
To: COMMUNITIES, HOUSING AND PLANNING POLICY BOARD

On: 20 AUGUST 2019

Report by: DIRECTOR OF COMMUNITIES, HOUSING AND PLANNING

Heading: CONSULTATION ON SECTION 38 OF THE HUMAN TRAFFICKING AND EXPLOITATION (SCOTLAND) ACT 2015 - DUTY TO NOTIFY AND PROVIDE INFORMATION ABOUT VICTIMS

1. Summary

- 1.1 The Scottish Government has launched a consultation on section 38 of the Human Trafficking and Exploitation (Scotland) Act 2015 – Duty to notify and provide information about victims.
 - 1.2 The consultation refers to section 38 of the Act, which relates to specified Scottish public authorities providing information to Police Scotland about a person(s) who is, or appears to be, a victim of human trafficking or of slavery, servitude and forced or compulsory labour (an offence under Sections 1 and 4 of the Act).
 - 1.3 The Council's response is attached as Appendix 1. Consultation responses should be submitted to the Scottish Government before the closing date of 6 September 2019.
 - 1.4 The proposed response is broadly supportive of the proposals being made by the Scottish Government on how the duty to notify and provide information about victims would operate and the potential to help tackle the illegal trade of human beings, both adult and children, for exploitation.
-

2. Recommendations

- 2.1 It is recommended that the Communities, Housing and Planning Policy Board:

- (i) notes the consultation on section 38 of the Human Trafficking and Exploitation (Scotland) Act 2015; and
 - (ii) approves the response for submission to the Scottish Government, as detailed within Appendix 1 of this report.
-

3. Background

- 3.1 In October 2015 the Scottish Parliament unanimously passed the Human Trafficking and Exploitation (Scotland) Act 2015 (“the Act”). This was the culmination of significant partnership working between agencies and across the political spectrum, including the Cross-Party Group on Human Trafficking.
 - 3.2 It is widely acknowledged that human trafficking is a hidden and often complex crime and therefore the true scale of the problem is unknown. Only limited data on the numbers of trafficking victims in Scotland is currently available and this is taken from the UK National Referral Mechanism (NRM) introduced in 2009 to meet the UK’s obligations under the Council of Europe Convention on Action against Trafficking in Human Beings.
 - 3.3 To support the collection of information under this process, if a victim consents to entering into the National Referral Mechanism they will receive a minimum of 90 days support, provided currently by the Trafficking Awareness Raising Alliance (TARA) or Migrant Help.
 - 3.4 There is a recognition that information collected currently is incomplete. The original policy intention underpinning section 38 of the Act was to allow for the collation and processing of wider information about trafficking activity. In Scotland this is not currently collected through NRM or the criminal justice system and would be a significant improvement in our understanding of the extent of human trafficking within Scotland.
 - 3.5 The consultation is seeking views on the nature of information and information sharing that would assist in improving the understanding of the issue and specifically is seeking responses on the following:
 - -Who should be named in Regulations as a Scottish public authority that will be subject to the duty,
 - What information should be included in notifications,
 - Who Police Scotland should pass information on to, and
 - What other bodies the Scottish Government should work with that cannot be named in Regulations.
 - 3.6 The Council’s proposed response is attached as Appendix 1 to this report for the consideration of members.
-

Implications of the Report

1. **Financial** - none
2. **HR & Organisational Development** - none
3. **Community/Council Planning** – Renfrewshire Community Safety Partnership will make a significant contribution towards developing a more accurate picture of the scale and extent of trafficking in Renfrewshire and Scotland as a whole; enabling effective targeting of enforcement activity and provision of support services. As well as raise awareness to identify perpetrators to disrupt their activity of trafficking adults and children often from the most vulnerable groups.
4. **Legal**– none
5. **Property/Assets** – none
6. **Information Technology**– none
7. **Equality & Human Rights** - Duty to notify by providing information about potential victims of trafficking will ensure that victims receive appropriate support and assistance contributing to the core component of a human rights approach to ensure equal protection and equal access to support services
8. **Health & Safety** – none
9. **Procurement** – none.
10. **Risk** – none
11. **Privacy Impact** – none
12. **Cosla Policy Position** - not applicable
13. **Climate Risk** – not applicable

List of Background Papers

- (a) Background Paper 1. Scottish Government - Consultation on section 38 of the Human Trafficking and Exploitation (Scotland) Act 2015 – Duty to notify and provide information about victims - <https://consult.gov.scot/justice/duty-to-notify-and-provide-information/>

The foregoing background papers will be retained within Communities, Housing and Planning Services for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is the Communities and Regulatory Manager

Author: Oliver Reid, Head of Communities and Public Protection
Email: oliver.reid@renfrewshire.gov.uk

Question 1 - Do you agree that these bodies should be named in Regulations under section 38(1) of the Act?			
Who	Yes	No	If no, please give your reasons for this here.
All 32 Scottish Local Authorities	✓		
All 14 Scottish Geographical NHS Boards	✓		
NHS 24	✓		
Scottish Ambulance Service	✓		
Scottish Fire and Rescue Service	✓		
Scottish Ministers for the purposes of including Marine Scotland	✓		
Scottish Ministers for the purposes of including Scottish Prison Service	✓		
Scottish Environment Protection Agency (SEPA)	✓		

In addition to the NHS Boards mentioned above the Scottish Government recognises there are other access points to NHS services that potential victims of trafficking may use, such as Dental Practice, Community Pharmacists and General Practice. However, they cannot be named in Regulations because they do not fall within the legal definition of 'Scottish public authority'.

The Scottish Government is of the view, subject to this consultation exercise, that for the reasons described below voluntary notifications should be encouraged by these groups of professionals and their staff.

Dental Practice Staff	Dental Practice staff may provide a service that victims may seek to access in order to receive treatment for injuries they may have sustained, or to seek treatment for poor dental hygiene.
Community Pharmacists	Community pharmacists may be an access point to NHS services if a victim is not registered with a GP or if they do not wish to attend at A&E or other mainstream NHS services.
General Practice Staff	General Practice staff may come into contact with victims during the course of their duties and this is another access point for victims to receive treatment. The Scottish Government is aware that females are more likely to attend GP services in the very late stages of pregnancy without having received any previous antenatal care or males may attend GP services as a result of injuries sustained following labour exploitation. It is important to remember that not all victims will be from outside the UK. It is possible that Scottish citizens may potentially be vulnerable to exploitation and require medical treatment. In such incidences potential victims could be registered with a GP and seek treatment there.

Question 2 - Do you agree that those listed below should be encouraged to submit voluntary notifications?			
Who	Yes	No	If no, please give your reasons for this here.
Dental Practice Staff	✓		
Community Pharmacists	✓		
General Practice Staff	✓		

Question 3 - Are there any other Scottish public authorities that you think should be subject to the Duty to Notify? No

If you answered yes to Question 3 please name the body and reason for each body here.

Body	Reason

In terms of content of the Regulations it will be the Scottish public authority that is named and subject to the legal duty and not an individual person or role within that public authority. The Scottish Government recognises that a one size fits all approach will not be feasible in terms of implementation of the duty and is of the view, subject to this consultation exercise, that it will be for each public authority to determine how this duty will work in practice.

Question 4 - Do you agree that bodies named in Regulations should establish their own processes for complying with the duty? YES

If you answered No to Question 4 please give your reason why

Bodies named in Regulations should establish their own processes for complying with the duty however, national guidance and processes should be developed so that the approaches are applied consistently and are able to be reviewed nationally to ensure effectiveness and compliance.

Processes to comply with the duty can therefore form part of the Local Authority's existing practices and align with processes in place to deal with other forms of vulnerability and exploitation. In Renfrewshire this would include MARAC & CONTEST and link to a Daily Tasking meeting each day with 14 partners to discuss incidents that have occurred over a 24-hour period. The incidents are tasked and disposed to the most appropriate partner who can apply their service's early intervention and include incidents ranging from anti-social behaviour incidents including disorder to mental health patients who are displaying vulnerability within the community. Intelligence sharing forms part of the meeting and partners are bound by a confidentiality statement which is signed at each meeting and a public protection ISP giving partners reassurance of free dialogue when exchanging sensitive information. Compliance with this duty and regulations should be an integral part of these processes.

Section 38(2) of the Act

A notification under subsection (1) relating to an adult must not include information that
(a) identifies the adult, or (b) enables the adult to be identified (either by itself or in combination with other information) unless the adult consents to the inclusion of that information.

The Scottish Government is of the view, subject to this consultation exercise, that the **anonymised** information listed below should be included in a notification if an adult **does not consent** to providing information that may identify them.

The purpose of duty to notify can be broken down into 3 main categories. Ultimately the collation and processing of data contained in notifications will help to achieve the original policy intention behind section 38 of the Act:

- To provide a **more accurate picture of the scale and extent of trafficking** in Scotland, to enable **more effective targeting of enforcement activity** and **provision of support services**.

However, as time has moved on since the Human Trafficking and Exploitation (Scotland) Bill 2014 passed through Parliament, section 38 of the Act will now also feed into and meet the key outcomes of the Trafficking and Exploitation Strategy:

- Identify and support victims to safety and recovery,
- Identify perpetrators and disrupt their activity, and
- Address the conditions that foster trafficking

Further, Part 4 of the Act introduced Trafficking and Exploitation Prevention Orders (TEPO) and Trafficking and Exploitation Risk Orders (TEROs). These are orders that can be imposed on people who have committed, or might commit, a trafficking or exploitation offence prohibiting or requiring them to do certain things.

Although a person must have committed a trafficking or exploitation offence before a TEPO can be made, Police Scotland are able to apply to the Courts for a TERO if there is a risk that an adult may commit a trafficking or exploitation offence and there is a need to protect a particular person, or persons generally, from the physical or psychological harm which would be likely to occur if the adult was to commit a trafficking or exploitation offence.

The collation of the information below may assist Police Scotland in applying for TEROs that will safeguard victims whilst further investigations are ongoing into any alleged criminal activity and subsequent prosecutions.

Information	Purpose
Gender	The gender of the victim may be required to identify specific sexual crimes in Scotland. There are specific crimes in Scotland that require the gender of the victim to be known in order to proceed.
Nationality	Action Area 3 (AA3) of the Trafficking and Exploitation Strategy focusses on addressing the conditions that foster trafficking both locally and globally. Information about the nationality of victims will feed into international work being taken forward in respect of AA3.
Country of Origin	Allows Police Scotland to carry out further checks/safeguarding in country of origin. Allows Police Scotland to work with law enforcement in country of origin to put measures in place to prevent victims being trafficked and re-trafficked to Scotland. Action Area 3 (AA3) of the Trafficking and Exploitation Strategy focusses on addressing the conditions that foster trafficking both locally and globally. Information about the country of origin of victims will feed into international work being taken forward in respect of AA3.
Location victim was recovered	This can be the starting point for a criminal investigation to take place and would allow for enquires to be conducted at this location to try and obtain information/intelligence that could assist a specific enquiry. Action Area 2 (AA2) of the Trafficking and Exploitation Strategy focusses on identifying perpetrators and disrupting their activity. If wider information is known about the location where victims are recovered this can feed into work to break down criminal activity and perpetrator behaviour. Wider information about the location where victims are recovered may assist local authorities, NHS and other support agencies to tailor their services accordingly.
Location reported activity took place	Must be known in order for a crime to be investigated in Scotland and is an essential element to start an investigation. Action Area 2 (AA2) of the Trafficking and Exploitation Strategy focusses on identifying perpetrators and disrupting their activity. If wider information is known about the location where victims are recovered this can feed into work to break down criminal activity and perpetrator behaviour.

Reported to be a victim of a section 1 offence	Must be known in order for a crime to be investigated in Scotland and is an essential element to start an investigation. Information about whether a victim is the victim of an alleged section 1 offence will help inform law enforcement activity.
Reported to be a victim of a section 4 offence	Must be known in order for a crime to be investigated in Scotland and is an essential element to start an investigation Information about whether a victim is the victim of an alleged section 4 offence will help inform law enforcement activity.

Question 5 – Do you agree that the anonymised information below should be included in a notification (if it is available) from a specified Scottish public authority to the Police if the adult does not consent to provide information that may identify them?

Information	Yes	No	If no, please give your reasons for this here
Gender	✓		
Nationality	✓		
Country of Origin	✓		
Location victim was recovered	✓		
Location reported exploitation took place	✓		
Has a referral been made to the Police	✓		
Reported to be a victim of a section 1 offence	✓		
If a victim of human trafficking, did the trafficking involve <ul style="list-style-type: none"> Labour exploitation Sexual exploitation Domestic servitude Commission of an offence Removal of organs or tissue Unknown Other 	✓		
Reported to be a victim of a section 4 offence	✓		

The Scottish Government is of the view, subject to this consultation exercise, that the **additional** information below should also be included in a notification (if available) if an adult **consents** to the inclusion of identifiable information. The purpose for collecting each piece of specific information is stated below.

Information	Purpose
Consent for additional information	Required so that Police can engage with victim(s) to assess threat risk and harm to them and others.
Is the victim willing to be contacted by the Police	Required so that Police can engage with victim(s) to assess threat risk and harm to them and others.
First name	Required so that Police can engage with victim(s) to assess threat risk and harm to them and others.
Family name	Required so that Police can engage with victim(s) to assess threat risk and harm to them and others.
Alias name(s)	Required so that Police can engage with victim(s) to assess threat risk and harm to them and others.

Date of Birth	Required so that Police can engage with victim(s) to assess threat risk and harm to them and others.
Alias Date(s) of Birth	Required so that Police can engage with victim(s) to assess threat risk and harm to them and others.
Is the victim a parent or carer	May be relevant to safeguard children or vulnerable people either in Scotland, the UK or abroad.
Other victims whereabouts	Required to safeguard other victims either in Scotland, the UK or abroad.
Safe Phone Number	In order for Police to contact victim in respect of investigations and safeguarding other victim(s)
Safe Address	In order for Police to contact victim in respect of investigations and safeguarding other victim(s)
Safe Post Code	In order for Police to contact victim in respect of investigations and safeguarding other victim(s)
Does the victim have any additional needs	So that any additional needs the victim has can be met by Police and other support agencies where applicable.
Details of persons responsible/perpetrators	This will allow Police to assess the situation and potentially identify further victims of trafficking and take any necessary measures to protect those individuals.

Question 6: Do you agree that the additional information listed below should be included in a notification from a specified Scottish public authority to the Police if the adult consents to the inclusion of that additional identifiable information?

Information	Yes	No	If no, please give your reasons for this here.
Consent for additional information	✓		
Is the victim willing to be contacted by the Police	✓		
First name	✓		
Family name	✓		
Alias name(s)	✓		
Date of Birth	✓		
Alias Date(s) of Birth	✓		
Is the victim a parent or carer	✓		
Other victims whereabouts	✓		
Safe Phone Number	✓		
Safe Address	✓		
Safe Post Code	✓		
Does the victim have any additional needs	✓		
Details of persons responsible/perpetrators	✓		
Further consideration – We recommend that children’s names are included if they are being looked after by the victim. It will help with safety planning and long-term arrangements regarding accommodation and safe guarding.			

Question 7: Is there any other information that you think should be included in a notification under section 38(1) of the Act? Yes

If you answered yes to Question 7 please list the information and reason for each piece of information here

Information	Reason
If the victim is a parent, carer or has other dependents, then the details of the children/dependents should be included.	To ensure that the needs of the children or dependents are met, however it is important to be aware that the trafficker/exploiter may also use the children or dependents as a form of control – i.e. threatening them to ensure compliance from the victim.
Premises / Vehicles of persons responsible/perpetrators	Would enable assessment of whether there are additional victims and possibly establish locations of crime

Section 38(4) of the Act

After receiving a notification under subsection (1), the chief constable of the Police Service of Scotland must notify a person who may be specified by regulations made by the Scottish Ministers about the person who is, or appears to be, a victim of an offence of human trafficking or an offence under section 4.

Once Police Scotland has received notifications from specified Scottish public authorities analysts will collate, gather and present this information in a high level overview document that will be shared with different bodies.

This report will detail emerging trends and patterns in respect of information such as, whether individuals were the victims of a section 1 or section 4 offence, location(s) where victims were recovered, location(s) where alleged exploitation took place and the profile of victims.

The Scottish Government is of the view that the bodies who receive this report will be able to share the data internally and cascade as they see fit to specific areas of their organisations. This will allow for more effective targeting of law enforcement activity and provision of support services across Scotland as a whole.

Police Scotland will also use the information contained in notifications to help build the intelligence picture around human trafficking and exploitation in Scotland which will contribute to law enforcement activity more generally. The welfare of individuals will be at the forefront of any action Police Scotland take and as a result this will also feed into the provision of support services.

The Scottish Government is of the view, subject to this consultation exercise, that Police Scotland should pass the information it receives to the bodies listed below.

The list below covers Scottish, UK, and European bodies. This is to ensure that an accurate picture of the scale of trafficking in Scotland is taken into account across the UK and beyond, for enforcement activity purposes, and for the provision of support services.

Question 8: Do you agree that the bodies listed below should receive a report from Police Scotland about individuals who are or appear to be victims of a section 1 or section 4 offence?

Who	Yes	No	If no, please give your reasons for this here
Scottish Government	✓		
All 32 Scottish Local Authorities	✓		
All 14 Scottish Geographical NHS Boards	✓		
Marine Scotland	✓		
NHS 24	✓		
Scottish Fire and Rescue Service	✓		
Scottish Ambulance Service	✓		
Scottish Prison Service	✓		
Scottish Environment Protection Agency (SEPA)	✓		
Trafficking Awareness Raising Alliance (TARA)	✓		
Migrant Help	✓		
Gangmasters and Labour Abuse Authority (GLAA)	✓		
British Transport Police (BTP)	✓		
National Crime Agency (NCA)	✓		
Home Office	✓		
Independent Anti-Slavery Commissioner	✓		
Interpol	✓		
Europol	✓		

Question 9: Are there any other bodies that you think Police Scotland should notify under section 38(4) of the Act? Yes

If you answered yes to Question 9 please list the bodies and the reason for each separate body here.

Body	Reason
Victim Support Scotland	Provision of advice and support to victims

Section 38(5) of the Act

A notification under subsection (4) relating to an adult must not include information that (a) identifies the adult, or (b) enables the adult to be identified (either by itself or in combination with other information), unless the adult **consents** to the inclusion of that information.

The Scottish Government is of the view, subject to this consultation exercise, that the **anonymised** information listed below should be contained in a notification from Police Scotland to others if an adult does not consent to providing information that may identify them.

The Scottish Government is of the view that additional information that may identify the victim should not be contained in a notification from Police Scotland to another body.

Question 10: Do you agree that the anonymised information below should be included in a notification from Police Scotland to a third party if the adult does not consent to provide information that may identify them?

Information	Yes	No	If no, please give your reasons for this here.
Gender	✓		
Nationality	✓		
Country of Origin	✓		
Location victim was recovered	✓		
Location reported activity took place	✓		
Reported to be a victim of a section 1 offence	✓		
If a victim of human trafficking, did the trafficking involve <ul style="list-style-type: none"> Labour exploitation Sexual exploitation Domestic servitude Commission of an offence Removal of organs or tissue Unknown Other 	✓		
Reported to be a victim of a section 4 offence	✓		

Question 11: Is there any other information that you think should be included in a notification under section 38(5) of the Act? No

If you answered yes to Question 11 please list the information and reason for each piece of information here.

Information	Reason
-------------	--------

Question 12: How frequently do you think the Police should pass information to a third party? Please select only one option or state one other time period.

Frequency	(x)
Monthly	
Quarterly (calendar year)	
Quarterly (financial year)	✓
Bi-annually	
Annually	
Another time period (please state only one)	

Do you have any other comments about the frequency?

We agree that quarterly information should suffice, however there should be scope to present on a case by case basis should an urgent situation present itself.

We also suggest considering the need that information should be immediate to ensure the most appropriate support is put in place as early as possible. Similar to the approach adopted for a Prevent case which can be exchanged via a secure email address.

Other Relevant Bodies

The Scottish Government is of the view, subject to this consultation exercise, that it would like to work with the following bodies, who cannot be named in Regulations, because they do not fall within the definition of 'Scottish public authority', and encourage them to voluntarily notify the Police about a person who is, or appears to be, a victim of human trafficking or of slavery, servitude and forced or compulsory labour.

The Gangmasters and Labour Abuse Authority, British Transport Police and Border Force all have very distinct roles and may come into contact with victims of human trafficking and exploitation at various stages of a victims journey. For example on entry into Scotland via air, rail, road or sea and once in Scotland using transport hubs to travel to different locations and then possible work in the agriculture, shellfish, processing and packaging industries.

In Scotland the Trafficking Awareness Raising Alliance (TARA) and Migrant Help support adult victims of human trafficking and of slavery, servitude and forced or compulsory labour. As these bodies cannot be named in Regulations terms and conditions will be inserted into any future Grants offered so that they will comply with the duty in the same way as any other statutory body.

Question 13: Do you agree that the Scottish Government should work with these bodies to establish a system whereby information can be shared with the police in a similar way to the statutory duty under section 38 of the Act?

Who	Yes	No	If no, please give your reasons for this here
Border Force	✓		
Gangmasters and Labour Abuse Authority	✓		
British Transport Police	✓		
TARA	✓		
Migrant Help	✓		

Question 14: Do you think that there are any other bodies that operate in Scotland that the Scottish Government should encourage to notify the police about a person who is or appears to be a victim of a section 1 or section 4 offence? YES

If you answered yes to Question 14 please list the body and reason for each body here.

Body	Reason
Third Sector Interface	Voluntary groups may work within communities that are affected by or have knowledge of trafficking operations
Community Councils	There may be local intelligence of suspected trafficking operations

We believe everyone has the responsibility to report a victim. National campaigns should encourage reporting as a form of supporting and protecting vulnerable people and protecting community safety where it is desirable to do so, unless there is an overriding legal reason not to do so.