



Department of

**Health, Social Services
and Public Safety**

www.dhsspsni.gov.uk

**Consultation on draft proposed Human
Trafficking and Exploitation (Criminal
Justice and Support for Victims)
(Independent Guardian) Regulations
(Northern Ireland)**

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1. Introduction

- 1.1 The purpose of this consultation is to seek views on the draft Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland).

2. Policy Background

- 2.1 The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c.2 (the Act) received Royal Assent on 13 January 2015. A full copy of the Act is available at:

<http://www.legislation.gov.uk/nia/2015/2/contents/enacted>. The objective of the Act is to provide Northern Ireland with a more robust legal framework in relation to:

- the prosecution of traffickers and those subjecting people in Northern Ireland to conditions of slavery;
- the provision of improved support for the victims of trafficking; and
- tackling the demand for trafficking.

- 2.2 Tragically, victims of human trafficking are often children or young people who may not be aware that they are being exploited or may be frightened or confused about what the future holds for them once they have been freed from the clutches of the traffickers. Consequently, section 21 of the Act (as amended by the Criminal Justice Act (Northern Ireland) 2015) makes provision for an Independent Guardian (IG) to be appointed for child victims and potential victims of human trafficking as well as separated children. An Independent Guardian will be appointed where the person with parental responsibility is not in regular contact with the child, or is outside of the UK; is suspected of having committed an offence under section 2 of the Act (human trafficking) in relation to the child; or has interests which conflict with those of the child. The Act defines a separated child as a child who has come to Northern Ireland and has been separated from both parents or from their legal or customary care givers, and may be at risk of harm because of that separation. This harm could include, but is not limited to, a risk of harm from abuse, exploitation or neglect. The definition

also ensures those children who are in Northern Ireland in the company of adults who are not their parents or caregiver and are at no risk of harm, such as those on a school trip, do not come within scope unnecessarily.

2.3 Section 21 of the Act places a duty on the Health and Social Care Board (HSCB) to make arrangements to enable an IG to be appointed to assist, represent and support a child. The arrangements must be made with a charity that will provide for the appointment of a person as the IG. Section 21(11) of the Act (as amended by section 101(3) of the Justice Act (Northern Ireland) 2015 provides that charities already registered under the Charities Act (Northern Ireland) 2008, charities waiting to be called forward to register under that Act and charities registered in either England and Wales or Scotland are eligible to be considered by the Health and Social Care Board to provide an independent guardian service in Northern Ireland.

2.4 Section 21(5) of the Act confers powers on the Department to make regulations in relation to:

- a) the training and qualifications required for a person to be eligible for appointment as an independent guardian; and
- b) the support to be provided for, and the supervision of, an independent guardian.

2.5 The Department now proposes to make Regulations under the powers conferred by section 21(5). The draft Regulations are attached at Appendix 1.

3. The Draft Regulations

3.1 The Regulations will set out the **training and qualifications** a person must have in order to be eligible for appointment as an IG and, following appointment, the **support and supervision** which must be available to IGs to enable them to fulfil their role.

Draft Regulation 3: Training and Qualifications

3.2 We propose that, in order to be eligible for appointment as an IG, a person must:

- be registered as a social worker in the principal part of the register maintained by the Northern Ireland Social Care Council; and
- have at least five years' post qualifying social work experience with children and families, including direct work with children, court related experience and inter-agency working.

Q1 Do you agree that, in order to be eligible for appointment as an IG, a person should have to be registered as a social worker in the principal part of the register maintained by the Northern Ireland Social Care Council?

Q2 Do you agree that, in order to be eligible for appointment as an IG, a person should 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?

If not, what do you consider to be the most appropriate period of post qualifying experience?

- 3.3 In considering the qualifications that should be required of a person to be eligible for appointment as an IG, we looked at the current Scottish Guardianship Service, a non-statutory service established in 2010 and delivered in partnership by Scottish Refugee Council and Aberlour Child Care Trust.
- 3.4 Registration with the Office of Immigration Services Commissioner (OISC) is a requirement for the current Scottish Guardianship service. All of the Guardians are registered with the OISC and new appointees are expected to achieve level 2 registration as soon as possible after joining the service.¹
- 3.5 The Guardians are mentored and supervised in accordance with the OISC rules, codes and standards and the Guardians must complete the required number of CPD hours each year.
- 3.6 Section 84(1) of the Immigration and Asylum Act 1999 (the 1999 Act) prohibits the provision of immigration advice or services other than by a 'qualified person'. The 1999 Act defines 'qualified person' to include a registered person with OISC within the UK. Any individual or organisation wishing to provide immigration advice or services must apply for registration with OISC.
- 3.7 We considered whether to specify OISC registration as a qualification requirement in the draft Regulations. The functions of an IG are set out in section 21(7) of the Act and do not include the provision of formal immigration advice or immigration services as defined under section 82(2) of the 1999 Act. However, the role of the IG will include supporting the young people by helping them navigate the immigration and welfare processes, assisting them to access the help they need when they need it, and make informed decisions about their future. Requiring OISC registration ensures that they have sufficient knowledge and understanding of immigration law and issues so that they can then assist the young person in their understanding and support them to make decisions.

¹ The requirements to practice at OISC Level 2 are set out at <http://oisc.homeoffice.gov.uk/how-to-become-a-regulated-immigration-adviser/guidance-on-competence/oisc-level-2/>

3.8 However, rather than including such registration as a requirement to be eligible for appointment as an IG, we are proposing to stipulate in the job specification that the IG will be expected to undertake the necessary training and achieve OISC registration within a defined period of time following appointment.

3.9 We recognise that there may be additional professional knowledge and competences considered necessary for a person to effectively undertake the role of IG, for example, knowledge and understanding of relevant legislation, a good understanding or experience of asylum or trafficking processes, effective advocacy skills. However, the powers provided in the primary legislation only allow for the prescription of specific training and qualifications and the inclusion of such additional knowledge and competences would be “ultra vires”, that is, beyond the scope of the powers contained in the Act. The intention is that such additional knowledge and competences deemed necessary will be set out in the job description which the Health and Social Care Board will include as part of the service specification.

Q3 Is there any other training which you consider should be specified as a requirement to be eligible for appointment as an IG? If so, please advise and give your reasons.

Q4 Are there any other qualifications which you consider should be specified as a requirement to be eligible for appointment as an IG? If so, please advise and give your reasons.

Draft Regulation 4: Support and Supervision

3.10 The Regulations will place a duty on the charity which appoints a person as an IG to **provide, or secure the provision of, support** to the IG and make arrangements for the IG to have **access to formal supervision**.

3.11 We are proposing to define that “support” includes administrative support, advice and assistance, and training and development that will enable the IG to enhance their knowledge and skills and also to meet post registration training and learning requirements set by the Northern Ireland Social Care Council.

3.12 As outlined in paragraph 3.8 above, it is proposed that the job description/specification will state that the IG, once appointed, will be expected to undertake the necessary training and achieve OISC registration. We therefore propose to prescribe that “support” includes training and development to enable the IG to achieve OISC level 2 registration.

Q5 Do you agree with the proposed definition of “support” provided at regulation 4(2)? If not, please give your reasons.

Q6 Is there any other support which you consider the charity should provide to the IG? If so, please advise and give your reasons.

3.13 We are proposing to specify that arrangements must be made for an IG to have access to formal supervision provided once per month. Based on the Supervision Policy, Standards and Criteria Guidance², supervision should normally take place once per fortnight for the first six months and then monthly thereafter. Fortnightly supervision would normally only apply to newly qualified social workers. Given that IGs should have at least 5 years experience working as a social worker, we consider that monthly supervision will be sufficient.

² Supervision Policy, Standards and Criteria - http://www.dhsspsni.gov.uk/supervision_policy__standards__and_criteria__regional_policy_for_northern_irel_and_health_and_social_care_trusts.pdf

Q7 Do you agree that access to formal supervision once a month is sufficient? If not, please tell us how frequent you consider it should be and why?

3.14 In order to provide clarity on what we mean by “formal supervision” and “senior employee”, we have provided definitions of these terms at regulation 4(3).

Q8 Do you have any comments in respect of the definitions of “formal supervision” and “senior employee”? If so, please let us have your views.

4. Impact Assessments

Equality Impact Assessment and Human Rights

4.1 The Department carried out a preliminary screening of the policy proposals and, as part of the screening process, concluded that an Equality Impact Assessment was not necessary. The Department is content that there will be no adverse impact on any of the groups listed under section 75 of the Northern Ireland Act 1998.

Regulatory Impact Assessment

4.2 A Regulatory Impact Assessment has not been prepared as the Regulations will have no adverse impact on business, charities or voluntary bodies.

5. How to Respond

If you wish to respond to this consultation, please do so by completing and returning the response questionnaire which can be downloaded from the e-consultation section of the Department's website:

http://www.dhsspsni.gov.uk/index/consultations/current_consultations.htm).

Additional copies of the consultation document can be obtained by contacting the Department's Family and Children's Policy Directorate (contact details below). If you require any of these documents in another format or language, please contact the Department's Family and Children's Policy Directorate.

The closing date for responses is **Friday 6 November 2015**. Responses received after this date will only be considered in exceptional circumstances and with prior agreement from the Department.

We are keen to hear from everyone who will be affected by these proposals. A response can be submitted by letter, fax or e-mail to:

**Human Trafficking and Exploitation (Criminal Justice and Support for Victims)
(Independent Guardian) Regulations (Northern Ireland) Consultation**

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The Department will consider requests to produce this document in other languages or in alternative formats.

STATUTORY RULES OF NORTHERN IRELAND

2015 No.

HEALTH AND SOCIAL CARE

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2015

Made - - - - - 2015

Coming into operation - - - - - 2015

The Department of Health, Social Services and Public Safety makes the following Regulations in exercise of the powers conferred by section 21(5) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015⁽¹⁾.

Citation and commencement

1. These Regulations may be cited as the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2015 and shall come into operation on xx 2015.

Interpretation

2. In these Regulations—

“the 2001 Act” means the Health and Personal Social Services Act (Northern Ireland) 2001⁽²⁾;

“the 2015 Act” means the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015;

“social worker” shall be construed in accordance with section 2(2)(a) of the 2001 Act.

Training and qualifications

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

⁽¹⁾ 2015 c. 2 (N.I.)

⁽²⁾ 2001 c. 3 (N.I.)

- (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 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.

Support and supervision

4.—(1) A charity which appoints a person as an independent guardian under section 21 of the 2015 Act must—

- (a) provide, or secure the provision of, support to the independent guardian; and
 - (b) make arrangements for the independent guardian to have access to formal supervision provided once per month.
- (2) For the purpose of paragraph (1)(a), support includes—
- (a) administrative support, advice and assistance; and
 - (b) training and development that will enable the independent guardian to—
 - (i) meet post registration training and learning requirements set by the Northern Ireland Social Care Council;
 - (ii) become a qualified person as defined in section 84(2)(a) of the Immigration and Asylum Act 1999⁽³⁾ who is regulated at level 2 in accordance with arrangements made for registration by the Office of the Immigration Services Commissioner under section 85 of, and Schedule 6 to, that Act; and
 - (iii) enhance their knowledge and skills in relation to the duties of an independent guardian.

(3) In this regulation—

“formal supervision” means one to one supervision, where a senior employee of the charity is given responsibility to work with the independent guardian to oversee, manage or direct the independent guardian to meet organisational, professional and personal objectives; and

“senior employee” means a social worker who has a minimum of five years' post qualifying experience, including at least one year's experience as a manager, and is of appropriate seniority to undertake management and supervision requirements for the independent guardian.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on xx 2015.



A senior officer of the
Department of Health, Social Services and Public Safety

⁽³⁾ 1999 c. 33

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 21(5) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, make provision for the first time for—

- (a) the training and qualifications required for a person to be eligible for appointment as an independent guardian; and
- (b) the support to be provided for, and the supervision of, an independent guardian.

Freedom of Information

DHSSPS will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations, they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, namely, DHSSPS in this case. This right of access to information includes information provided in response to a consultation. DHSSPS cannot automatically consider as confidential, information supplied to it in response to a consultation.

However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential. **If you do not wish information about your identity to be made public, please include an explanation in your response.**

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Secretary of State for Constitutional Affairs' Code of Practice on the Freedom of Information Act provides that:

- The Department should only accept information from third parties in confidence, if it is necessary to obtain that information in connection with the exercise of any of the Department's functions, and it would not otherwise be provided;
- The Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and

- Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see the web site at: <https://ico.org.uk>).