

Independent Guardian Service (IGS)

Proposed Amendments to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2016

Consultation Document

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FOREWORD FROM ROBIN SWANN MLA

MINISTER OF HEALTH



The aim and purpose of this consultation is to seek views on proposed amendments to current legislation governing the Independent Guardian Service (IGS) for separated/unaccompanied asylum-seeking children, including those who may have been trafficked.

The proposed amendments, by amending the criteria required to work as an Independent Guardian, facilitate the possibility of attracting a larger, more diverse pool of applicants for the role. It is hoped, in turn, that this will address current pressures on the IGS, and thus enable continuity of service for some of the most vulnerable young people in our society.

Your views, opinions and suggestions are important and will contribute to the finalisation of any legislative amendments relating to the procedures and functions of the IGS.

Robin Swann, MLA

Minister of Health

Section 1 – Introduction and background

1.1 This consultation is seeking your views on proposed amendments to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2016¹. These changes implement certain recommendations resulting from a review of the Independent Guardian Service (IGS) undertaken in 2021 by the Centre for Effective Services (CES).

About the Independent Guardian Service

1.2 The Independent Guardian Service (IGS) came into operation on 1 April 2018. It was set up under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015² (the 2015 Act) and associated regulations – the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2016 (the 2016 Regulations).

1.3 In 2018, the then-Health and Social Care Board (HSCB) commissioned Barnardo's NI to deliver the IGS, with the service starting in April 2018. The HSCB closed in April 2022, with its functions transferring to the new Strategic Planning and Performance Group (SPPG) of the Department of Health (DoH).

1.4 The 2015 Act (as amended by the Health and Social Care Act (Northern Ireland) 2022, reflecting the closure of the HSCB), requires DoH to make arrangements to appoint independent guardians to "...assist, represent and support..." children who have been trafficked, are suspected to have been trafficked or who have become separated from their parents/caregivers and, because of that separation, may be risk of harm. A separated and/or trafficked child requires access to a range of professional services and the Independent Guardian (IG) must have the requisite knowledge and skills in order to understand and oversee this process.

¹ Please see www.legislation.gov.uk/nisr/2016/410.

² Please see www.legislation.gov.uk/nia/2015/2/section/21.

- 1.5 The 2015 Act requires the Independent Guardian Service to be delivered by a registered charity. Barnardo's NI is the current service provider.
- 1.6 The 2015 Act provides (at section 21(4)(b)) for a person to be appointed to the role of Independent Guardian (IG). It requires (at section 21(5)) that the Department of Health makes regulations specifying the training and qualifications IGs should have.
- 1.7 The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2016 came into operation in December 2016. Regulation 3(a) and (b) requires IGs to be registered social workers with a minimum of five years' post-qualifying social work experience. This must include experience working with children and families, including court-related experience and inter-agency working. Regulation 4(1) provides for support (training, development and administrative support) and formal supervision arrangements in order to enhance their skills and knowledge in relation the duties of an Independent Guardian.
- 1.8 The National Referral Mechanism³ (NRM) is the UK-wide support system for victims of trafficking. So-called first responder agencies who suspect an individual is a victim of trafficking will refer that individual to the NRM, where the Home Office as the competent authority will make an assessment on the trafficking claim. In NI, first responder organisations include HSCTs, the police and Border Force. Please see further information on page 9 below.
- 1.9 Children and young people identified as a potential victim of trafficking by the relevant first responder will be referred to the IGS if they have been, or are about to be, referred to the NRM. The IGS will then engage with that child/young person within 24 hours.
- 1.10 HSCTs manage new arrivals of separated/unaccompanied children on a rota basis. If the person is under 18, outside their country of origin and without a

³ Please see www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/national-referral-mechanism-guidance-adult-northern-ireland-and-scotland for further information on the NRM.

parent/caregiver, they will be considered separated/unaccompanied. The relevant HSCT will advise SPPG of the person's arrival, and they will be referred to the IGS. Again, they will be seen within 24 hours.

1.11 As of 30 June 2022, the IGS reported 148 open cases.

1.12 The current service provider has stated that the IGS has been, and continues to be, operating at and beyond capacity. In particular, it has had ongoing difficulties in recruiting IGs with the necessary five years' post-qualifying experience as required under the 2016 Regulations. The Department is considering options to mitigate capacity issues and address this situation, which is the subject of this consultation.

1.13 An independent evaluation of the IGS was completed by the Centre for Effective Services (CES) in March 2021. One of its recommendations was that the five-year post-qualification requirement was reduced.

Policy and Legislative Context

Legislation

1.14 Key legislation relating to the IGS is as follows:

1.14.1 The Children (Northern Ireland) Order 1995⁴ (the 1995 Order) is the key piece of legislation relating to the care and protection of children and young people in Northern Ireland. The 1995 Order requires that a child or young person's wellbeing is considered "paramount" at all times, and it applies to migrant as well as indigenous children. As such, the provisions within are applicable to children and young people who may use the IGS.

1.14.2 However, the additional, specific needs of trafficked or unaccompanied children are also recognised in legislation. The IGS was set up under section 21 the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. The subordinate legislation that provides for specific functions of the IGS is the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2016.

1.14 The key statutory functions of the IGS under the 2015 Act (at section 21(7)(a) – (h)), are:

- determining and communicating needs / wishes of the child;
- representing, and liaising on behalf of, the child to e.g. housing, health, translation services;
- assisting the child to obtain legal advice / representation, and instructing these representatives where appropriate;
- ensuring the child is consulted and updated about legal and other proceedings affecting them;
- contributing to safeguarding plans and promoting the child's best interests;
- acting as a link between the child and other relevant service providers;

⁴ Please see www.legislation.gov.uk/nisi/1995/755/contents

- assisting in establishing contact with the child's parents/caregivers, if in the child's best interests and if this is their wish; and
- accompanying the child to meetings etc as appropriate.

1.15 As provided for at section 21(4)(a) of the 2015 Act, the IGS must be delivered by a charity. This ensures that it is independent, including from statutory social services. The latter will have a role in supporting a trafficked and/or separated/unaccompanied child in addition to the support provided by the IGS, although the 2015 Act requires that due regard is given to the IGS' functions.

Policy

1.16 Like the 1995 Order, *Co-operating to Safeguarding Children and Young People in Northern Ireland*⁵ is applicable to trafficked and/or unaccompanied asylum-seeking children and young people as well as those born and/or naturalised in the jurisdiction.

1.17 However, the specific needs of trafficked and/or unaccompanied children and young people are catered for in additional guidance documents ('the *Working Arrangements* documents'):

1.17.1 *Working Arrangements for the Welfare and Safeguarding of Unaccompanied and Separated Children and Young People* provides guidance to professionals and agencies who may work with asylum-seeking children or young people who have arrived into NI without a caregiver.

1.17.2 *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking and Modern Slavery* provides guidance for those working with asylum-seeking child victims or potential victims of trafficking or modern slavery.

The documents require that the statutory social worker assigned to a trafficked and/or unaccompanied child ensures that an IG "...is appointed in respect of the child as immediately as possible." They are both available on the DoH website at

⁵ Please see www.health-ni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland

National Referral Mechanism

- 1.18 As noted at 1.8 above, the (NRM) is a framework for identifying potential victims of trafficking and/or modern slavery to ensure they have the support they need. HSCTs (and others) are recognised as ‘first responders’ who make NRM referrals.
- 1.19 The ‘Single Competent Authority’ within the Home Office determines if an individual has been a victim of trafficking and/or modern slavery. It will, within five days, make a ‘reasonable grounds’ decision; this means it has reasonable grounds to decide that an individual is a victim (or not). If this decision is positive (i.e. that there are reasonable grounds to believe the individual is a victim of trafficking and/or modern slavery), they will be granted a period of ‘reflection’ during they will be afforded certain supports, such as accommodation and counselling. This period lasts for a minimum of 45 days, and is designed to support the person to move towards independence from NRM support.
- 1.20 During the reflection period, the competent authority will gather information to make a ‘conclusive grounds’ decision, which is the final determination on whether the person has been a victim of trafficking and/or modern slavery. This decision is made on the balance of probability. The target timeframe for making a conclusive grounds decision is as soon after the 45-day reflection period as possible.
- 1.21 Support is provided to individuals who have received a positive conclusive grounds decision for 14 days.
- 1.21 Support for children in the NRM process in Northern Ireland is provided by HSCTs. Additional support for unaccompanied children is offered by the IGS.

Section 2 – Current Position

- 2.1 As already noted, IGs are currently required to have five years of post-qualifying social work experience. This experience is to include working with children and families as well as court experience and inter-agency working.
- 2.2 The current service provider had advised in early 2021 that it had made two unsuccessful attempts to recruit an IG to a vacant position. They have advised the Department that they believe the post-qualifying regulatory criterion is preventing otherwise suitably qualified applicants from being able to apply for the position.
- 2.3 The CES evaluation recommended that the post-qualifying requirements for IGs should be reduced, noting that both Barnardo's (as the current service provider) and wider stakeholders held this view. It also noted that there was "...openness to exploring the potential of adding other roles to the team that may not require a social work qualification."

Section 3 – Proposed Amendment to Regulations

Preferred Option: Removal of Five Year Post-Qualifying Period

3.1 Regulation 3: Training and qualifications of the 2016 Regulations currently provides for the following:

To be eligible for appointment as an independent guardian, a person shall—

- (a) be registered as a social worker in the principal part of the register maintained by the Northern Ireland Social Care Council under section 3 of the 2001 Act⁶; and
- (b) have a minimum of five years' post qualifying social work experience with children and families, including direct work with children, court related experience and inter-agency working.

3.2 The Department proposes to replace the present wording of 3(b) with 'have completed their period of assessed employment'. Under this proposal, therefore, Regulation 3 would read as follows:

To be eligible for appointment as an independent guardian, a person shall—

- (a) be registered as a social worker in the principal part of the register maintained by the Northern Ireland Social Care Council under section 3 of the 2001 Act; and
- (b) have completed their post-qualification period of assessed employment.

3.3 This means that IGs would continue to be required to be qualified social workers and have completed at least one year in practice and have been assessed to be professionally competent at the end of year one. This approach would allow maximum flexibility, and would merely amend the *statutory* minimum requirements to practice as an IG. It would not preclude a minimum period being set in the contract with the service provider, nor the provider itself setting a minimum number of years' experience in its recruitment exercises (e.g. through job adverts, personnel specifications).

⁶ Health and Personal Social Services Act (Northern Ireland) 2001. Please see www.legislation.gov.uk/nia/2001/3/contents

Other Options and Considerations

Three Years' Post-Qualifying Experience

- 3.4 CES recommended that the length of the required post-qualifying period was re-examined, though it did not specify by how much the period should be reduced. However, the report noted that all participants in the review agreed that a reduction should happen, with a majority suggesting that a reduction to three years' experience was appropriate and consistent with other specialist roles in social work.
- 3.5 An alternative option to the preferred option of removing the post-qualification experience requirement from the Regulations could therefore be to reduce the experience requirement prescribed in the regulations to three years.

Skills Mix

- 3.6 In the 2015 consultation, some respondents queried whether it was necessary for IGs to hold a professional social work qualification. The Health Committee, in its meeting on 9 March 2016⁷, also discussed this issue. At that time, the Department made a commitment to keep this under review and, as a consequence, in 2020, CES was commissioned to undertake an evaluation. Their report was published in 2021. The consensus in this report was that IGs should continue to be qualified social workers.
- 3.7 Although the CES evaluation of the local IGS concluded that social work should remain a required profession to practice as an IG specifically, it also recommended that the potential for introducing a skills mix within the team to improve outcomes for young people, maximise resources and reduce pressure on the service is explored. This would involve a diversified skills mix across the IGS, which whilst not the same as the Scottish model (where Guardians specifically can be of different professional backgrounds – see more details below) would potentially bring in a similar range of frontline practitioners.

⁷ Please see <http://data.niassembly.gov.uk/HansardXml/committee-17810.pdf>.

Scottish Model

3.8 The most comparable service to the IGS in the rest of the UK and Ireland is the Scottish Guardianship Service (SGS). The SGS considers a social work qualification to be desirable; however, this is not essential if an applicant meets other relevant criteria (such as having training and work experience in trauma, immigration and/or child protection). Guardians come from a range of professional backgrounds⁸.

Departmental Recommendations

3.9 Given the consensus in the CES evaluation that social work was the most suitable profession for IGs, the Department considers that it is sensible to retain the requirement that IGs be qualified social workers. As such, we propose retaining Regulation 3(a).

3.10 The Department is of the view that the commissioner and service provider of the IGS should have discretion and maximum flexibility in their recruitment practices. We have therefore concluded that amending Regulation 3(b) to require that applicants have completed their AYE is the most appropriate course of action. It is considered that this is the minimum that could be required in terms of a social work qualification and provides a level of assurance that the qualified social worker has been assessed positively in practice. As noted above, this would merely be a statutory minimum; contractual and recruitment requirements could exceed this minimum.

3.11 As noted at 3.8, the SGS approach does not limit the role of Guardian to social workers and, although CES concluded that a social work qualification *is* retained to work as an IG specifically, it did recommend exploring the potential for a skills mix in the team. In light of these identified opportunities, we would welcome your views as to which professions could fulfil additional roles within the IGS.

⁸ Please see p.33 of *She endures with me: An evaluation of the Scottish Guardianship Service Pilot* for further details of SGS recruitment criteria, available at www.scottishrefugeecouncil.org.uk/wp-content/uploads/2019/10/She-endures-with-me-Final-evaluation-of-the-Scottish-Guardianship-Service-Pilot-PDF.pdf

3.12 The Department has also considered the suggestion of participants of the CES evaluation that three years' minimum PQ experience for an IG is an appropriate minimum requirement. We consider, as per previous comments, that any such minimum should be set within the contract between the commissioner and service provider and in recruitment processes, rather than within Regulations.

Section 4 – Assessment of Impact

All of the screening documents referred to below are available upon request or on the consultation's website. Please see *Section 5 – Your Views* for details.

Child's Rights Implications

4.1 In accordance with recommendations of the Northern Ireland Commissioner for Children and Young People, a screening exercise has been undertaken on the implications on children and young people's rights of any changes to the 2016 Regulations. No negative impacts have been identified and, as such, the Department of Health has concluded that a full Child Right's Impact Assessment is not necessary.

Equality Implications

4.2 In accordance with guidance produced by the Equality Commission for Northern Ireland and in keeping with Section 75 of the Northern Ireland Act 1998, the options for amendments of the 2016 Regulations were screened for equality impact. The Department has concluded that a full Equality Impact Assessment is not required.

Data Protection Impact Assessment

4.3 A data protection screening has been carried out, and the Department has concluded that a full Data Protection Impact Assessment is not required.

Regulatory Impact Assessment

4.4 Screening for regulatory impact of the proposed amendments has been considered, and the Department has concluded that a full impact assessment is not necessary.

Rural Impact Assessment

5.5 In line with the requirements of the Rural Needs Act (Northern Ireland) 2016, screening has been undertaken for potential impacts on rural populations as a consequence of the proposed amendments. This did not identify any specific impact on rural communities, and as such the Department has concluded that a full Rural Impact Assessment is not necessary.

Section 5 – Your Views

4.1 This consultation has been launched using Citizen Space at <https://consultations2.nidirect.gov.uk/doh-1/igs-regs-amendments> (or by scanning the QR code below). Citizen Space is the Northern Ireland Civil Service (NICS) recommended online consultation tool and surveying tool.



4.2 Additional copies of this document can be downloaded from the above link.

4.3 You can also share your views on this consultation in a number of other ways.

A questionnaire is attached at **Annex 1** of this document. This can be completed and submitted as follows:

- Download and email your completed questionnaire to fcpdadmin@health-ni.gov.uk
- Print and post the completed questionnaire to:

Family and Children's Policy Directorate
Department of Health
Room A3.5A
Castle Buildings
BELFAST
BT4 3SQ

- 4.4 The Department will consider requests to produce this document in other languages or in alternative formats. Please contact the Department, at the above email or postal address, to make your request.
- 4.5 A child-friendly/easy-read consultation document will also be produced and made available in due course.
- 4.6 **The consultation closes at 11.59pm on 19 January 2023.** Please note that late responses cannot be accepted.

Section 6 – Following Consultation

Privacy, Confidentiality and Access to Consultation Responses

- 5.1 For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice at Annex 1.
- 5.2 Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (UK GDPR) (EU) 2016/679.
- 5.3 If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

See Privacy Notice at attached **Annex 2**.

Annex 1 – Consultation Questionnaire

1. Do you agree that the requirement that Independent Guardians (IGs) have five years' post-qualifying social work experience is removed from Regulation 3 of the 2016 Regulations? (please tick *one* option)

Yes

No

If you answered 'no', please explain your answer below.

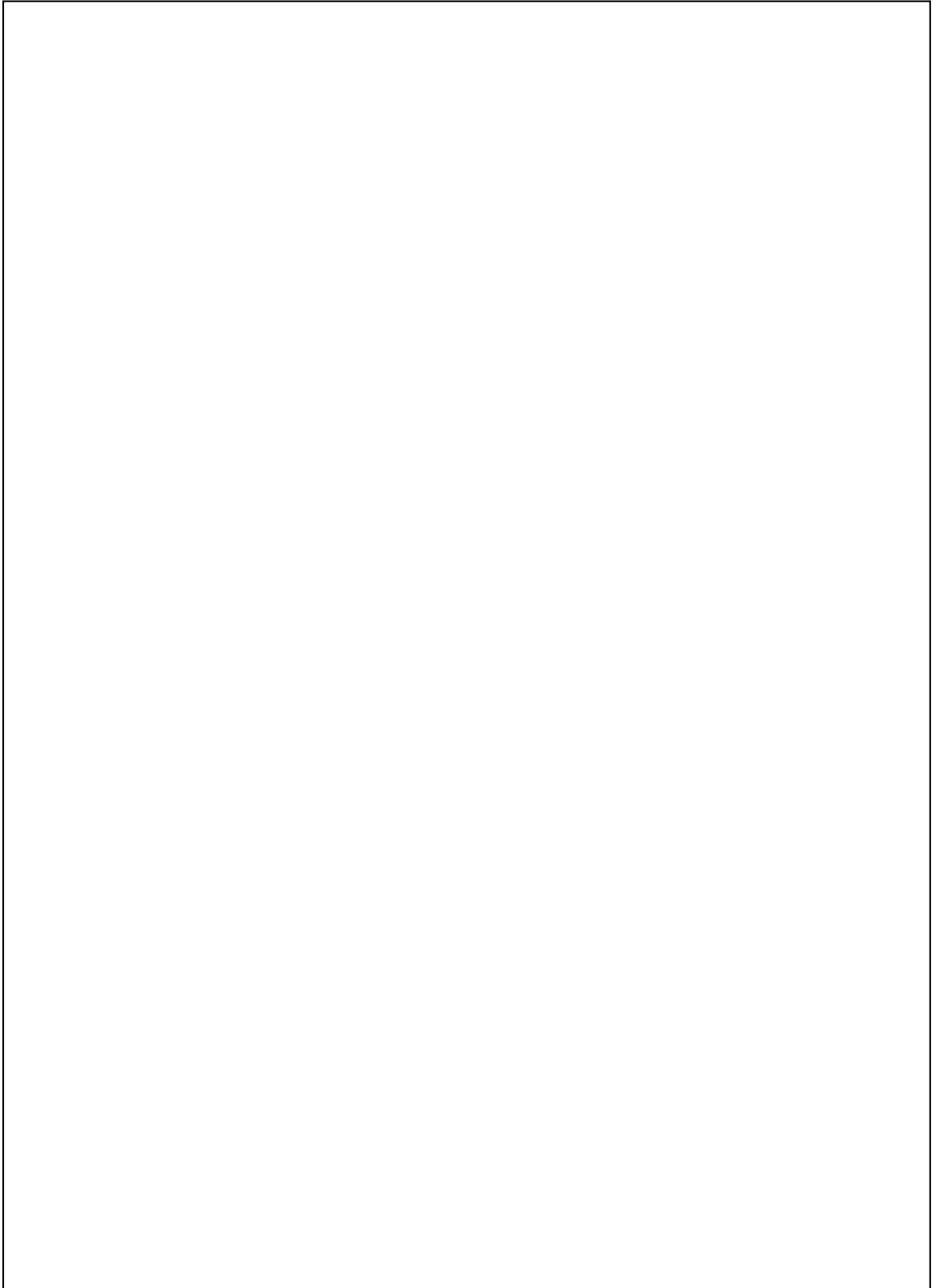
2. Are you content with the wording of the proposed amendment to Regulation 3(b) as outlined at paragraph 3.2 of this consultation document?
(please tick *one* option)

Yes

No

If you are *not* content, please explain your reasons below.

3. As noted at 3.7 and 3.11 of the consultation document, a recommendation of the CES evaluation was that the potential for a skills mix within the IGS was explored. Please use the space below to comment on which professions/skill sets you feel would be appropriate for any such additional roles.



- 4. Please add any further comments you may have regarding what qualifications and/or experiences, if any, you think should be statutorily required to work as an IG.**

Annex 2 – Privacy Notice

Data Controller Name: Department of Health (DoH)

Address: Castle Buildings, Stormont, BELFAST, BT4 3SG

Email: fcpdadmin@health-ni.gov.uk

Telephone: 028 9052 0500

Data Protection Officer Name: Charlene McQuillan

Email: DPO@health-ni.gov.uk

Telephone: 028 9052 2353

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the [Data Protection Act \(DPA\)](#) and the [UK General Data Protection Regulation](#) (UK GDPR). The Department of Health (DoH) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

Purpose for processing

We will process personal data provided in response to consultations for the purpose of informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We will publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents, but will include the names of organisations responding.

If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

Lawful basis for processing

The lawful basis we are relying on to process your personal data is Article 6(1)(e) of the UK GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2)(g) of the UK GDPR, in the exercise of the function of the department, and to monitor equality.

How will your information be used and shared

We process the information internally for the above stated purpose. We don't intend to share your personal data with any third party. Any specific requests from a third party for us to share your personal data with them will be dealt with in accordance the provisions of the data protection laws.

How long will we keep your information

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department's approved Retention and Disposal Schedule [Good Management, Good Records](#) (GMGR).

What are your rights?

- You have the right to obtain confirmation that your data is being [processed, and access to your personal data](#)
- You are entitled to have personal data [rectified if it is inaccurate or incomplete](#)
- You have a right to have personal data [erased and to prevent processing](#), in specific circumstances
- You have the right [to 'block' or suppress processing](#) of personal data, in specific circumstances
- You have the right to [data portability](#), in specific circumstances
- **You have the right to** [object to the processing](#), in specific circumstances
- **You have rights in relation to** [automated decision making and profiling](#).

How to complain if you are not happy with how we process your personal information

If you wish to request access, object or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above.

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

casework@ico.org.uk