



CWB Item 3.2A Appendix A

COSLA Response to Scottish Government Consultation on Section 38 of the Human Trafficking and Exploitation (Scotland) Act 2015

Introduction

1. The Convention of Scottish Local Authorities (COSLA), as the representative voice of Local Government in Scotland, welcomes the opportunity to respond to the Scottish Government's consultation on the Duty to Notify provision contained within the Human Trafficking and Exploitation (Scotland) Act 2015.
2. Tackling human trafficking and exploitation is a key priority for COSLA, and our organisation is fully embedded in work deriving from the Scottish Government's Human Trafficking Strategy. COSLA chairs Action Area 1 of the strategy and is represented on the other Action Area groups. We believe Local Government has a critical role to play in tackling human trafficking and exploitation in Scotland.
3. This submission is drawn from our discussions with key local authorities, stakeholders and partners and the expertise of the Migration, Population and Diversity (MPD) team within COSLA which works specifically on migration issues.
4. In this submission we set out a number of key issues raised by the Duty to Notify consultation document, as well as issues that were raised in the outreach events attended by COSLA officials. As far as possible we refer to the questions in the consultation document for ease of reference.

Summary

5. COSLA believes that the Duty to Notify has the potential to be an important tool in the fight against human trafficking and exploitation. However, the consultation and pilots of Duty to Notify have raised a number of key issues which should be addressed before the Duty can be implemented more widely.

Clarity of purpose

6. COSLA questions whether the Duty has a clearly defined overall purpose. It is not clear whether the Duty is seeking to gather broader, lower-level intelligence that would not meet the threshold for a National Referral Mechanism (NRM) submission, or if it is trying to replicate (or go beyond) the complexity of the NRM.
7. This confusion of purpose arises from the extent of data requested in a Duty to Notify submission. Questions 5, 6 and 7 ask essentially for the same information as would be obtained by an NRM. The stated purpose of the Duty to Notify is for the "collation and processing of wider information [...] not currently collected through the NRM or the criminal justice system". The level of detail required for questions 5, 6 and 7 suggests the Duty to Notify is straying from its purpose of collecting wider information beyond the NRM, to more specific information that would fall within the ambit of the NRM.

8. It is hard to conceive of a situation in which a potential victim of human trafficking would be willing to share the details requested in Questions 5, 6 and 7 and consent for those to be shared with the police, but would *not* be willing to share the same information through the NRM, when the latter would trigger support but the former would not. This suggests that it would be far better to have the Duty to Notify at a sub-NRM threshold, for situations when no NRM has been submitted.
9. COSLA is concerned that local authority officials will be co-opted into collecting data that are otherwise existent, but not accessible by Police Scotland and the Scottish Government. Currently the only source of data of human trafficking is via the NRM, which releases data in aggregate form. We accept that the aggregate data is not sufficient to build a detailed intelligence picture of human trafficking in Scotland, but it must be for the Scottish Government and Police Scotland to engage with the Single Competent Authority and Home Office directly to unlock that disaggregated data, not to impose on overstretched local authorities a duty to collect it in duplicate. We are concerned that the purpose is as much to secure easier access to existing data, which we do not see as a local authority's role.

Realistic expectations of local authority staff (Question 1)

10. COSLA has concerns about the responsibility being placed on frontline council workers, and questions whether they are the best placed to extract the detailed information proposed in the consultation.
11. Obtaining the information required by the Duty, particularly at Questions 4, 5 and 6, would almost inevitably involve asking probing questions of a potential victim of human trafficking. It is not clear to COSLA that the frontline workers who would be covered by the Duty are the most appropriate for this task. The rationale for frontline local authority workers having a duty to notify of any potential human trafficking signs they see in the course of their normal duties is clear: to provide 'soft intelligence' that can inform intelligence-led policing. The case for frontline local authority workers collecting the complex, NRM-level information (such as required by Questions 4, 5 and 6) is less so.
12. The Duty to Notify is not the trigger for intervention in a specific case. Seen from a local authority perspective, there is logically no point at which intervention would be appropriate and the Duty the only formal record of concern. In any case where human trafficking was suspected, an Initial Referral Discussion would include representatives from Social Work Adult or Child Protection services, Police Scotland, etc. Regardless of whether a Duty to Notify submission were made, the agencies represented at the IRD would take forward the case. Duty to Notify has value in bringing together aggregated soft intelligence that can be analysed to direct intelligence-led human trafficking activity. It is not the means by which individual cases will be followed up. The value in collating idiosyncratic casework details (such as requested by Questions 5, 6 and 7) is therefore questionable.
13. COSLA has concerns that the local authority staff who would be covered by Duty to Notify would not be well placed to complete the task at the level of complexity proposed in the consultation. There are 252,000 local authority workers in Scotland. Many of those who come into everyday contact with members of the public, particularly in areas where victims of human trafficking may be encountered, include concierges, refuse workers, building maintenance staff, and staff in elementary occupations.

However, many of these staff were not recruited on the basis of competences that would be required to answer the questions proposed in the consultation (e.g. assimilating complex written information, working with vulnerable members of the public, making risk assessments, etc.). Furthermore, local authority staff who are recruited to make the complex judgements required (e.g. to answer questions 5, 6 and 7 in the consultation paper) are already trained in how to take cases forward, so this represents a duplication of their work.

14. In addition, it may prove counterproductive to ask local authority staff who are not required to perform the kind of analysis required to answer questions 5, 6 and 7 to do so. A public official asking probing questions such as a potential victim's alias names and safe place of residence should be trained for such a task, and the potential consequences of missteps are serious. Asking council officers to undertake such steps without adequate training (and with no extra budget being made available for such a purpose) would not be appropriate.
15. Furthermore, the level of complexity runs the risk that local authority officers may be wary of completing the form, especially at broader, sub-NRM level, if the right balance is not struck between simplicity and complexity. If human trafficking, or any other crime, is suspected, then a council worker has an obligation to report that to the authorities or police. The threshold for Duty to Notify is lower. But if a local authority worker finds the form burdensome or overly complex, they may struggle to prioritise it.
16. Many local authorities have contracts or agreements with third-sector organisations that may come into contact with potential victims of human trafficking. They should be subject to the Duty (or not) in their own right, and not by extension when they sign an agreement or contract with a council. COSLA advises against a system where third party bodies are subject to the Duty by virtue of concluding an agreement with a council, as this may impact our ability to secure service providers.
17. In short, due to the number and range of council employees who would be subject to the Duty, the form should be simple and light-touch, and designed with the user in mind.

Potential adverse consequences of submitting information

18. The Duty to Notify must be seen in the context of developing immigration enforcement practice in the UK. There is a clear trend in UK policy in recent years of immigration status being considered by frontline staff and other non-immigration officers; this is broadly known as the hostile environment policy. Equally importantly, immigration enforcement actions in Britain have always been intelligence-led.
19. Under the Duty to Notify system, intelligence submitted by specified Scottish public authorities, such as councils, will be collated by Police Scotland. Police Scotland may then share that information, once anonymised, with other specified public bodies, including the UK Border Force. UK Border Force is accountable only to Home Office ministers, with a clear mandate to reduce the size of the irregular migrant population in Britain. Border Force is not accountable either to Police Scotland or Scottish local authorities for how it uses the intelligence it receives.
20. While we accept that information passed from Police Scotland would be anonymised, we have concerns that it may still lead to enforcement action by Border Force. Many of Scotland's local authorities have numerically and proportionately small migrant populations, particularly of nationalities that feature highly in the human trafficking

statistics. The possibility of an immigration enforcement action being taken by the UK Border Force on the basis of intelligence provided by Scottish local authority staff cannot therefore be discounted. This is particularly the case in situations where staff would have a Duty to Notify, but no support through the NRM had been triggered.

21. Local authority staff should not have to evaluate the likelihood of triggering immigration enforcement action in making a decision on whether they have a Duty to Notify. We must not allow situations to develop where local authority staff are put into conflict with their responsibilities to serve the public and duties imposed on them by the Human Trafficking and Exploitation (Scotland) Act. COSLA is unconvinced that there are sufficient safeguards in place to firewall intelligence submitted by council staff from triggering immigration enforcement actions.

Additional subjects of the voluntary notifications (Question 2)

22. If the mechanism is re-focused towards broader soft intelligence, the Scottish Government should consider requesting that churches and other religious bodies make submissions in cases where they spot potential signs of human trafficking. Equally, foodbanks may be in a position to spot similar signs.
23. Private sector workers, such as those working for utility companies or private-sector social care organisations, are likely to come across the signs of human trafficking on a similar basis to comparable local authority workers. It may be worth considering how far the Duty could be extended to cover them.

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