

Consideration of subordinate legislation by the Education, Children and Young People Committee

8th March 2023

1. This note provides information about the [Human Trafficking and Exploitation \(Independent Child Trafficking Guardians\) \(Scotland\) Regulations 2023](#).
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2023/18.
3. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **26 January 2023**
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [7 February 2023](#). No points were raised.
6. These regulations will be considered by the Education, Children and Young People Committee at its meeting on **8 March 2023**.
7. If the Committee wishes to produce a report on these regulations, it must do so by **13 March 2023**.

Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

8. No.

Purpose of the regulations:

9. These Regulations make provision in connection with independent child trafficking guardians under section 11 of the Human Trafficking and Exploitation (Scotland) Act 2015 (“the 2015 Act”).
10. Linked to these Regulations, the Human Trafficking and Exploitation (Scotland) Act 2015 (Commencement No. 5) Regulations 2023 commence in full section 11 of the 2015 Act given the establishment of the statutory Independent Child Trafficking Guardian service with effect from 1 April 2023.
11. A copy of the Scottish Government’s Policy Note is included in Annexe A.

12. The policy note states that the aim of the Independent Child Trafficking Guardian (ICTG) service is to provide assistance, support and representation to a children and young people who are, or may be, a victim of the offence of human trafficking, or who are vulnerable to becoming a victim of human trafficking. The service will provide support to children and young people who arrive in Scotland without there being someone in the UK who has parental responsibilities and rights in respect of them. These children will often have undergone an arduous migration alone. Although these children will receive looked after status and receive local authority support, they face many wider challenges and additional support is therefore required.

Consultation

13. The consultation to seek views on the appointment, role and functions of the ICTG and wider operational issues opened on 26 August 2019 and closed on 17 November 2019.
14. The responses to the consultation have been taken into account when developing these regulations, including consideration on the appointment of Guardians and the training and qualifications that will be required.

Impact Assessments

15. A Child Rights and Wellbeing Impact Assessment, Equality Impact Assessment and Data Protection Impact Assessment have been completed on the policy and are attached. No issues were identified as part of these assessments.
16. An Islands Communities Impact Assessment will also be done in partnership with the appointed ICTG service provider. This will be published before the ICTG service is launched on 1 April 2023

Financial Impact

17. The policy note states that the a Business and Regulatory Impact Assessment (BRIA) has been completed. This policy has no impact on business.

Procedure

18. These regulations are being considered by the Education, Children and Young People Committee under the negative procedure.
19. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.
20. Rule 10.4 of the Scottish Parliament's standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40-day time period seeking an annulment of regulations.

21. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).
22. If a motion to annul is lodged, the lead committee will consider this and then hold a vote. If the motion is disagreed to, then the regulations will remain in their current form.
23. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.
24. If that is also agreed to (i.e. the majority of MSPs agree with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and the Scottish Government must lay a new set of regulations before the Scottish Parliament.
25. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
26. The Committee is invited to consider the instrument.

Jane Davidson
Committee Assistant
Education, Children and Young People Committee
1 February 2023

Annexe A

POLICY NOTE

The Human Trafficking and Exploitation (Scotland) Act 2015 (Independent Child Trafficking Guardians) (Scotland) Regulations 2023

SSI 2023/18

The above instrument was made in exercise of the powers conferred by sections 11(7) of the Human Trafficking and Exploitation (Scotland) Act 2015 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

These Regulations make provision in connection with independent child trafficking guardians under section 11 of the Human Trafficking and Exploitation (Scotland) Act 2015 (“the 2015 Act”).

Linked to these Regulations, the Human Trafficking and Exploitation (Scotland) Act 2015 (Commencement No. 5) Regulations 2023 commence in full section 11 of the 2015 Act given the establishment of the statutory Independent Child Trafficking Guardian service with effect from 1 April 2023.

Policy Objectives

The aim of the Independent Child Trafficking Guardian (ICTG) service is to provide assistance, support and representation to a children and young people who are, or may be, a victim of the offence of human trafficking, or who are vulnerable to becoming a victim of human trafficking. The service will provide support to children and young people who arrive in Scotland without there being someone in the UK who has parental responsibilities and rights in respect of them. These children will often have undergone an arduous migration alone. Although these children will receive looked after status and receive local authority support, they face many wider challenges and additional support is therefore required. This can include going through the Home Office’s trafficking process and in many cases, asylum process as well. They also face further barriers such as breaks in their education, adapting to a new country, and learning a new language. Additional support from an ICTG (‘a Guardian’) is therefore deemed necessary.

An existing non-statutory service called the Scottish Guardianship Service has been in operation since 2010. However, in line with Section 11 (1) of the Human Trafficking and Exploitation (Scotland) Act 2015, Scottish Ministers have made arrangements to establish a statutory service that will replace this non-statutory service. A procurement exercise has been carried out to appoint an ICTG service provider and the existing non-statutory service will be wound down.

The scope of ICTGs and some of the details of how they will operate is already set out in Section 11 of the Human Trafficking and Exploitation (Scotland) Act 2015. These regulations set out further details on the following:

- Register of ICTGs – the regulations require the ICTG service provider to keep a register of Guardians and stipulate that anyone on that register will need to comply with conditions set by this service provider. These conditions will be agreed between the Scottish Government and the service provider as part of the terms and conditions of the contract. The regulations do however require that any Guardian must be registered or become registered as fit to provide immigration advice and immigration services by the Office of the Immigration Services Commissioner (OISC). OISC regulates immigration advisers; ensuring they are fit, competent and act in their clients' best interests. The regulations also require that any Guardian must not be barred from regulated work with children under the Protecting Vulnerable Groups scheme.
- Training and qualifications – the regulations require Guardians to complete training and qualifications as required. Details on the necessary training have been agreed between the Scottish Government and the service provider as part of the terms and conditions of the contract. The contract stipulates that Guardians must have a relevant professional qualification to SCQF level 8 (HND) in working with children. The contract also requires Guardians to undertake training so that they have an understanding and experience of relevant policies and guidance, such as child protection procedures.
- Supporting people over the age of 18 – the regulations allow for Guardians to continue supporting young people when they turn 18. This may be necessary in some circumstances, for instance if a young person was still waiting for a decision from the Home Office on their trafficking or asylum case when they turn 18. The details of when support would continue has been agreed between the Scottish Government and the service provider as part of the terms and conditions of the contract, however the regulations specify that support will not continue past the age of 26 in line with other continuing care and aftercare provisions applicable to formerly looked after children under the Children (Scotland) Act 1995.

Consultation

Consultation to seek views on the appointment, role and functions of the ICTG and wider operational issues opened on 26 August 2019 and closed on 17 November 2019. Analysis of the 40 responses received has been carefully considered by the Scottish Government and a response was published on 11 May 2020.

The responses to the consultation have been taken into account when developing these regulations, including consideration on the appointment of Guardians and the training and qualifications that will be required. There are no themes that emerged from the consultation that we have decided to not take on,

however some of the responses have been factored into the procurement of the new ICTG service rather than captured in these regulations, as was set out in the consultation response.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website. It includes the Scottish Guardianship Service and the Convention of Scottish Local Authorities (COSLA).

Impact Assessments

A Child Rights and Wellbeing Impact Assessment, Equality Impact Assessment and Data Protection Impact Assessment have been completed on the policy and are attached. No issues were identified as part of these assessments.

An Islands Communities Impact Assessment will also be done in partnership with the appointed ICTG service provider. This will be published before the ICTG service is launched on 1 April 2023.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. This policy has no impact on business.

Scottish Government Directorate for Children and Families
January 2023