

## **EXPLANATORY MEMORANDUM TO**

### **Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) 2016**

**SR 2016 No. 410**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under sections 21(5) and 27(6) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 and Articles 23(1), (2)(d) and (f), (5)(a) and (c), (7)(a) and 48(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The purpose of the Rule is to specify the training and qualifications required for a person to be eligible for appointment as an independent guardian; and the support to be provided for, and the supervision of, an independent guardian under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (the 2015 Act).

#### **3. Background**

- 3.1. The 2015 Act received Royal Assent on 13 January 2015. The Act provides the north of Ireland with a more robust legal framework in relation to the prosecution of traffickers and those subjecting people in the north of Ireland to conditions of slavery; the provision of improved support for the victims of trafficking; and tackling the demand for trafficking. Section 21 of the Act (as amended by the Criminal Justice Act (Northern Ireland) 2015) requires the Regional Health and Social Care Board to make arrangements with a charity to provide for a person (an independent guardian) to be appointed to assist, represent and support a child to whom section 21 applies. The Department of Health is required, under section 21(5), to make regulations to specify the training and qualifications required for a person to be eligible for appointment as an independent guardian and the support to be provided for, and the supervision of, an independent guardian.
- 3.2. Regulation 3 of the Statutory Rule specifies that, in order to be eligible for appointment as an independent guardian, individuals must be qualified social workers with 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.
- 3.3. The Statutory Rule also provides, at regulation 4, that a charity which appoints a person as an independent guardian must provide, or secure the

provision of, support to the independent guardian and make arrangements for the independent guardian to have access to formal supervision once per fortnight during the first six months from appointment and once per month thereafter.

- 3.4. The Statutory Rule defines “support” as including administrative support, advice and assistance, and training and development that will enable the independent guardian to meet post registration training and learning requirements set by the Northern Ireland Social Care Council and to enable the independent guardian to achieve Office of the Immigration Services Commissioner (OISC) level 2 registration.
- 3.5. Regulation 4(3) provides definitions of formal supervision and the senior employee of the charity. The senior employee who will undertake formal supervision of the independent guardian must also be a social worker who has a minimum of five years’ post qualifying experience, including at least one year’s experience of managing or supervising social workers and is of appropriate seniority to meet the management and supervision requirements as they relate to the independent guardian
- 3.6. Regulation 5 of the Statutory Rule amends the Children’s Homes Regulations (Northern Ireland) 2005 to insert a reference to independent guardian in the list of persons who the registered person shall ensure are provided with facilities for the purpose of meeting privately with children accommodated in the home.

#### **4. Consultation**

- 4.1. Public consultation on the draft Regulations ran from 10 September to 6 November 2015. A total of 18 responses were received.
- 4.2. The majority of respondents agreed that an independent guardian should have to be registered as a social worker and should be required to have a minimum of 5 years social work experience with children and families, including direct work with children, court related experience and inter-agency working. However some respondents were of the view that restricting the role of an independent guardian to registered social workers was overly prescriptive and may exclude other suitable applicants. It was also suggested that the experience required should not necessarily be restricted to the social work profession. The Department has given a commitment to undertake a review of the service after a period of 3 years to determine whether it is meeting the needs of this very vulnerable group of young people. The review will specifically consider whether those young people would be better served by opening the role of guardian to other professions. If the review decides that other professions should be able to apply to act as independent guardians to trafficked and separated children, the Regulations will be amended.
- 4.3. Most respondents either agreed with the proposed definition of “support” or had no further comment to make and also agreed that access to formal supervision once per month was sufficient. However, some respondents suggested that formal supervision should take place on a fortnightly basis during the first 6 months following appointment and the Regulations have been amended to include such provision.

- 4.4. Respondents were keen to ensure that the independent guardian receives robust supervision and has access to professional supervision. In relation to the definition of “senior employee”, some respondents were of the view that the senior employee need not be a social work professional and should be extended to include a professionally qualified individual or suggested that it could be provided by a senior work manager within the agency or commissioned additionally from an external source. It was also suggested that the senior employee should also be OISC level 2 registered.
- 4.5. As required under Article 23(8) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, the Department also consulted with the Regional Health and Social Care Board and the Health and Social Care Trusts regarding the proposed amendment to the Children's Homes Regulations (Northern Ireland) 2015.
- 4.6. A copy of the consultation report, summarising all of the responses received, is available on the Department of Health website at: <https://www.health-ni.gov.uk/consultations/consultation-draft-human-trafficking-and-exploitation-criminal-justice-and-support>.

## **5. Equality Impact**

- 5.1. An Equality and Human Rights Screening was carried out prior to consultation, and reconsidered taking account of the responses received. The Regulations are considered to be compliant with section 75 of the Northern Ireland Act 1998.

## **6. Regulatory Impact**

- 6.1. These Regulations are considered to have no adverse impact on small businesses, charities or voluntary bodies.

## **7. Financial Implications**

- 7.1. Any financial implications arising specifically from these Regulations, for example, the cost of providing the necessary supports to an independent guardian, will be included in the overall costs of the Independent Guardian Service to be established under section 21 of the 2015 Act.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. These Regulations do not breach section 24 of the Northern Ireland Act 1998, as they are not incompatible with any of the Convention rights or community law, and they do not discriminate against a person on the grounds of religious belief or political opinion. Nor do these Regulations modify or amend any of the enactments stated in section 7 of the Northern Ireland Act 1998.

## **9. EU Implications**

- 9.1. Not applicable

## **10. Parity or Replicatory Measure**

- 10.1. Not applicable

## **11. Additional Information**

- 11.1. Not applicable