

Implementation of Section 11 of the Human Trafficking and Exploitation (Scotland) Act 2015: Independent Child Trafficking Guardians

Consultation Paper

August 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

Introduction and purpose

In October 2015 the Scottish Parliament passed the Human Trafficking and Exploitation (Scotland) Act 2015 (“the Act”). The Act received Royal Assent on 4 November 2015.

Section 11 of the 2015 Act places a duty on Scottish Ministers to make arrangements for an Independent Child Trafficking Guardian (ICTG) to be appointed for a child:

- whom a relevant authority has reasonable grounds to believe is or may be a victim of human trafficking;
- whom a relevant authority has reasonable grounds to believe is vulnerable to becoming a victim of human trafficking; and
- for whom no-one in the UK has parental rights or responsibilities.

The Human Trafficking and Exploitation (Scotland) Act 2015 (Commencement No. 1 and Transitory Provisions) Regulations 2016 (“the Commencement Regulations”) brought into force certain provisions of the Act on 31 May 2016, including section 11 but only for the purpose of making regulations under section 11(7) and (8). Scottish Ministers will consider exercising their powers under these sections of the Act and this consultation intends to inform this and define the wider roles and responsibilities of the Independent Child Trafficking Guardian.

It is the intention of the legislation that all children and young people who arrive in Scotland unaccompanied and who will have undergone an arduous migration alone, are considered to be at risk of having been trafficked or becoming trafficked and would be referred to the ICTG for support. Those children who have been a victim, or who may be a potential victim, of human trafficking for whom someone in the UK does have parental rights or responsibilities will not be eligible for an ICTG. Existing legislative provisions and standard child protection processes and procedures will continue to be used and local authorities will continue to meet their duties towards these children, and all other children and young people present in their areas, as set out in the Acts of the Scottish Parliament which legislate for children and young people.

It is the intention that the functions of the ICTG must be such that they complement, rather than conflict or compete with, existing statutory roles. They should focus on where they can add value in supporting these eligible children and address any gaps in support which are needed to meet their specific needs.

Section 11(1) places a duty on Scottish Ministers to exercise their powers in order to make such arrangements as they consider reasonable to enable an “Independent Child Trafficking Guardian” to be appointed to assist, support and represent an eligible child. The Act defines a ‘child’ as being under 18 years of age.

Section 11(8) defines “person with parental rights or responsibilities” in relation to a child and “relevant authority”. Both of these definitions may be added to or amended by regulations made by Scottish Ministers. An earlier consultation in summer 2016 covered the definitions as currently set out and sought views as to whether regulations should be brought forward. The outcome of that consultation will be considered alongside responses to this consultation.

The purpose of this consultation paper is to seek your views on a number of issues in relation to a child trafficking guardian.

This consultation will be split into two sections:

- part one seeks your views on the proposed regulations as defined under section 11(7); and
- part two seeks views on wider operational details.

Your responses will help to inform draft regulations and supporting guidance.

Scottish Government consultation process

Consultation is an essential part of the policy making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. You can find Scottish Government consultations online at <https://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responding to this consultation

The consultation will run for 12 weeks and we are inviting responses by Sunday 17th November 2019. Please respond to this consultation using the Scottish Government’s consultation platform, Citizen Space. You can view and respond to this consultation online at: <https://consult.gov.scot/looked-after-children-unit/independent-child-trafficking-guardians>

You can save and return your responses while the consultation is still open. Please ensure that you have submitted your response before 11:59 pm on Sunday 17th November 2019.

Responding by post

If you are unable to respond online using Citizen Space, please submit your response by post.

Please send your completed response to:

Looked After Children Unit
Scottish Government
Victoria Quay, 2A South
Edinburgh
EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the “About You” page before submitting your response. Please indicate how you wish your response to be handled and; in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential and treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please remember to complete and return the Respondent Information Form included at the end of this document.

To find out how we will handle your personal data, please see our privacy policy <https://beta.gov.scot/privacy/>.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potential defamatory or offensive materials, or where publication would be contrary to copyright or data protection laws, we will make responses available to the public at <https://consult.gov.scot>. If you use Citizen Space to respond, you will receive a copy of your response by email.

Following the closing date, all responses will be analysed, considered and used to inform the decision making process, along with a range of other available information and evidence. Responses will be published where we have been given permission to do so.

Following this, the Scottish Government will publish a report, outlining the next steps and any further work that will be necessary to progress the development of the independent child trafficking guardian service. Depending on the nature of the consultation exercise the responses may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals; and
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them by email to looked_after_children@gov.scot or by hard copy to the Looked After Children Unit at the address above.

Background and Context

Child trafficking is considered child abuse. Children are by default more vulnerable to coercion and abuse than adults due to their age and dependency on others for their care and are therefore at greater risk of becoming victims.¹ Given its devastating impact on children and young people, combatting child trafficking and supporting victims to recover is a priority for the Scottish Government.

Child trafficking typically exposes children to continuous and severe risk of significant harm. It involves the recruitment, transportation, transfer, harbouring and/or receipt of a child for the purposes of exploitation. Children are trafficked for a number of reasons within and between countries and continents. They may be trafficked for one type of exploitation but sold into another.

Whilst in some circumstances it is clear that a child or young person has been a victim of child trafficking, it is often difficult to establish directly if an unaccompanied child presenting in Scotland has been a victim. Given that unaccompanied or separated children have often been displaced from their homes due to violence, trauma and abuse, they are considered vulnerable to being exploited or trafficked during their migratory journeys once in Europe or the UK. The harm children may experience once they are displaced and separated has a severe impact on their physical and emotional well-being.

International research has shown that unaccompanied and trafficked children benefit enormously from guardianship arrangements as they have an advocate to ensure that their best interests are considered, they have access to the right information and legal assistance and that they receive the appropriate mental, physical and emotional health support they need.

Looked After Children

All unaccompanied and trafficked children and young people have the same right to care and support as any other child in Scotland. Under [section 25](#) of the Children (Scotland) Act 1995, local authorities have a duty to provide any child or young person who presents in their area, and for whom no individual holds parental rights and responsibilities, with accommodation. Following an assessment of the child's background and circumstances, and should a decision be reached that they require to remain in the care of the local authority, they will become 'looked after' children and matched to suitable care and accommodation.

¹ Scottish Government (2015) *Trafficking and Exploitation Strategy*
<https://www.gov.scot/publications/trafficking-exploitation-strategy/>

Young people in Scotland in the care of a local authority are looked after until they are 18 years of age and legislation also provides for additional support for young people on leaving care in the form of Continuing Care (remaining in their care setting up to 21 years old) and Aftercare (additional local authority support up to 26 years old).

Guardianship support for victims of child trafficking

As well as receiving looked after status and receiving local authority support, trafficked children and young people face many wider challenges and additional support is required. This can include going through the trafficking process and in many cases, the asylum process as well. They also face further barriers such as breaks in their education, adapting to a new country, and learning a new language.

Section 11 of the 2015 Act puts into statute the role of an Independent Child Trafficking Guardian who will be appointed to assist, support and represent a child or young person who is unaccompanied in Scotland, where there are reasonable grounds to believe that a child is, or is vulnerable to becoming, a victim of human trafficking; and no person in the UK has parental rights or responsibilities in relation to the child.

Recognising that these children and young people are vulnerable, the Guardian will provide assistance and support in navigating the complex welfare, care, immigration, asylum, and trafficking systems, often in a foreign language. The Guardian can represent young people in engaging with the various authorities and speak on the child's behalf to avoid the need for them to re-live their experiences through constant re-telling of their story to different authorities.

PART ONE: SECTION 11(7) – APPOINTMENT OF INDEPENDENT CHILD TRAFFICKING GUARDIANS

Part one of this consultation seeks views on the provisions as set out in Section 11(7). Views provided in relation to the following questions will inform regulations.

In terms of section 11(7) of the Act, Scottish Ministers have the power, by regulations, to make further provision about ICTGs including in relation to their appointment and their functions. The questions in this consultation seeks your views on these.

Section 11(7) of the Act states:

“The Scottish Ministers may by regulations make further provision about independent child trafficking guardians appointed under this section, including, in particular, provision about:

- a. the appointment of an independent child trafficking guardian,
- b. the termination of that appointment,
- c. the conditions (including conditions as to training, qualifications and experience) to be satisfied for a person to be eligible for appointment as an independent child trafficking guardian,
- d. payments to be made to, or in respect of, an independent child trafficking guardian,
- e. the functions of an independent child trafficking guardian,
- f. the records that should be maintained by any person in relation to the appointment of an independent child trafficking guardian (including arrangements to maintain a register of independent child trafficking guardians),
- g. the circumstances in which—
 - i. an independent child trafficking guardian appointed in relation to a person may continue to act after that person is no longer a child, and
 - ii. the person who is no longer a child is to be treated as a child for the purposes of this section.

Question 1: The appointment of an independent child trafficking guardian

We propose appointing an organisation who will be responsible for providing independent child trafficking guardians. That organisation will be appointed through an open and fair procurement/bid process and they will be responsible for employing independent child trafficking guardians and appointing them to individual cases.

Do you agree with the proposal set out above?

Yes/No/Don't Know

Please expand on your answer if you wish to.

Question 2: The termination of that appointment

We propose that the appointment of an independent child trafficking guardian should be terminated using the normal procedures of the service provider.

Do you agree with the proposal set out above?

Yes/No/Don't Know

Please expand on your answer if you wish to.

Question 3: The conditions (including training, qualifications and experience) to be satisfied by a person to be eligible for that appointment

a) It is suggested, given the intended role of the ICTG, those employed will as a minimum require the following qualifications:

- OISC (Office of the Immigration Services Commissioner) Level 2
- Relevant related qualification in working with children, Professional Qualification to SCQF Level 8 (HND Level)

Do you agree with the above qualifications?

Yes/No/Don't Know

What other 'relevant related qualification' should be considered?

b) In addition, it is suggested that given the intended role of the ICTG, those employed will have - or be required to develop - the following experience:

- Understanding of child protection and looked after children guidance and procedures
- Awareness of impact of trauma on children/young people and its effects

- Skills in communicating with children, working with and through interpreters
- Knowledge of UK and Scottish legislation to include immigration, asylum, human rights and data protection legislation, as well as specific legislation concerning children and young people and the statutory responsibilities and duties of the agencies involved in supporting them
- Knowledge of key policies and procedures relating to key legislation above
- Awareness of age assessment guidance and procedures
- An understanding of the distinct and cultural needs of separated children
- An understanding of data protection and information sharing legislation and guidance
- Experience of working with young people/children at risk
- Knowledge of child abuse and exploitation, indicators of trafficking and the National Referral Mechanism or other relevant trafficking identification systems

It is recognised that it is unlikely that many people will have all of the above experience prior to employment, therefore it is expected that the service provider will provide sufficient training to employees to develop the above experience and expertise.

Do you agree with the above requirements for experience?

Yes/No/Don't Know

Is there any other experience or training that should be a requirement for an independent child trafficking guardian?

c) To ensure that an ICTG is suitable and accountable they must:

- Undergo a full Disclosure up to and including PVG Scheme membership; and
- Register with the Office of the Immigration Services Commissioner

Do you agree with the above requirements?

Yes/No/Don't Know

Are there any other checks that an independent child trafficking guardian should undergo?

Question 4: The payments to be made to, or in respect to the role of, an independent child trafficking guardian

We propose that the service provider, whoever that may be, should set the salary and the policy for any other payments to be made to the ICTG.

Do you agree with the above proposal?

Yes/No/Don't Know

If not, what approach would you propose?

Question 5: The functions of an independent child trafficking guardian

It is proposed that the ICTG should have regard to the following functions:

- Contribute to the safeguarding of the child or young person and specifically contribute to the prevention of (re)trafficking.
- Promote the best interests of the child or young person
- Where the immigration status of a child or young person is not established, advise them as they progress through the immigration process, including on pathway planning for both positive and negative decisions on their status.
- Have regard to the duties of the public bodies who have statutory duties relating to these children and young people, specifically but not limited to local authorities, the Home Office and Police Scotland.
- Act in accordance with and assist local authorities as part of their plan for the support of the child or young person by:
 - Supporting them in dealing with the consequences of having been trafficked.
 - Supporting them through any appropriate referral mechanism for identification of trafficking, such as the National Referral Mechanism where they have been entered into by a First Responder.
 - Supporting them through any criminal proceedings against their traffickers, including understanding the process and managing expectations around prosecution.
 - Supporting them to access Criminal Injuries Compensation through the Criminal Injuries Compensation Authority (CICA) if required.
 - Supporting them towards independence to achieve the best outcomes and destinations for these young people.
 - Supporting them in being active in the development of their support and pathway planning.
- Provide a confidential service according to data protection guidance and information sharing protocols.
- When necessary, contribute to an age assessment in line with the Age Assessment Practice Guidance for Scotland.

Do you agree with the above functions?

Yes/No/Don't Know

Are there any that you would add to or remove from the list? If so, what are they?

Question 6: Record Keeping

The Act makes provisions for Scottish Ministers to make regulations about the records that should be maintained relating to the ICTG (further consideration of data sharing arrangements will be required as part of the data protection impact assessment at a later stage).

What records should be kept about the ICTG (for example, records on employment; relevant training)? (Data protection principles as set out in the relevant data protection laws must be adhered to by the ICTG Service, individuals appointed and service users at all times as with any other public service)

Question 7: Vulnerable young people over 18

The legislation allows Scottish Ministers to make provision for what circumstances the ICTGs may continue to act for a person after they are no longer a child.

One such example is due to the complexities and the timescales involved in the trafficking and asylum processes, it is possible that a child will reach the age of 18 before they have a decision about their case or may still be vulnerable to exploitation or re-trafficking and require on-going support and advice from the ICTG.

It is therefore suggested that a young person could continue to receive support from an ICTG after the age of 18 where they have been a looked after child by a local authority, potentially in line with existing Continuing Care and Aftercare provisions (which the young person will be eligible for). This is for the purpose of preventing (re)trafficking of vulnerable young people.

Do you agree with the above?

Yes/No/Don't Know

Are there other circumstances in which the ICTG may continue to act for a person after they are no longer a child that should be considered?

PART TWO: GUIDANCE

The Scottish Government proposes to issue supporting guidance written in conjunction with local authorities and any other relevant authorities relating to (amongst other things):

- what constitutes a victim of trafficking or a potential victim of trafficking;
- whom the duty to refer a young person to a guardian applies; and
- the offer of support from a child trafficking guardian.

Part Two of this consultation seeks wider views on the roles, responsibilities, and functions of a child trafficking guardian that may be included in this guidance. Consultation responses in this section will inform the development of the wider responsibilities of the child trafficking guardian and ensure that the best possible support is in place for trafficked children.

Question 8: Support for victims of child trafficking

As has been indicated, child victims of trafficking who enter the formal care system often have additional complex support needs beyond support for asylum, trafficking and welfare processes. These require specific support from a wide range of services. A guardian will be well-placed to ascertain what additional support is required for each individual young person and in partnership with social work would be able to signpost or commission services as required.

Examples of the kinds of support that could be considered include (but are not limited to) language interpretation, trauma support, providing English tuition (ESOL), further education and valuable socialization opportunities.

What are some of the additional support measures that a child trafficking guardian could provide, or facilitate provision of, to best support trafficked children?

Question 9: Support to prevent re-trafficking

Once a young person has successfully attained Settled Status and the child trafficking guardian's support has concluded, there is significant risk that young people may find themselves at risk of being re-trafficked if additional monitoring and support is not provided.

What additional support, if any, could the child trafficking guardian provide to minimize the risk of vulnerable young people being re-trafficked?

Question 10: Appeal Rights Exhausted

When a young person in receipt of support from a child trafficking guardian has their asylum/immigration application refused, and have exhausted all their rights to appeal that decision, they are deemed 'Appeal Rights Exhausted' and unlikely to hold any valid immigration status.

Social work still have a statutory duty to provide support and assistance to Appeal Rights Exhausted children and young people as they are still likely to have support needs. It is also likely that a child or young person in this position will still require the additional support that is provided by an ICTG.

What support for Appeal Rights Exhausted children and young people would you propose that an ICTG provide, and what additional support arrangements (if any) could be put in place to help the ICTG provide that support?

Question 11: Data Sharing

The legislation states that a person responsible for exercising functions in relation to a child for whom a child trafficking guardian has been appointed (for example social worker, teacher, health worker, etc.) must recognise and pay due regard to the guardian's function and where appropriate provide the guardian with access to information regarding the child as will allow the guardian to provide appropriate support for the child or young person.

What information needs to be shared between the statutory professionals supporting the child/young person and the independent child trafficking guardian (whilst adhering to data protection and other information sharing principles)?

Question 12: Conduct

Given the statutory nature of the ICTG, it is important to ensure that appropriate measures are in place in the situation where there is a concern raised regarding the conduct of a child trafficking guardian. It is important to have procedures in place to ensure quality assurance, professional standards and the safeguarding of the children and young people, and to provide a framework for potential complaints or grievances.

In the event that it is necessary for a complaint or grievance to be made about a child trafficking guardian, what procedures and processes should the service provider have in place to ensure accountability and quality improvement of the ICTGs and the service?



RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No



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