own actions and how they affect others;
- Our **public services** are high quality, continually improving, efficient and responsive to local people's needs; and
- We have improved the life chances for **children, young people and families** at risk.

10. The success of the legislative measures in the Bill must be considered alongside those of the proposed Trafficking & Exploitation Strategy for which a separate CIA will be undertaken once the Strategy has been agreed and finalized, and measures taken by other agencies across Scotland, the UK and the wider world to combat trafficking. Specifically, we would expect to see:

- i) improved information about the number of individuals suspected to be affected by trafficking, and specifically more detailed data about the number of children affected;

- ii) associated with the above, improved awareness of the needs of victims of trafficking (including children) and more appropriate and timely access to relevant services;
- iii) an increase in the number of successful prosecutions of suspected traffickers, leading in turn to improved safety for those who might otherwise have been the victims of their activities;
- iv) regular review of the proactive measures undertaken by the Scottish Government and other key partners as set out in the Trafficking and Exploitation Strategy to ensure that efforts remain appropriately targeted, focused and effective.

Section 2: Assess and analyse

11. In setting out to assess and analyse the impact of the Bill, we must consider not only which Bill provisions may impact upon children but also the interaction with the rights expressed within the UNCRC and the SHANARRI wellbeing indicators as defined in the GIRFEC approach as a framework. The overarching framework which sets out how these rights and indicators interact is attached at **Annex A** for reference.

12. As noted above, a constraint in the analysis is the limited availability of reliable data about trafficking of children and adults. Currently, the UK Government (Home Office) holds data about victims who have been referred to the National Referral Mechanism (NRM) . However, referral to the NRM is not mandatory and it is thought that this data significantly underestimates the volume of trafficking that takes place both within Scotland and the UK (“internal trafficking”) and internationally. The Trafficking and Exploitation Strategy that accompanies the Human Trafficking and Exploitation Bill identifies the importance of improving data and information about trafficking in order to improve the strategic approach to reduction of trafficking and identification and support of potential victims.

Relevant measure within the Bill	Likely to impact on	Description of the anticipated impact	SHANARRI/UNCRC considerations
<i>Creation of a single offence of human trafficking for all forms of exploitation for adults and children.</i>	Collectively these provisions may affect:	(i) Child victims of trafficking should benefit from these provisions which are aimed at ensuring that those who traffic will be more severely punished in law than at the present time, and are deprived of the liberty that enables them to act. The measures will also disrupt and prevent further trafficking activity by individuals reducing the risk of more child victims.	In our opinion, these offences promote the opportunity for children to be Safe, Healthy, Achieving, Nurtured, Active, Responsible, Respected and Included. Children who are trafficked, or whose parents have been trafficked are less likely to be able to exercise their rights and to have their wellbeing protected than children who are able to remain safe at home with their families. The rights of children of traffickers should not be adversely affected although clearly separation from a loved parent is a source of anxiety for a child. (Article 9 of the UNCRC notes that children must not be separated from their parents unless this is in the child's best interests). Children of imprisoned parents do have access to support services where it assessed that they have a need of such a service; in the case of some children, their safety and wellbeing
<i>Establish statutory aggravations of human trafficking</i>	(i) Child victims of trafficking		
<i>Revised slavery, servitude and forced labour offence</i>	(ii) Children of those who have been trafficked	(ii) Children of those who have been trafficked may be indirectly affected by these provisions. Ideally, they will be able to be reunited with their parents in better and safer circumstances: this would clearly accord more closely with their rights and their wellbeing. It is however, possible that in some instances, it may not be to the benefit of the child to be reunited with the parent who has been trafficked. Improved information about those who have been trafficked should enable local service providers to be aware of children who may be at risk and/or in need of additional support.	
<i>Establish trafficking prevention orders and risk orders</i>	(iii) Children of those arrested or prosecuted for trafficking		
<i>Detention of property of those arrested for trafficking offences</i>			
<i>Criminal lifestyle offence</i>			

		(iii) Children of traffickers may also be affected by these provisions where their parents are deprived of liberty as a consequence of trafficking. As noted above, we expect this to be a very small number of children.	may be enhanced by separation from the trafficking parent.
<i>Place a duty on the Lord Advocate to publish guidance about the prosecution of credible trafficking victims who have committed offences</i>	Small number of child victims of trafficking who may have committed offences as a consequence of trafficking	<p>The final decision on any prosecutions in Scotland is for the independent Lord Advocate to take. Under normal circumstances, children under the age of 12 are not prosecuted and those over the age of 12 would normally be referred into the Whole System Approach except in rare instances.</p> <p>The Lord Advocate's current, non-statutory, guidance makes clear that, where there is credible evidence that a crime has been committed as a consequence of the individual's trafficked status, this should be taken into account in the decision whether or not to prosecute is in the public interest. This applies also to child victims of trafficking who have committed offences: referral into the Whole System Approach would not normally be appropriate unless a referral to the Reporters in relation to an offence committed relates the wellbeing for the child concerned or has been endorsed by COPFS</p>	The duty on the Lord Advocate to publish guidance about prosecution of credible trafficking victims who have committed offences offers protection to children who have done so as a consequence of their trafficked status. This supports SHANARRI and specifically articles 39 and 40 of the UNCRC, ensuring that the mitigating factors of the situation are taken into account.
<i>Require Scottish</i>	(i) Child victims of	The trafficking strategy will explicitly	It is intended that measures set out

<p><i>Ministers to publish an trafficking and exploitation strategy</i></p>	<p>trafficking (ii) Children of trafficked parents</p>	<p>address the needs of children as well as adults. It is therefore a useful vehicle to enhance the support offered to children who have been trafficked and/or whose parents may have been trafficked. In developing the strategy, Scottish Ministers are required to consult with relevant organisations, this will include organisations representing the rights and needs of children, to ensure that these are reflected in the Strategy. A review will assess the progress of the strategy, and the impact of for both adult and child victims and potential victims of trafficking, at least every 3 years.</p>	<p>within the strategy should support children’s wellbeing and ability to exercise their rights. These support article 39 of the UNCRC, in particular.</p>
<p><i>Duty on Scottish Ministers to secure the provision of relevant immediate support and recovery services for the adult victims of trafficking</i></p>	<p>(i) Child victims of trafficking whose age may be uncertain (ii) Children of trafficked parents</p>	<p>While the measures in the Bill directly support the needs of adults, recognizing that support services for trafficked children are already available within the wider continuum of children’s services, there are some tangential benefits for children. Firstly, where individuals of unknown age could only previously have received children’s services, this is no longer the case as services will now be available for trafficked adults. It does however, remain the case that those under 18 or thought to be under 18 should be offered children’s services in line with the principle that the child and or his/her wellbeing is at the centres of how the services he/she needs are assessed and delivered. Secondly, as</p>	<p>Ensuring that young people of unknown age can access services, whether or not they are able to prove their age and that the needs of children of trafficked parents can be identified and addressed contributes to wellbeing and notably to the following indicators: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included.</p>

		parents are identified and offered services, it is likely that the needs of their children are more likely to be identified and met.	
<i>Duty on public bodies to provide anonymised information about potential human trafficking victims</i>	(i) Child victims of trafficking	This measure is of benefit to children, although perhaps primarily indirectly. Improving knowledge and understanding of patterns of trafficking will enable government and partners to develop better responses to trafficking and mechanisms of support. Information about all identified potential child victims of trafficking is already required to be reported to the Police.	Indirectly, in that it contributes to the longer term ambition of reducing trafficking, this provision promote the opportunity for children to be Safe, Healthy, Active, Nurtured and Respected.

Section 3: Improve

13. Based on the assessment above, it is the Scottish Government's view that if accepted, the overall impact of the proposals of the Bill will be to promote wellbeing of children and young people by acting to reduce the likelihood that they or those close to them may be the victims of trafficking. Enabling children and young people to remain in their homes and communities, and to access the services in line with existing legislation promotes wellbeing and ensures that needs of children and young people who may have been trafficked can be assessed holistically. The requirement on Scottish Ministers to publish and revise a Trafficking Strategy provides the opportunity for there to be a regular review of what additional measures might be introduced to reduce further the likelihood that children will become victims of trafficking, and to consider what additional support might be of use. The only detrimental impact we have identified is potentially to children of those who may be prosecuted. We anticipate that this will be an extremely small number of children and that their needs will best be identified within the context of support available to children of prisoners.

Section 4: Review

14. This assessment will be revised at Stage 2 of the Human Trafficking and Exploitation (Scotland) Bill to take account of any arising amendments and of any feedback on the format of this new assessment model.

Accountability

15. The responsibility for production, supervision and review of this Child Impact Assessment lies jointly with the Deputy Director for Criminal Law & Licensing Division (which has overarching policy responsibility for adult victims of human trafficking, adult victim support and criminal offences) and the Deputy Director for Children's Rights & Wellbeing Division (which has responsibility for promoting children's rights, child protection and specific policies on child trafficking). This will ensure that the CIA reflects both the indirect and direct impact of policy and legislative decisions within the Human Trafficking & Exploitation (Scotland) Bill as it progresses.

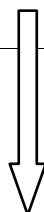
Scottish Government

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Linking the UNCRC and SHANARRI

The UNCRC provides the framework for establishing a set of conditions in which a child's wellbeing (as defined through the Children and Young People (Scotland) Act 2014) can be promoted, supported and safeguarded:

UNCRC CLUSTER: Civil Rights & Freedoms		
Article 7: Every child has the right to a legal name and nationality, as well as the right to know and, as far as possible, to be cared for by their parents.	Article 8: Governments must respect and protect every child's right to an identity and prevent their name, nationality or family relationships from being changed unlawfully. If a child has been denied part of their identity illegally, governments must act quickly to protect and assist the child to re-establish their identity.	Article 13: Every child must be free to say what they think and to seek and receive all kinds of information, as long as it is within the law.
Article 14: Every child has the right to think and believe what they want and also to practise their religion, as long as they are not stopping other people from enjoying their rights. Governments must respect the rights of parents to give their children information about this right.	Article 15: Every child has the right to meet with other children and to join groups and organisations, as long as this does not stop other people from enjoying their rights.	Article 16: Every child has the right to privacy. The law should protect the child's private, family and home life.
Article 17: Every child has the right to reliable information from the media. This should be information that children can understand. Governments must help protect children from materials that could harm them.	Article 28: Every child has the right to an education. Primary education must be free. Secondary education must be available to every child. Discipline in schools must respect children's dignity. Richer countries must help poorer countries achieve this	Article 39: Children neglected, abused, exploited, tortured or who are victims of war must receive special help to help them recover their health, dignity and self-respect.



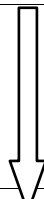
WELLBEING INDICATORS		
Achieving	Respected	Included

UNCRC CLUSTER: Family environment and alternative care		
Article 5: Governments must respect the rights and responsibilities of parents and carers to direct and guide their child as they grow up, so that they enjoy their rights properly.	Article 9: Children must not be separated from their parents unless it is in the best interests of the child (for example, if a parent is hurting a child). Children whose parents have separated have the right to stay in contact with both parents, unless this might hurt the child.	Article 10: Governments must respond quickly and sympathetically if a child or their parents apply to live together in the same country. If a child's parents live apart in different countries, the child has the right to visit both of them.
Article 11: Governments must do everything they can to stop children being taken out of their own country illegally or being prevented from returning.	Article 18: Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by giving them the help they need, especially if the child's parents work.	Article 19: Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them.
Article 20: If a child cannot be looked after by their family, governments must make sure that they are looked after properly by people who respect the child's religion, culture and language.	Article 21: If a child is adopted, the first concern must be what is best for the child. All children must be adopted and kept safe, whether they are adopted in the country where they were born or in another country	Article 25: If a child has been placed away from home (in care, hospital or prison, for example), they have the right to a regular check of their treatment and the way they are cared for.
Article 27: Every child has the right to a standard of living that is good enough to meet their physical, social and mental needs. Governments must help families who cannot afford to provide this.	Article 39: Children neglected, abused, exploited, tortured or who are victims of war must receive special help to help them recover their health, dignity and self-respect.	



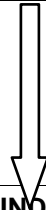
WELLBEING INDICATORS		
Safe	Healthy	Nurtured

UNCRC CLUSTER: Basic health and welfare		
Article 6: Every child has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential.	Article 18: Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by giving them the help they need, especially if the child's parents work	Article 23: A child with a disability has the right to live a full and decent life with dignity and independence, and to play an active part in the community. Governments must do all they can to provide support to disabled children
Article 24: Every child has the right to the best possible health. Governments must provide good quality health care, clean water, nutritious food and a clean environment so that children can stay healthy. Richer countries must help poorer countries achieve this.	Article 27: Every child has the right to a standard of living that is good enough to meet their physical, social and mental needs. Governments must help families who cannot afford to provide this.	Article 33: Governments must protect children from the use of illegal drugs.



WELLBEING INDICATORS		
Safe	Healthy	Active
Nurtured	Included	

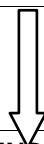
UNCRC CLUSTER: Education, leisure and culture		
Article 28: Every child has the right to an education. Primary education must be free. Secondary education must be available to every child. Discipline in schools must respect children's dignity. Richer countries must help poorer countries achieve this.	Article 29: Education must develop every child's personality, talents and abilities to the full. It must encourage the child's respect for human rights, as well as respect for their parents, their own and other cultures, and the environment.	Article 30: Every child has the right to learn and use the language, customs and religion of their family, whether or not these are shared by the majority of the people in the country where they live.
Article 31: Every child has the right to relax, play and take part in a wide range of cultural and artistic activities.		



WELLBEING INDICATORS		
Active	Achieving	Respected
Responsible	Included	

UNCRC CLUSTER: Special protection measures

<p>Article 22: If a child is a refugee or seeking refuge, governments must ensure that they have the same rights as any other child. Governments must help in trying to reunite child refugees with their parents. Where this is not possible, the child should be given protection.</p>	<p>Article 30: Every child has the right to learn and use the language, customs and religion of their family, whether or not these are shared by the majority of the people in the country where they live.</p>	<p>Article 32: Governments must protect children from work that is dangerous or might harm their health or education</p>
<p>Article 33: Governments must protect children from the use of illegal drugs</p>	<p>Article 34: Governments must protect children from sexual abuse and exploitation.</p>	<p>Article 35: Governments must ensure that children are not abducted or sold</p>
<p>Article 36: Governments must protect children from all other forms of bad treatment.</p>	<p>Article 37: No child shall be tortured or suffer other cruel treatment or punishment. A child should be arrested only as a last resource and for the shortest possible time. Children must not be put in a prison with adults and they must be able to keep in contact with their family.</p>	<p>Article 38: Governments must do everything they can to protect and care for children affected by war. Governments must not allow children under the age of 15 to take part in war or join the armed forces.</p>
<p>Article 39: Children neglected, abused, exploited, tortured or who are victims of war must receive special help to help them recover their health, dignity and self-respect.</p>	<p>Article 40: A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to help from a lawyer and a fair trial that takes account of their age or situation. The child's privacy must be respected at all times.</p>	



WELLBEING INDICATORS		
Safe	Healthy	Respected
Included		



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