

Response to Scottish Government's Consultation on the Implementation of Section 11 of the Human Trafficking and Exploitation (Scotland) Act 2015: Independent Child Trafficking Guardians

November 2019

We welcome the opportunity to respond to the Scottish Government's consultation on the implementation of Section 11 of the [Human Trafficking and Exploitation \(Scotland\) Act 2015](#) (the 2015 Act), which when enacted will establish Independent Child Trafficking Guardians (ICTGs) on a statutory footing in Scotland. This is a vital role for the protection and support of unaccompanied children, and we fully support the implementation of the provisions of Section 11 of the 2015 Act, which have so far been subject to some delay.

Background

Children who arrive in Scotland unaccompanied are particularly vulnerable to trafficking, abuse and exploitation, and are entitled to special protection. They may have experienced trauma and persecution prior to leaving their country of origin, or during their often traumatic journey to Scotland. Guardians are one of the most important features of the protection system for unaccompanied children.¹ As a nation committed to enshrining the United Nations Convention on the Rights of the Child (UNCRC) into our domestic law, Scotland must treat these children with care and respect for their rights. Issued in 2000, the UN Optional Protocol on the sale of children, child prostitution and child pornography draws special attention to these serious violations of children's rights, and the importance of efforts to combat such violations.² In 2005, the United Nations Committee on the Rights of the Child set out the rights of children to proper treatment when they are unaccompanied and separated in General Comment 6.³ These rights include the provision of a guardian, who can represent the child's best interests in all spheres and at all levels of their life, and who should be appointed as soon as the unaccompanied child is identified. Through the enactment of Section 11 of the 2015 Act, Scotland is ensuring the rights outlined

¹ FRA (2015) *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*. Luxembourg: Publications Office of the European Union

² United Nations General Assembly (2000) *Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography*. A/RES/54/263

³ United Nations Committee on the Rights of the Child (2005) *General Comment 6: Treatment of unaccompanied and separated children outside their country of origin*. CRC/GC/2005/6

in these treaties are upheld, demonstrating the commitment to protecting the rights of unaccompanied children.

Data and eligibility

Section 11 of the 2015 Act establishes the circumstances of children and young people to whom an ICTG must be appointed, specifically, children and young people whom a relevant authority has reasonable grounds to believe are, or may be, victims of human trafficking; whom a relevant authority has reasonable grounds to believe are vulnerable to becoming victims of human trafficking; and for whom no-one in the UK has parental rights or responsibilities. The legislation intends that all children and young people aged under 18 who arrive in Scotland unaccompanied are considered to be at risk of having been trafficked, or becoming trafficked, and as such all unaccompanied children must be appointed an ICTG. As local authorities have a duty of care under Section 25 of the [Children \(Scotland\) Act 1995](#) (the 1995 Act) to accommodate all children for whom no-one has parental responsibility, children and young people who are appointed an ICTG should almost always be “looked after” children.

There is a lack of reliable data on the numbers of unaccompanied children in Scotland, and trafficked children are one part of this wider group. A Freedom of Information request undertaken as part of Every Child Protected Against Trafficking’s (ECPAT) 2018 report ‘Still In Harm’s Way’ suggests that during 2017, there were 169 unaccompanied children recorded as being in the care of Scotland’s local authorities, and 45 identified as having been trafficked.⁴ Numbers of children who have potentially been trafficked and thus referred to the National Referral Mechanism (NRM) are published, and data for Scotland indicates that 53 children were referred to the NRM in 2018.⁵ However there is evidence to suggest NRM data under-represent the scale of the issue, as there are limitations in the data collection and presentation, and inconsistency in use and frontline practitioner awareness of the NRM.⁶ The numbers of children subject to child protection procedures for reasons of trafficking are low, and therefore are not reported individually within the Scottish Government’s annual ‘Children Looked After’ statistical return (CLAS).⁷ Data pertaining to unaccompanied children and young people who are looked after are not currently collected as part of the CLAS. Furthermore, there is evidence to suggest there is variation in practice in some local authorities who do not provide accommodation to unaccompanied children under Section 25 of the 1995 Act, instead providing support under Section 22, which does not lead to the child or young person being “looked after”. In addition to this potentially complicating attempts to collect data, the justification of doing so is questioned, as legal

⁴ ECPAT (2018) *Still in Harm’s Way: An update report on trafficked and unaccompanied children going missing from care in the UK*. ECPAT UK and Missing People

⁵ NCA (2019) [National Referral Mechanism Statistics: End of year summary 2018](#). London: National Crime Agency

⁶ ECPAT (2018) *Still in Harm’s Way: An update report on trafficked and unaccompanied children going missing from care in the UK*. ECPAT UK and Missing People

⁷ Scottish Government (2018) *Trafficking and exploitation strategy: First annual progress report*. Edinburgh: Scottish Government.

opinion suggests this places these children and young people at a serious disadvantage in terms of their eligibility to all the duties required in relation to a looked after child, and their eligibility for aftercare support.⁸

A clear understanding of the numbers of children and young people who require an ICTG is critical in order to understand and respond strategically to need. The Scottish Guardianship Service, run in partnership between the Scottish Refugee Council and Aberlour, who currently provide guardians for unaccompanied children in Scotland on a non-statutory basis, have supported over 500 children and young people since the service began in 2010.

We are concerned that some children and young people who need the protection and support of an ICTG are not eligible to receive it. The consultation document is clear that children who have been a victim of trafficking, or who may be a potential victim, who arrived in the UK with someone who has parental rights and responsibilities are not eligible for an ICTG. We understand and agree that the needs of children and young people from the UK who are victims of internal trafficking are not best met by an ICTG. However, some children and young people who have arrived from other countries with a person who has parental responsibilities and rights may need the protection and support of a guardian, and have the right to receive this. For example, there may be children who arrived with a parent, but have subsequently been separated from them. Under Article 2 (non-discrimination) of the UNCRC, all children are equally entitled to have their rights upheld and respected. The current needs and best interests of the child, rather than the conditions under which they arrived in the UK, should guide their eligibility to an ICTG. Additionally, there may be children and young people arriving in the UK with their parent(s), whose parent(s) are complicit in their trafficking. Again, the individual child's need to the support and protection offered by an ICTG should take precedence.

Consultation questions

1. 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 this proposal?

Yes. In addition to the procurement process taking account of matters such as the quality of the service, the knowledge, skills, and experience of guardians, and the organisational support mechanisms in place, the independence of the organisation responsible for providing ICTGs must be assured. The importance of independence and impartiality is one of six fundamental principles of

⁸ Ang, J. (2015) *Legal issues in the accommodation and support of asylum seeking and trafficked children under the Children (Scotland) Act 1995*. Glasgow: Children's Legal Services Agency.

guardianship systems outlined by the European Union Agency for Fundamental Rights.⁹ ICTG's must be independent from the state, including from any existing asylum, immigration and welfare services.¹⁰

This consultation focuses largely on role and the expectations of the individuals who will be employed as ICTGs. The expectations on the organisation providing ICTGs should also be clear, including the service standards, evaluation and accountability arrangements, and mechanisms for organisational learning and development (such as integration with the international guardianship community to keep abreast of indicators and new patterns of trafficking).

2. 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 this proposal?

Yes. Additionally, as outlined in the UN Committee's General Comment 6, review mechanisms should be in place to monitor the quality of the service provided by ICTGs in order to ensure the best interests of the child are being represented, and to prevent abuse.

3a. 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?

Yes. ICTGs require specialist training and qualifications.¹¹ The proposed level of qualification is commensurate with that currently required of guardians under the Scottish Guardianship Service. This service has been well evaluated, and is recognised as an international model of good practice.¹²

Equally important to their qualifications are the values of those employed as ICTGs. In order to fulfil their role to a high standard, ICTGs must be committed to working with compassion and sensitivity, in a rights-based and relationship-focussed way. The organisational recruitment processes, and ongoing training, coaching and supervision, must support this.

⁹ FRA (2015) *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*. Luxembourg: Publications Office of the European Union

¹⁰ Sereni, A. & Baker, C. (2018) [Before the harm is done: Examining the UK's response to the prevention of trafficking](#). London: The Anti-Trafficking Monitoring Group; Crawley, H. & Kohli, R. (2013) *'She Endures With Me': An evaluation of the Scottish Guardianship Service Pilot*. Swansea University & University of Bedfordshire.

¹¹ Sereni, A. & Baker, C. (2018) [Before the harm is done: Examining the UK's response to the prevention of trafficking](#). London: The Anti-Trafficking Monitoring Group

¹² Crawley, H. & Kohli, R. (2013) *'She Endures With Me': An evaluation of the Scottish Guardianship Service Pilot*. Swansea University & University of Bedfordshire; Ivan, J (2016) *Case study on the Scottish Guardianship system and on the role of the independent guardian in ensuring adequate reception conditions*. Brussels: European Council on Refugees and Exiles

3b. 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

Do you agree with the above requirements? Is there any other experience or training that should be a requirement?

Yes. In addition, specific reference should be made to the requirement for experience and knowledge about children's rights, particularly the rights of unaccompanied children.

An explicit reference to requirements for an understanding of [Getting It Right For Every Child](#) (GIRFEC), Scotland's national approach to safeguard and support all children's rights and wellbeing, would further strengthen the list.

Unaccompanied children are children first and foremost. We are concerned that child trafficking is not always handled through the overarching lens of child protection, or indeed GIRFEC. Rather than the guiding focus always being the needs and rights of the child, within the multi-agency context issues such as immigration and crime can take precedence. ICTGs have an important role in ensuring this is not the case, and the child's rights, needs and wellbeing remain firmly at the centre.

3c. 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? Are there any other checks that an independent child trafficking guardian should undergo?

We agree ICTGs should undergo suitable disclosure/PVG checks, and register with the OISC. Given the role of the ICTG is to support and act in the best interests of unaccompanied children, addressing a wide range of wellbeing

needs, a sole focus on registration through the OISC may overly focus scrutiny on the immigration aspects of their role. Registration or scrutiny through bodies such as the Scottish Social Services Council or the Care Inspectorate should also be considered, in recognition that the focus should always be on the best interests of the child, not their immigration status.

4. 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?

Yes.

5. 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? Are there any that you would add to or remove from the list?

Yes. Other important functions of an ICTG which should be added to the list include acting as an advocate for the child or young person, ensuring their views are heard and taken into account in all decisions that affect them, and ensuring they access their rights and entitlements. In addition to their function in providing support in the areas listed, ICTGs have a broader, more holistic role in building a trusting relationship with the child or young person, supporting them in relation to their own individual wellbeing needs, and communicating, coordinating, and acting as a 'bridge' for the child between different parts of complex systems of immigration, care and child protection.

The Council of Europe established [Core Standards for guardians of separated children in Europe](#) in 2011, which set out the role and responsibilities of guardians.¹³ Informed by evidence, research, international good practice examples and children's views, 10 standards are identified. Alongside practice indicators, they provide a framework for high quality guardianship and set a consistent standard across European jurisdictions. Further aligning the functions of ICTGs in the above list with these standards will result in a stronger, more comprehensive articulation of the functions of an ICTG.

6. What records should be kept about the ICTG (for example, records on employment; relevant training)?

No comments

7. It is 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.

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

We fully support the suggestion that a young person can continue to receive support from an ICTG after the age of 18, in line with provisions under the [Children and Young People \(Scotland\) Act 2014](#) (the 2014 Act).

It should be clarified that Continuing Care provisions and Aftercare provisions have different upper age thresholds in legislation. Under Part 11 of the 2014 Act, young people who are looked after on or beyond their 16th birthday are entitled to remain in the same accommodation, and receive the same assistance from the local authority, under Continuing Care provisions until they reach the age of 21. Part 10 of the 2014 Act extends eligibility for aftercare to young people who were looked after on or beyond their 16th birthday, until they reach the age of 26. This mirrors the duties of corporate parents under Part 9 of the 2014 Act,

¹³ Goeman et al (2011) *Core Standards for guardians of separated children in Europe: Goals for guardians and authorities*. Council of Europe. Leiden: Defence for Children - ECPAT

who have duties to young people who were looked after on or beyond their 16th birthday up until the age of 26. Statutory corporate parenting guidance is clear that the duties and responsibilities of corporate parents apply equally to all eligible children and young people regardless of their age.¹⁴

Developments such as these in Scotland's policy and legislation recognise the negative impact of early, multiple, abrupt and accelerated transitions for young people leaving care.¹⁵ Furthermore, young people who have been looked after as unaccompanied children often face additional barriers and vulnerabilities in addition to those which may be experienced by other care leavers. Their support needs do not abruptly end when they become 18, and this may even be a time of increased vulnerability due to changes in other areas of their lives, such as legal entitlements, finances and accommodation. The need for continued support beyond the age of 18 for young people who have been unaccompanied children is recognised internationally, particularly in relation to the importance of trust for these young people, which often necessitates longer guardian involvement.¹⁶

In recognition of this, and in line with aftercare and corporate parenting provisions, all young people who have been supported by a ICTG should be able to continue to access this support until they are aged 26, or beyond in circumstances where this is required.

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

A range of literature and guidance is available setting out the role of a guardian, and the supports that trafficked and unaccompanied children benefit from from guardians.¹⁷ Notably, these include specialist support to navigate complex systems, including care, child protection and immigration; linking with other agencies; translation and communication support; facilitating participation (including participation in the local community); ensuring (alongside multi-agency partners) the child's health, accommodation and educational needs are met; advocating for and holding others to account for decisions affecting the child's best interests; support to access social opportunities; risk assessment; accessing specialist victim support services, trauma support and other counselling; support to identify future plans and support progress towards them; and supporting the child to maintain family links. [Lifelong Links](#), a collaborative

¹⁴ Scottish Government (2015) *Statutory Guidance on Part 9: Corporate Parenting*. Edinburgh: Scottish Government

¹⁵ Stein, M. (2012) *Young People Leaving Care: Supporting Pathways to Adulthood*, London: Jessica Kingsley Publishing

¹⁶ FRA (2015) *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*. Luxembourg: Publications Office of the European Union

¹⁷ For example: D'Addato A., Giraldi M., Van Der Hoeven C. and Fontal A. (2017), *Let Children be Children: Lessons from the Field on the Protection and Integration of Refugee and Migrant Children in Europe*, Eurochild and SOS Children's Villages International, Brussels; Goeman et al (2011) *Core Standards for guardians of separated children in Europe: Goals for guardians and authorities*. Council of Europe. Leiden: Defence for Children – ECPAT; FRA (2015) *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*. Luxembourg: Publications Office of the European Union;

project working with local authorities, family group conference services, voluntary sector organisations, children and young people with care experience, and other stakeholders to build positive lifelong support networks for children with care experience, is an example of a model of supporting/building family links for all care experienced children, yet has also given specific attention to the particular needs and rights of unaccompanied children. Lifelong Links have guidance specific to working with unaccompanied children which has been utilised in England, and plans are underway to begin this work in two local authorities in Scotland in the coming year.

Children and young people who have worked with guardians are clear that it is important to have a guardian who is consistent, knowledgeable, who understands them, encourages them, invests time in them, and can be trusted to advise them.¹⁸ Guardians have a distinctive and complex role, requiring them to have particular specialist skills and knowledge, but also to respond to the unique circumstances and wellbeing needs of each individual child, whilst working in a multiagency context. ICTGs must communicate and work in partnership with other professionals in the team around the child to ensure the right person meets the child's needs at the right time.

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

The preamble to this question implies that an ICTG's support will conclude when a child or young person achieves Settled Status. We do not agree that this is an appropriate default position. Guardianship should be available for as long as it is needed, depending on the best interests of the child.¹⁹ Simply because children have received Settled Status, their risk of trafficking does not automatically reduce. The needs of the child, rather than their immigration status, should be paramount in guiding the support they receive.

In terms of preventing re-trafficking for all unaccompanied children and young people, ICTGs have a role in working and planning with the child or young person to understand and manage risk; and undertaking or facilitating therapeutic work around exploitation and safety. Stability, felt security, and reliable positive relationships are important for children and young people to feel safe, and ICTGs have a role in supporting children and young people to establish these.

10. What support for Appeal Rights Exhausted children and young people would you propose that an ICTG provide, and what additional

¹⁸ Crawley, H. & Kohli, R. (2013) *'She Endures With Me': An evaluation of the Scottish Guardianship Service Pilot*. Swansea University & University of Bedfordshire

¹⁹ FRA (2015) *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*. Luxembourg: Publications Office of the European Union

support arrangements (if any) could be put in place to help the ICTG provide that support?

As stated above, an ICTG's support should depend on the needs of the child, not their immigration status. Children and young people who are deemed Appeal Rights Exhausted are very likely to continue to require the support of an ICTG, in all the areas we have already outlined. There may be an increased risk that a child or young person goes missing at such a time, due to fear of being repatriated, therefore the ICTG's support becomes even more important.

11. 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)?

As well their responsibilities to respect and uphold children's rights to privacy and confidentiality, ICTG's are part of a multiagency network of professionals who each have a role in the child's life, and must share information lawfully and appropriately within this context. As in any area of practice, information can be shared on the basis of consent, or, if appropriate, under a number of other provisions of the [Data Protection Act 2018](#). The sharing of information is critical to promoting, supporting and safeguarding a child or young person's wellbeing. In light of recent developments in relation to the repeal of Parts 4 and 5 of the 2014 Act due to concerns about information sharing, the provision of clear guidance in relation to information sharing in the context of ICTGs may prove beneficial to address any confusion and anxiety felt by professionals.

12. 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?

Children and young people should have clear, transparent and easy access to complaints procedures in the event that they are not satisfied with the service they receive. Children and young people working with ICTGs are often particularly vulnerable, and may not feel empowered to make a complaint for fear of negative consequences for their immigration status. Therefore, particular care must be taken to ensure their rights to complain, and where they can access support to do so, are clearly communicated to all children and young people using the service.

The ICTG service provider has responsibility for ensuring the quality of the service is monitored and maintained to a high standard. Evaluation and monitoring should be ongoing and extensive, involving children and young people, and external/independent parties, in addition to internal mechanisms.

About CELCIS

CELCIS is a leading improvement and innovation centre in Scotland. We improve children's lives by supporting people and organisations to drive long-lasting

change in the services they need, and the practices used by people responsible for their care.

Thank you for providing us with this opportunity to respond. We hope the feedback is helpful; we would be happy to discuss any aspect in further detail.

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