

The Independent Guardian Service for Trafficked and/or Separated Children/Young People

Guidance on Section 21 of Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015



Department of
Health

An Roinn Sláinte

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Version History

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This guidance will be reviewed every five years (or more often as required).

Acronyms Used in this Document

Acronym	Meaning
DoH	Department of Health
ESOL	English for Speakers of Other Languages
HSCB	Health and Social Care Board (now SPPG)
HSCT	Health and Social Care Trust
IG(s)	Independent Guardian(s)
IGS	Independent Guardian Service
SPPG	Strategic Planning and Performance Group (of DoH)
UNCRC	United Nations Convention on the Rights of the Child
UNOCINI	Understanding the Needs of Children in Northern Ireland

1. Introduction

- 1.1 The Independent Guardian Service (IGS) for separated children/young people was established under section 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015¹ (the 2015 Act).
- 1.2 Arrangements for the appointment and supervision of Guardians is provided for under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2016² (the 2016 Regulations, currently under review).
- 1.3 In line with section 21(5) of the 2015 Act, the 2016 Regulations currently provide that those eligible for appointment as an Independent Guardian must be social workers with at least five years' post-qualifying experience³.
- 1.4 In 2018, the then-Health and Social Care Board (HSCB) commissioned Barnardo's NI to deliver the IGS, with the award of contract commencing on 1 January 2018 and service delivery commencing on 1 April 2018. The HSCB closed in April 2022, with its functions under the 2015 Act transferring to the new Strategic Planning and Performance Group (SPPG) of the Department of Health (DoH).
- 1.5 The purpose of this document is to interpret and provide guidance on the application of section 21 of the Act. It is intended that this will help inform future service specifications and any contract between the IGS commissioner and service provider, as well as to assist the service provider in discharging its functions under the Act.
- 1.6 As well as the Act, this Guidance is informed by two independent reviews of the IGS (one, reviewing the Service as a whole, completed in March 2021 and a second, focusing more specifically on process and governance, in March 2023).
- 1.7 This Guidance relates to an Act of the Northern Ireland Assembly. It therefore applies only to the provision of Independent Guardians within Northern Ireland.

¹ www.legislation.gov.uk/nia/2015/2/section/21

² www.legislation.gov.uk/nisr/2016/410

³ DoH has consulted on amending this criterion and intends to remove the post-qualification period upon the restoration of the Northern Ireland Executive. The intention is to afford SPPG and the service provider greater flexibility in setting post-qualifying requirements.

2. Definitions

- 2.1 The IGS is available to several cohorts of **children** and **young people**; those who are actual or potential/suspected victims/survivors of human **trafficking** and/or those who are **separated** and/or **unaccompanied**. These terms are defined below. Expanded and additional definitions can be found in the operational guidance documents *Working Arrangements for the Welfare and Safeguarding of Unaccompanied and Separated Children* and *Working Arrangements for the Welfare and Safeguarding of Child Victims and Potential Child Victims of Human Trafficking and Modern Slavery* (both, currently under review, are available on the Department of Health's website⁴).

Child(ren)

- 2.2 The term 'child' is not defined in the 2015 Act. Under Article 2(2) of the Children (Northern Ireland) Order 1995, a 'child' is defined as a person who is under the age of 18. The same definition is used in the United Nations Convention on the Rights of the Child (UNCRC). The term '**young person/people**' is also used in this document to respect that, even though they are legally a child, some under the age of 18 will not identify as such. It also reflects that individuals aged between 18 and 21 can, by exception, use the IGS.

Trafficked

- 2.3 For the purpose of this guidance, the term 'trafficked' is as outlined in section 2 of the 2015 Act⁵. Section 2 is primarily concerned with the offence of trafficking, but by extension outlines the criteria for being considered a victim/survivor of such an offence.
- 2.4 Section 2 provides that trafficking occurs when a person (A) facilitates the travel of another person (B) with a view to exploit B during or after that travel. This includes travel to, from or within a country. This means that it is possible for indigenous people to be trafficked within their country.
- 2.5 Whether or not B consents to the travel is irrelevant should A facilitate it with the intention to exploit B.

⁴ www.health-ni.gov.uk/publications/protecting-unaccompanied-children-and-child-victims-human-trafficking-and-modern-slavery. Please note that, as of this publication, these documents are under review.

⁵ www.legislation.gov.uk/nia/2015/2/section/2

- 2.6 A child/young person is a trafficked child/young person if someone has enabled them to travel to, from or within the jurisdiction with the intention of exploiting the child/young person.

Separated

Section 21 (11)

“Separated child” means a child who—

- (a) is not ordinarily resident in Northern Ireland;
- (b) is separated from all persons who—
 - (i) have parental responsibility for the child; or
 - (ii) before the child’s arrival in Northern Ireland, were responsible for the child whether by law or custom; and
- (c) because of that separation may be at risk of harm.

- 2.7 A separated child/young person is defined by section 21(11) of the 2015 Act as above, and similarly by the UN Committee on the Rights of the Child⁶. However, *a separated child/young person is not necessarily separated from other adult family members* (e.g. adult sibling, aunt/uncle).

Unaccompanied

- 2.8 An unaccompanied child/young person is a child/young person separated from *any* adult family member or primary caregiver who would normally legally or by custom have responsibility for caring for the child/young person⁷. As this means they are separated from those who have parental responsibility for them, they qualify as a separated child/young person for the purpose of section 21. As such, the term ‘separated’ in this document should be read as including children/young people regarded as ‘unaccompanied’. Indeed, for individual children/young people, being unaccompanied may be of greater significance than being separated.

⁶ See paragraph 8 of the General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, available at www.refworld.org/docid/42dd174b4.html.

⁷ Ibid, paragraph 7.

3. Service Eligibility

- 3.1 To be eligible to be referred to the IGS, a child/young person must be potentially or actually trafficked, or separated (or both) and under the age of 18.

Eligibility Due to Trafficking

- 3.2 As set out below, section 21 (2) provides that children/young people who have been trafficked or potentially trafficked can avail of the Service.

Section 21 (2)

(2) [Section 21] applies to a child if—

- (a) a reference relating to that child has been, or is about to be, made to a competent authority for a determination for the purposes of section 10 of the trafficking convention as to whether there are reasonable grounds to believe that the child is a victim of trafficking in human beings; and
- (b) there has not been a conclusive determination that the child is not such a victim;

and for the purposes of this subsection a determination which has been challenged by way of proceedings for judicial review shall not be treated as conclusive until those proceedings are finally determined.

- 3.3 The ‘competent authority’ is the Home Office, which has responsibility for the National Referral Mechanism (NRM). The NRM is a framework that assesses whether those referred to it are likely to have been victims of trafficking and, if so, facilitates support. Further information is available on the UK Government’s website⁸.
- 3.4 Under section 21 (2), eligibility for the IGS applies to children/young people who have been referred, or are intended to be referred, to the Home Office for NRM consideration and continues until a conclusive determination is made by the Home Office. If the Home Office concludes that the child/young person/young person has *not* been a victim of trafficking, eligibility for the IGS falls away, unless the determination is subject to legal challenge. In the event of a legal challenge against the Home Office’s determination, a child/young person/young person remains eligible for the IGS until such time as the legal challenge concludes. If the outcome of the legal challenge

⁸ www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/national-referral-mechanism-guidance-adult-northern-ireland-and-scotland

upholds the Home Office's determination, eligibility for the IGS falls away at that point.

- 3.5 In line with section 21 (4)(d), the IGS is not intended to be a service for individuals who are in routine contact with those who have parental responsibility for them, or if those with parental responsibility are resident in the UK. It is not just a matter of having parental responsibility; parental responsibility must be exercised in a way that is in the best interests of the child/young person. This would clearly not apply to anyone with parental responsibility who is suspected of a human trafficking offence (under section 2 of the 2015 Act).
- 3.6 It follows, therefore, that, if in the course of involvement with the IGS, a child/young person re-unifies with his/her parents – as long as those parents are acting in the child/young person's best interests – the child/young person should be safely discharged from the Service in a timely way.
- 3.7 As indicated above, trafficking can include travel with the intent to exploit *within* a jurisdiction. This means that, as well as being available to migrant children/young people, the IGS is open to indigenous children/young people – those already resident in Northern Ireland. It is expected that this would be in cases where the parent is suspected or guilty of a section 2 offence under the Act (where the child/young person has been, or is suspected of having been, trafficked by another party; parents acting in the child/young person's best interests would be expected to co-operate with an NRM referral). As with separated children/young people who are at risk of harm (see below), it will be for an HSCT social worker to determine in their UNOCINI assessment if an indigenous child/young person/young person is eligible to be admitted to the IGS.

Eligibility Because a Child/Young Person is Separated

- 3.8 'Separated' and 'unaccompanied' children/young people are defined above. Section 21 (3) makes provision for the IGS to be available to separated children/young people. As noted above, an 'unaccompanied' child/young person should be regarded as a 'separated child/young person' and as such the IGS is open to both separated and unaccompanied children/young people.
- 3.9 As set out in Section 21 (11)(a), a separated child/young person is not ordinarily resident in Northern Ireland.

“Separated child” means a child who—

...

(c) because of that separation, may be at risk of harm.

- 3.10 However, separation of itself does not determine eligibility for the IGS. A further important consideration is risk of harm as a consequence of separation. An individual needs and risk assessment (a UNOCINI assessment) should be undertaken to, among other things, determine risk of harm. This will be a matter for the relevant HSCT initially responsible for the separated child/young person.
- 3.11 If an assessment confirms that a child/young person is separated, a notification of the child/young person’s separated status will be made by the relevant HSCT to SPPG, which should maintain a record of all separated children/young people. If the assessment also confirms that the separated child/young person is at risk of harm, the HSCT will make a referral to the IGS and notify SPPG.
- 3.12 Where an assessment concludes that the child/young person is not at risk of harm, Looked After Children policies and procedures will apply to the child/young person, including as appropriate the seeking of a Care Order from the court without delay. A referral to the IGS would not be made in these circumstances.
- 3.13 However, risk assessment is a dynamic process. If risk of harm is identified at any future stage, the separated child/young person should be referred to the IGS. Likewise, if a separated child/young person is no longer considered to be at risk of harm, they should be safely discharged from the IGS (see below). Risk assessment documentation should be held on the child/young person's file by the IGS.
- 3.14 In accordance with established practice, the UNOCINI assessment must be held on each separated child/young person’s file.

Movement Out of the Jurisdiction

- 3.15 The provisions of 2015 Act extend to Northern Ireland only. As such, should a child/young person/young person, who is a user of the IGS, permanently leave Northern Ireland, they will no longer be eligible for the IGS.

- 3.16 If the child/young person's whereabouts are known, the HSCT – supported by the IGS as necessary – should make contact with relevant authorities in the jurisdiction to which the child/young person has moved to share any relevant information and ensure that any necessary ongoing support is put in place. Beyond that, the service user should be discharged from the IGS.

Age

- 3.17 The IGS is available to relevant cohorts of children/young people who are under the age of 18, as defined above.
- 3.18 Section 21 4(e)(ii) explicitly specifies that the provision of the Service should cease when the service user attains the age of 18.
- 3.19 An important part of IGS provision will be preparation for discharge from the service at age 18. It is accepted that this may not be possible for some young people and it is recommended that the HSCT responsible for the child/young person's care is involved in discharge decision-making. It is nevertheless expected that the majority of IGS cases will be closed on or before an individual's 18th birthday.
- 3.20 Case reviews (see below) should include effective discharge planning by the IGS, as this is critical to supporting the child/young person to transition smoothly out of the Service.
- 3.21 Discharge at the age of 18 does not mean that these young people will not be in receipt of any services. Care leaver services are likely to apply in most cases. Planning for discharge should commence no later than six months before the person's 18th birthday.
- 3.22 However, section 21(10) makes provision for some users to continue to use the Service until they attain the age of 21. Where a decision is made to retain the services of the IGS for an individual post-age 18, this should be clearly documented on the IGS case plan and in the relevant HSCT's care/pathway plan for the young person. Decisions of this nature should be made between the IG and the relevant HSCT, in discussion with the young person.

Section 21 (10)

- (10) the arrangements under this section may provide for an independent guardian appointed in relation to a person under the age of 18 to continue (with the consent of that person) to act in relation to that person after that person attains the age of 18 but is under the age of 21.

- 3.23 The issue of continuing eligibility for IGS services should be considered at each review that takes place beyond the young person's 18th birthday.
- 3.24 In line with the 2015 Act, IGS services will not be available beyond a young person's 21st birthday. Again, effective planning by the IGS is critical to prepare a young person for their discharge from the service at age 21.
- 3.25 If section 21 (10) applies, planning for discharge should commence no later than six months before the young person's 21st birthday; however, discharge should be at the earliest possible opportunity after their 18th birthday.
- 3.26 There is no legal provision for admission to, or continuation of, the Service beyond the individual's 21st birthday.

Consent

- 3.27 Section 21 (10) specifies that a person's consent is required should the IGS continue beyond their 18th birthday. This means that a young person has to formally agree to remain within the service as an adult. The consideration of consent should be documented on file – whether or not it is obtained.
- 3.28 Continued service use beyond age 18 should be based on clearly documented need, as determined by an individual assessment, and should be in the young person's best interests. Developing a young person's independence should be a key consideration.

Summary

To be eligible for the IGS, a person must be:

- a. trafficked or potentially trafficked, aged under 18* and not in touch with those who have parental responsibility for them**; **and/or**
- b. separated, at risk of harm **and** aged under 18*; **and**

* or under 21 should the provisions of subsection 10 of Section 21 apply.

** or if the individual(s) with parental responsibility are responsible for a section 2 offence or otherwise act against the child's interests.

4. Service Provision

- 4.1 The functions of an IG are specified in section 21 (7), which should be read in conjunction with section 21 (2) and (3) of the 2015 Act. IGs do not have powers to undertake functions other than those specified in the Act.
- 4.2 In line with section 21 (6) of the 2015 Act, every IG must at all times work in the child/young person's best interests.

Role of IG

Section 21 (7)

- (7) the functions of an independent guardian include (where appropriate)—
- (a) ascertaining and communicating the views of the child in relation to matters affecting the child;
 - (b) making representations to, and liaising with, bodies or persons responsible for—
 - (i) providing care, accommodation, health services, education or translation and interpretation services to or in respect of the child; or
 - (ii) otherwise taking decisions in relation to the child;
 - (c) assisting the child to obtain legal or other advice, assistance and representation, including (where necessary) the appointment and instructing of legal representatives to act on behalf of the child;
 - (d) consulting regularly with the child and keeping the child informed of legal and other proceedings affecting the child and any other matters affecting the child;
 - (e) contributing to a plan to safeguard and promote the future welfare of the child based on an individual assessment of that child's best interests;
 - (f) providing a link between the child and any body or person who may provide services to the child;
 - (g) assisting in establishing contact with members of the child's family, where the child so wishes and it is in the child's best interests;
 - (h) accompanying the child to meetings or on other occasions.
- 4.3 An IG will be part of a network of professionals working with a trafficked/potentially trafficked and/or separated child/young person. All service users of the IGS will also have, at a minimum, a HSCT social worker and a GP. They may also have a range of other statutory and community/voluntary sectors providing support, for *example* Children's Court Guardians, youth workers and Border Force officials.
- 4.4 Under section 21(8) of the 2015 Act, this network of professionals must "recognise and pay due regard" to IGs. This relationship will need to be underpinned by effective two-way information-sharing and a commitment

to work collaboratively to ensure that each child/young person's best interests are being served.

- 4.5 The operation of the service to date is indicating that the vast majority of young people accessing the IGS sought asylum in the UK. A key role of the IG is to support each child/young person with his/her asylum claim, as this will often relate directly to the person's status as trafficked or separated.
- 4.6 The will of the Northern Ireland Assembly was to establish a service that was sufficiently independent of the roles, functions and responsibilities of other agencies. Such independence enables IGs to perform an important challenge function. While collaborative working and networking are recommended and necessary, it is also critical that IGs remain sufficiently impartial and objective in order that this challenge function can be discharged effectively.

Distinction Between IG and HSCT Social Worker

- 4.7 The support of an IG is intended to complement – not replicate or replace – that of a HSCT social worker. The roles are distinct; an IG undertakes a range of statutory functions (as outlined above) in the context of trafficking or separation, whereas the role of HSCT social workers relates to safeguarding and promoting each child/young person's welfare in its widest sense.
- 4.8 *Examples of work relevant to a child/young person's status as trafficked and/or separated may be in relation to asylum claims, family reunification or in assisting in the arrangement of specialist education such as ESOL (this is not an exhaustive list).*
- 4.9 Examples of work that should be undertaken by HSCT social workers are the assessment of need and risk, formulation and review of care and pathway plans, the arrangement of appropriate accommodation, following statutory Looked After Child processes, and the fulfilment of after-care duties and obligations (again, this is not an exhaustive list).
- 4.10 A HSCT social worker should ensure that an IG is sighted on any information that is required to enable the effective exercise of an IG's functions. In particular, this includes any determination relating to risk of harm. Where the UNOCINI assessment has determined eligibility for the IGS, the IGS should be provided with a copy of a UNOCINI assessment for the child/young person's file.

- 4.11 Similarly, it is expected that IGs will share all relevant information with other parties involved in the child/young person's care (such as, but not limited to, the HSCT social worker), to enable them to best exercise and discharge their duties and functions in relation to the child/young person.
- 4.12 In line with section 21 (7)(e) of the 2015 Act, IGs should be invited to contribute to the construction of care plans and to participate in their review. Similarly, if deemed appropriate, other relevant parties such as the HSCT social worker could be consulted as regards the IG case plan.

Case Management

Governance

- 4.13 The Children Order requires those working with children/young people to maintain records in relation to those children/young people. It is therefore expected that comprehensive case records are maintained by the IGS provider in relation to each child/young person/young person in receipt of IGS services.
- 4.14 A governance/recording protocol – *specific to the IGS* – should be in place. SPPG should additionally consider the development of an information-sharing protocol to direct, enable and support effective information-sharing between HSCTs and the IGS and to ensure that information critical to the exercise of statutory duties and functions is available to support decision-making and taking of action to best meet the interests of individual children/young people.

Case Plan

- 4.15 Following referral to the Service, it is expected that IGs will develop a plan, which clearly identifies what actions will be taken, when and by whom to support each young person known to the service. IGs should consult others as appropriate when developing the plan, such as the young person's HSCT social worker.
- 4.16 In line with DoH co-production guidance⁹, where possible the plan should be co-produced with the service user him/herself.

⁹ www.health-ni.gov.uk/publications/co-production-guide-northern-ireland-connecting-and-realising-value-through-people

- 4.17 The case plan should be regularly reviewed, and any updates to it fully documented. The rationale for any alteration to the plan should be clearly recorded.

Reviews

- 4.18 Regular reviews of the service user and his/her engagement with the Service should take place.
- 4.19 The reviews should be conducted in partnership with each young person, as well as in consultation with the responsible HSCT. Where appropriate, consultation with other relevant professionals may help to inform reviews.
- 4.20 Formal supervision sessions also provide an opportunity for cases to be reviewed and discussed. In line with Regulation 4 (1)(b) of the 2016 Regulations, supervision of IGs must take place monthly (or fortnightly in the case of those in the role less than six months).

Case Closures

- 4.21 As noted above, it is important that individuals are discharged safely from the IGS and in a timely, planned and managed way. Age is clearly a key factor in discharging a young person from the IGS and in case closure decision-making. The issue of risk should also be part of the ongoing discussion with the relevant HSCT about each young person in receipt of IGS services.
- 4.22 In line with section 21 (4)(e)(iv), SPPG has the authority to – in consultation with the IGS – close a case. It is expected that the IGS will be responsible for the vast majority of case closures and that SPPG's authority in this regard will be used only in exceptional circumstances. Such circumstances could, for example, include open cases for which there is no legislative basis, or cases where SPPG is of the view that other arrangements (e.g. leaving care services) are sufficient to support the service user and minimise risk.
- 4.23 Cases should be safely closed when no risk is identified as a result of the service user's status as separated or when they reach the age of 18, whichever is earlier.
- 4.24 It may be beneficial for the IGS to develop a discharge checklist to be completed and filed in relation to each case it closes. This should include

consideration of planning and future service provision by the relevant HSCT in relation to individual children/young people.

Summary

- The role of IG is distinct from that of a HSCT social worker
- A case plan should be drawn up as soon as a new individual is referred to the Service
- Cases should be regularly reviewed, no less than every six months
- Cases should be closed as soon as soon as:
 - the service user reaches the age 18 (or if Subsection 10 applies, as soon after this if it is in their best interests);
 - a service user is reunited with those who have parental responsibility for him/her (subject to the exclusions provided for in 4 (d)(ii) and 4 (d)(iii) of section 21); or
 - the service user is no longer assessed as being at risk of harm due to his/her trafficked and/or separated status.