

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Written submission from Police Scotland

As the lead for Public Protection for Police Scotland I welcome the opportunity to respond to the call for evidence from the Scottish Parliament's Justice Committee in relation to the proposed Human Trafficking and Exploitation (Scotland) Bill.

Police Scotland recognises the significant risk and harm presented by exploitation and trafficking of persons to and within communities across Scotland. Police Scotland's National Human Trafficking Unit (NHTU) was formed in 2013, to ensure an effective, coordinated and victim focussed response to such incidents and act as a Single Point of Contact for law enforcement agencies and statutory and non-statutory agencies in the United Kingdom and beyond. The creation of Human Trafficking 'Champions' in each of our 14 local policing divisions enables Police Scotland to embed best practice and ensure a consistently high level of investigation and victim care.

The Scottish Crime Campus, Gartcosh was identified as the optimum location for the NHTU. Human Trafficking demands effective joint working and the advantages of co-location with other investigators within Police Scotland's Specialist Crime Division, the National Crime Agency (NCA) other statutory agencies and Crown Office and Procurator Fiscal Service has been clearly evidenced at strategic, tactical and operational level. In addition, Police Scotland has an established governance structure to ensure the formation and review of policy and continuous monitoring of implementation. This includes the formation of partnership work streams to ensure our collective national efforts are managed and coordinated to deliver positive long-term outcomes.

We recognised that general awareness raising and a greater understanding of issues surrounding criminal activity associated with Human Trafficking is crucial to delivering effective solutions, not only within law enforcement, but also across partnerships and within our communities. A key priority for Police Scotland is our Human Trafficking and exploitation training and communication strategies. An example, worthy of mention, was the creation of an aide memoire distributed to every officer in Police Scotland, supported by an online learning package. Police Scotland also developed a similar guide for partner and public use entitled 'Reading the Signs'. This guidance leaflet, which was launched by the Scottish Business Resilience Centre, continues to be marketed and distributed throughout business and public sectors.

While the establishment of the NHTU has enabled tactics and practices to be developed with the aim of delivering high quality, effective investigations, which prioritise victim identification and care while ensuring those involved in any part of criminal exploitation are identified and targeted, we fully recognise that prevention activity is of equal importance. A significant number of pro-active operations and initiatives have been carried out with the aim of actively engaging with individuals, groups and communities potentially at greater risk of being exploited as a result of

situational vulnerability. Our response is underpinned by a victim strategy aimed at identifying and, in partnership, supporting victims of Human Trafficking and exploitation.

Human trafficking and exploitation operations are often protracted, complex and challenging due to the scale, generally hidden nature of the crime, language and cultural barriers and the controlling pressure of abusers. Notwithstanding, Police Scotland is absolutely committed to working with our partners and local communities with the emphasis on identifying victims of Human Trafficking and exploitation, investigating, preventing and proactively targeting perpetrators in Scotland while building greater international links to help combat the global reach of perpetrators.

Operational activity continues to target serious and organised crime groups operating across a wide variety of industry sectors, including construction, agriculture, fishing and the sex industry. This is reflected in our work with international law enforcement agencies, an example being Police Scotland forming part of an International Joint Investigation Team in partnership with Europol, the Metropolitan Police and Polish Authorities. This evidences our commitment to continually increase our operational activity across borders and pursue those responsible for exploitation in Scotland, regardless of their location.

Police Scotland therefore welcomes and supports many of the provisions contained within the Human Trafficking and Exploitation (Scotland) Bill, specifically the opportunities it presents for the care and support of victims. Notwithstanding, I would wish to make the following comments and welcome the opportunity to explore some of the issues raised when making oral representation in the near future.

Part 1 – Offences

1. Police Scotland continues to identify victims of Human Trafficking in circumstances where the individual has been forced to commit crime for the benefit of the trafficker, such as shoplifting, begging or maintaining cannabis cultivations. It would appear the inclusion of Human Trafficking for the purposes of forced criminality within the section entitled 'slavery, servitude, forced or compulsory labour' is being considered, however, Police Scotland is strongly of the opinion that reference to forced criminality should be inserted as a separate definition of exploitation within Section 3 of the Bill. This would clearly highlight the fundamental differences between forced criminality and forced labour and increase awareness and appreciation of the scope of exploitation.
2. The prevention and investigation of child abuse and neglect has been a key priority for the police and partners across Scotland for some time. Child trafficking and all forms of child exploitation is a form of child abuse. Given it is, at times, difficult to prove the movement of a 'child', Police Scotland is of the view that the focus of any prosecution should be the victim's status and vulnerability. It is suggested that, in many cases, child exploitation will simply not meet the criteria required for slavery, servitude or forced or compulsory labour, for example, trafficking for criminal purposes such as benefit fraud, begging etc.

3. While it would appear some discussion has taken place around a separate offence of 'child trafficking', Police Scotland are of the view that, within the present draft legislation, reference to where a victim has been exploited specifically because they are a 'child' should be specifically referenced within Section 3(8) or, more appropriately, raised within a separate section.
4. While it is recognised that Section 3(3) of the Bill is attempting to clarify and consolidate existing pieces of legislation, Police Scotland are strongly of the opinion that this Section should be amended to explicitly include *'it is irrelevant if a person consents to being a prostitute if that person is exploited through another person exercising control etc'*. This would ensure that persons working as prostitutes could be considered as victims and re-enforce the Scottish Government strategy on Gender Equality and Violence against Women.
5. With the exception of reference to Article 4, Human Rights Convention the Bill does not define forced or compulsory labour. Police Scotland is of the view that the inclusion of a definition of prostitution as a form of labour would allow an offence of forced or compulsory labour to be relevant where a person is forced into prostitution and movement or control cannot be evidenced.
6. Police Scotland is of the view that the inclusion of Sections 11 (3) and 11 (4) of the Criminal Law (Consolidation)(Scotland) Act 1985, which relate to the separate offence of trading in prostitution, within Section 5 would provide the opportunity to apply for Trafficking and Exploitation Prevention Orders (TEPO) and Trafficking and Exploitation Risk Orders (TERO)
7. Police Scotland are of a view that the legislation in relation to Section 4, Slavery, Servitude and Forced or Compulsory Labour, should reflect the fact that persons may appear to 'consent' to certain acts however the circumstances are such that they are clearly being exploited. This is typically experienced when persons from abroad have consented to work in the UK for considerably less than the minimum wage and do not regard themselves as being exploited. This is addressed in the Modern Slavery Bill as follows:
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"The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour."
It is suggested that Section 4 of the Bill should provide similar clarity.
8. Vulnerability is an essential element of Human Trafficking and traffickers are dependent on many of these vulnerabilities being present in their choice of victim. Police Scotland is of the opinion the vulnerabilities currently highlighted do not adequately reflect operational experience. While it is acknowledged that the inclusion of a list of adverse risk indicators may inadvertently encourage practitioners to disregard any form of exploitation not explicitly referred to, it is suggested that the inclusion of an Appendix highlighting vulnerability indicators would assist in the identification of victims of trafficking. Inserting a caveat it is a non-exhaustive list would mitigate

concerns. An example of such a list can be found within the Sexual Offences (Scotland) Act 2009. This provides examples of where consent cannot be considered to be present in rape.

9. The Bill makes reference to the vulnerability of victims due to a 'person's age' and that 'they are young'. Police Scotland is of the opinion that a clear definition is required and strongly suggests the Bill be amended with reference made to a 'child' and/or 'children'.

Part 2 – Protection of Victims

1. Police Scotland has established a number of measures to identify trafficked victims who are involved in criminality as a direct result of their trafficked status. While section 3 of the Bill (Exploitation for the purposes of offence of Human Trafficking) refers to slavery, servitude and forced or compulsory labour, we are of a view that this is an evolving picture and that, as new forms of exploitation emerge, the Bill should be adequately 'future proofed' to deal with this. Examples of this include shoplifting, organised begging and benefit fraud. It is our opinion that these crimes would not necessarily fit readily in to the category of forced or compulsory labour, hence Police Scotland's suggestion that specific reference is made to forced criminality.
2. Police Scotland is of the opinion that Section 8 (3) requires strengthening and suggests the amendment to '*must secure the provision of that support and assistance*' would fill the gap in provision while a victim awaits a reasonable grounds decision.
3. Section 8 – Duty to secure support and assistance explicitly refers to adults. Police Scotland has repeatedly highlighted challenges in respect of the provision of support and assistance to victims aged 16 and 17 who are, in terms of the Bill, children. This is particularly acute in respect of the provision of suitable accommodation where neither child protection nor adult support and protection arrangements are ideal. It is therefore suggested that the Bill should reflect the often unique requirements of 16 and 17 year old victims in respect of the duty to provide support.
4. Police Scotland is of the opinion that a Section outlining the presumption of age, similar to that included in the Modern Slavery Bill (section 50), would ensure appropriate measures are undertaken for the provision of care and support.

Part 4 – Trafficking and Exploitation Prevention and Risk Orders

1. The reduction and prevention of Human Trafficking will be enhanced by the introduction of Trafficking and Exploitation Prevention Orders (TEPO) and Trafficking and Exploitation Risk Orders (TERO). The orders should provide law enforcement agencies and the criminal justice system with the ability to place restrictions on persons, not only convicted of trafficking offences but those suspected of committing or attempting to commit trafficking offences.

Police Scotland would wish to highlight the management of registered sex offenders has been enhanced through the use of Sexual Offences Prevention Orders, including the introduction of Section 100, Criminal Justice and Licensing (Scotland) Act 2010 which allows for positive obligation conditions to be imposed in addition to prohibitive conditions.

Part 5 – Strategy and Planning

1. Placing a duty on Scottish ministers to prepare, produce, regularly review and update a Trafficking and Exploitation strategy is welcomed by Police Scotland. It is envisaged the requirement for Ministers to consult with organisations and individuals they consider have a relevant interest in the issue of Human Trafficking and exploitation provides an opportunity to strengthen existing partnerships and encourage the development of further joint working across all sectors, including industry. It is suggested that the structure of the Scottish Government's Strategy for tackling Organised Crime focusing on the 4 D's of Deter, Detect, Divert and Disrupt would be transferable for the Human Trafficking and Exploitation strategy.
2. While productive partnership work continues to develop and mature, it is widely accepted that the true picture of Human Trafficking in Scotland is still unclear. The inclusion in the Bill of the statutory duty to notify Police Scotland and provide information in relation to potential victims is particularly welcome. It is anticipated that, the provision of adequate and appropriate information will improve victim identification, detection, intervention and disruption opportunities.

Part 6 – Final Provisions

1. The recognition that Human Trafficking offences can be committed by businesses is welcomed, especially where 'relevant individuals' can be proceeded against. This complements Section 50, Modern Slavery Bill (Transparency of Supply Chains), where there is a requirement for businesses to prepare a slavery and Human Trafficking statement for each financial year.

Conclusion

Police Scotland is broadly supportive of the Bill and the provisions within, particularly in respect of measures to provide improved victim support and assistance.

The comments provided are based on a growing body of experience and evidence as our partnership response to Human Trafficking continues to develop and mature.

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