

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Written submission from the Information Commissioner's Office

1. The Information Commissioner's Office (ICO) is the UK's independent public authority set up to uphold information rights. We do this by promoting good practice, ruling on complaints, providing information to individuals and organisations and taking appropriate action where the law is broken.

2. The ICO enforces and oversees the Data Protection Act 1998 (the DPA) and the Privacy and Electronic Communication Regulations 2003, as well as the UK Freedom of Information Act 2000 and the UK Environmental Information Regulations 2003, both of which apply to reserved matters in Scotland.

3. The ICO welcomes the opportunity to comment to the Justice Committee on aspects of the Human Trafficking and Exploitation (Scotland) Bill (the Bill) that are relevant to our work in relation to the DPA. We responded to Jenny Marra MSP's consultation on her proposed Member's Bill on this subject. We noted then that the Member's Bill envisaged significant multi-agency working which would necessarily involve large volumes of personal information being shared. It would also create a new body, the Scottish Survivors' Service, to coordinate much of the work.

4. The Scottish Government's Bill as introduced to Parliament does not contain as many provisions as Jenny Marra's proposed Bill for the use or sharing of personal information. We have therefore limited our comments to those sections of the Bill that clearly envisage the use of personal data to assist in combatting human trafficking and exploitation.

Duty to secure support and assistance

5. Clause 8 establishes a statutory duty on the Scottish Ministers to secure support and assistance for victims of human trafficking during a specified period. It is not clear from the Bill itself whether Ministers (through the offices of the Scottish Government) will secure such support directly or whether, as appears to be the current case from the policy memorandum, Ministers will provide resources to other organisations to support victims.

6. In many cases it will be necessary for some personal details of these victims to be supplied to other agencies to provide that support and assistance. We expect whichever organisation is responsible for coordinating this work will comply fully with its obligations under the DPA and we would recommend it conducts a [Privacy Impact Assessment](#) to ensure that it protects the privacy of the people it is trying to help.

Prevention and risk orders

7. Part 4 of the Bill contains provisions for new prevention and risk orders to be served on relevant offenders either at sentencing or upon application to a sheriff.

8. We welcome the provisions allowing these orders to be varied, renewed or discharged as they support people's rights under the DPA for their personal

information to be accurate and, where necessary, kept up to date. If circumstances change and a person is no longer a threat, then there are clear processes in the Bill whereby this can be acknowledged and their order discharged or amended as appropriate.

Duty to notify and provide information about victims

9. Clause 34 of the Bill will require specified Scottish public authorities to notify the Chief Constable of Police Scotland about people who are, or are believed to be, victims of human trafficking or exploitation. Paragraphs 92-94 of the policy memorandum consistently talks about the use of anonymised data. However, Clause 34(2) includes a provision that an adult victim might consent to being identifiable. We infer from this that, as a matter of course, adult victims would be asked to consent to their name being provided to the Chief Constable. We understand the purpose of such sharing is to improve the available intelligence about the scale and extent of trafficking and exploitation.

10. Victims are likely to be in a vulnerable state and may have little, if any, understanding of the English language and the Scottish legal system. In which case, we question whether they would be capable of providing fully informed and freely given consent. As the stated policy intention is for only anonymised data to be provided, we recommend that the consent provision be deleted. We would be happy to work with the Scottish Government in the drafting of any regulations made under this clause to ensure that specific individuals cannot be identified from what may be very unique circumstances.

We trust the Committee finds this response helpful. We would be happy to discuss any aspect of it further at the Committee's convenience if required.

Dr Ken Macdonald
Assistant Commissioner for Scotland
23 February 2015