

EQUALITY IMPACT ASSESSMENT – RESULTS

Title of Policy	Human Trafficking and Exploitation (Scotland) Bill
Summary of aims and desired outcomes of Policy	The Bill will consolidate and strengthen the existing criminal law against human trafficking and enhance the status and support for its victims. The Bill will also give statutory responsibility to relevant agencies to work with the Scottish Government to develop and review a Scottish Trafficking Strategy
Directorate: Division: team	Justice: Criminal Law and Licensing Division

Executive summary

1. The proposals in the Human Trafficking and Exploitation (Scotland) Bill will affect victims of human trafficking and exploitation and those involved in the trafficking and exploitation of human beings. The changes will also affect Police Scotland, specified Scottish public authorities, COPFS and the courts.
2. One of the key aims of the Bill is to give the adult victims of human trafficking the same statutory rights as child victims to access immediate support and assistance. The statutory requirement to support child victims of trafficking is set out in other existing legislation. This is explained in more detail in the separate Child Impact Assessment.
3. Equality issues were considered during the policy development process and none of the proposals were considered to give rise to the possibility of those affected being treated less favourably due to any of the protected characteristics. Indeed, some of the proposals are intended to ensure that the particular circumstances of individuals may be taken into account (e.g. the

slavery, servitude and forced or compulsory labour offence which requires that the court, in assessing whether a person has been the victim of the offence, is to have regard to any of the alleged victim's characteristics that make them more vulnerable than other people), such characteristics could include those originating from a protected characteristic.

4. It was therefore considered that a relatively limited Equality Impact Assessment (EQIA) would be appropriate. The focus of the data gathering and consideration was on determining whether there may be any inadvertent effects on different groups by examining the populations likely to be affected by the Bill.

5. The EQIA, which took into consideration existing research, confirmed that the proposals in the Bill are unlikely to have any negative effect on the basis of the protected characteristics. There is potential for the Bill provisions to have some positive differential effects for victims of trafficking and exploitation.

6. It should be borne in mind that there are very significant challenges in establishing credible information about levels of human trafficking and numbers of victims. Potential victims can be reluctant to engage with authorities, including law enforcement agencies. The complex, hidden nature of this crime makes it particularly difficult to quantify its impacts and scale accurately. A large proportion of cases are never recognised or reported, and do not appear in any statistics. As a result, estimates about the true scale of the problem vary widely.

7. Available data is heavily caveated and is of limited value in assessing the true extent to which individuals with protected characteristics will be affected by the Bill. It is this lack of robust and reliable data which has informed one of the key aims of the Bill to provide wider information about the scale and nature of trafficking activity in Scotland.

8. No changes to the policy were considered necessary following the EQIA. However, the Scottish Government will continue to work with stakeholders to ensure full account is taken of equality issues.

Background

9. The trafficking of human beings for exploitation is a serious, complex and multifaceted crime. It is an international and cross-border crime, although trafficking can also occur within Scotland and within the UK. It involves the transport of both children and adults for a variety of exploitative purposes. Prosecutors from across the UK and Ireland have acknowledged that investigating and prosecuting this crime raises unique challenges, but is a key priority. Trafficking for the purposes of exploitation is a violation of individuals' rights. Once identified, victims of trafficking need time for recovery and reflection following their trafficking experience and have the right to expect appropriate standards of immediate support and assistance based on an assessment of their individual needs.

10. Preventing and tackling this crime in Scotland is a joint responsibility of the Scottish Government, the UK Government, the police, prosecutors, local authorities; support agencies and others. Working in partnership with relevant agencies on an international and UK level, the Scottish Government aims to make Scotland a hostile place for traffickers and to better identify and support potential and confirmed victims.

11. The Human Trafficking and Exploitation Bill will include provision to:

- clarify and strengthen the law against traffickers and those who exploit individuals – creating a single offence of human trafficking for all types of exploitation for both adults and children; establishing statutory aggravators of human trafficking for other crimes; reframing the current standalone exploitation offence;
- introduce new measures to disrupt and prevent trafficking and those who exploit others – powers to issue two new types of preventive order and associated interim orders to assist in preventing trafficking and exploitation activity and the harm to potential victims; providing for the detention of property of a person arrested on suspicion of a human trafficking offence; placing a duty on public authorities to provide anonymised

data about potential human trafficking victims and exploitation to Police Scotland;

- ensure the rights of trafficked victims to access support and assistance – placing a duty on the Scottish Ministers to secure the provision of relevant immediate support and recovery services for adult victims of trafficking;
- place a duty on the Lord Advocate to publish guidance about the prosecution of credible trafficked and exploitation victims who have committed offences;
- ensure a strategic, cross-agency approach to tackling trafficking and exploitation – placing a duty on Ministers to engage with relevant stakeholders to develop and publish a trafficking and exploitation strategy; placing a duty on specified public authorities to co-operate with the Scottish Ministers in preparing the strategy.

12. Human trafficking is, by its nature, a hidden crime and its drivers are complex and international. The proposals outlined above which will be introduced as the Human Trafficking and Exploitation (Scotland) Bill is an important step in ensuring a strategic Scottish response to this issue; clarifying the criminal law to assist law enforcement agencies in bringing traffickers to justice; and enhancing the rights of victims to immediate support and time for recovery.

The Scope of the EQIA

13. Policy and analytical services officials from the Scottish Government were involved in carrying out the EQIA. The Scottish Government took account of existing evidence available. These included:

The National Crime Agency Strategic Assessment of the extent and nature of human trafficking in the UK, published on 30 September 2014¹

¹ <http://www.nationalcrimeagency.gov.uk/publications/399-nca-strategic-assessment-the-nature-and-scale-of-human-trafficking-in-2013/file>

NCA National Referral Mechanism statistics 2013, published 20 January 2014²

The Inquiry into Human Trafficking in Scotland by the Equality and Human Rights Commission (2012)³

Eurostat – Working Paper on Statistics on Trafficking in Human Beings⁴

14. However, a constraint in the analysis is the limited availability of reliable data about human trafficking. 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.

15. The National Crime Agency Strategic Assessment on the nature and scale human trafficking in 2013 estimated that there were 55 potential victims of human trafficking in Scotland.

- The assessment published on 30 September 2014 provides a new figure of 55 potential victims in Scotland and is a refinement of the earlier NRM figure, published on 18 February 2014, that reported 99 (77 adults and 22 children) referrals of potential trafficking victims from Scotland in 2013.
- The assessment figure of 55 potential victims reflects the removal of duplicate referrals, removal of referrals that received a negative reasonable grounds and negative conclusive grounds decision and included information received to an NCA intelligence requirement.

Key Findings

16. The EQIA confirmed that the proposals in the Bill will not impact adversely on any of the protected characteristics. The Bill is intended to apply equally to those affected by its provisions.

2 <http://www.nationalcrimeagency.gov.uk/publications/139-national-referral-mechanism-statistics-2013/file>

3 http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Human_Trafficking_in_Scotland_/inquiry_into_human_trafficking_in_scotland-full-report_pdf_.pdf

4 http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20141017_working_paper_on_statistics_on_trafficking_in_human_beings_en.pdf

The proposals will have a positive impact on victims of human trafficking and exploitation and where an individual with a protected characteristic is a victim, some positive effect will be present.

17. With regard to eliminating unlawful discrimination, harassment and victimisation, there is no evidence to suggest that any individual is currently treated less favourably due to their protected characteristic. A key aim of the Bill is to make Scotland a hostile environment for human trafficking. In so doing, the expectation is that the number of victims of trafficking and exploitation would be reduced. A victim could have protected characteristics and it follows that included in that overall reduction would be victims with protected characteristics.

18. In respect of advancing equality of opportunity, there is no evidence to suggest that the Bill will have either a positive or negative impact on anyone due to their protected characteristic.

19. On promoting good relations, there is no evidence to suggest that the Bill will have either a positive or negative impact on anyone due to their protected characteristic.

Recommendations and Conclusion

20. The Scottish Government has concluded that no changes to the policy are necessary as a result of the EQIA, as the Bill is intended to apply equally to those affected by its provisions and appear to have no detrimental effect on the basis of the protected characteristics. It is hoped that the Bill will have a positive effect for victims of human trafficking and exploitation. In respect of victims with protected characteristics, it is anticipated therefore, that the Bill will have some positive differential effects.

21. In recognition that the EQIA is an iterative process, the Scottish Government will continue to ensure that full account of equality issues is taken into consideration as the legislation progresses and through the implementation stage.