



Human Trafficking and Exploitation (Scotland) Act 2015

2015 asp 12

PART 2

PROTECTION OF VICTIMS

Support and assistance for child victims

11 Independent child trafficking guardians

- (1) The Scottish Ministers must make such arrangements as they consider reasonable to enable a person (an “independent child trafficking guardian”) to be appointed to assist, support and represent a child to whom subsection (2) applies.
- (2) This subsection applies to a child if a relevant authority determines that—
 - (a) there are reasonable grounds to believe that the child—
 - (i) is, or may be, a victim of the offence of human trafficking, or
 - (ii) is vulnerable to becoming a victim of that offence, and
 - (b) no person in the United Kingdom is a person with parental rights or responsibilities in relation to the child.
- (3) A relevant authority making a determination that subsection (2) applies in relation to a child must, as soon as reasonably practicable after doing so, take steps to bring that child to the attention of the person mentioned in subsection (4)(a).
- (4) The arrangements made under subsection (1) must—
 - (a) provide for a person to appoint an independent child trafficking guardian for a child to whom subsection (2) applies,
 - (b) provide for an independent child trafficking guardian to be appointed as soon as reasonably practicable after a relevant authority brings the child to the attention of the person mentioned in paragraph (a), and
 - (c) ensure that the independent child trafficking guardian appointed is independent of any person who will be responsible for exercising functions under any enactment in relation to the child.

Changes to legislation: There are currently no known outstanding effects for the Human Trafficking and Exploitation (Scotland) Act 2015, Cross Heading: Support and assistance for child victims. (See end of Document for details)

- (5) An independent child trafficking guardian appointed in relation to a child must at all times act in the best interests of the child.
- (6) A person responsible for exercising functions under any enactment in relation to a child for whom an independent child trafficking guardian has been appointed under this section must—
 - (a) recognise, and pay due regard to the guardian's functions, and
 - (b) provide the independent child trafficking guardian with access to such information relating to the child as will enable the guardian to carry out the guardian's functions effectively.
- (7) The Scottish Ministers may by regulations make further provision about independent child trafficking guardians appointed under this section, including, in particular, provision about—
 - (a) the appointment of an independent child trafficking guardian,
 - (b) the termination of that appointment,
 - (c) the conditions (including conditions as to training, qualifications and experience) to be satisfied for a person to be eligible for appointment as an independent child trafficking guardian,
 - (d) payments to be made to, or in respect of, an independent child trafficking guardian,
 - (e) the functions of an independent child trafficking guardian,
 - (f) the records that should be maintained by any person in relation to the appointment of an independent child trafficking guardian (including arrangements to maintain a register of independent child trafficking guardians),
 - (g) the circumstances in which—
 - (i) an independent child trafficking guardian appointed in relation to a person may continue to act after that person is no longer a child, and
 - (ii) the person who is no longer a child is to be treated as a child for the purposes of this section.
- (8) In this section—

“person with parental rights or responsibilities”, in relation to a child, means—

 - (a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the Children (Scotland) Act 1995,
 - (b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the Children (Scotland) Act 1995,
 - (c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the Children (Scotland) Act 1995,
 - (d) a parent having parental responsibility for the child under Part 1 of the Children Act 1989,
 - (e) a person having parental responsibility for the child by virtue of—
 - (i) section 12(2) of the Children Act 1989,
 - (ii) section 14C of that Act, or
 - (iii) section 25(3) of the Adoption and Children Act 2002,
 - (f) a parent having parental responsibility for the child under Part 2 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755),

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- (g) a person having parental responsibility for the child by virtue of Article 12(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755),
 - (h) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007),
 - (i) any other person with rights or responsibilities anywhere in the world which are, in relation to a child, analogous to those described in paragraphs (a) to (h), and
 - (j) any other person specified by regulations made by the Scottish Ministers,
- “relevant authority” means—
- (a) a local authority, and
 - (b) any other person specified by regulations made by the Scottish Ministers.

Commencement Information

II S. 11 in force at 31.5.2016 for specified purposes by S.S.I. 2016/128, reg. 2, Sch.

12 Presumption of age

- (1) This section applies where—
 - (a) a relevant authority has reasonable grounds to believe that a person may be a victim of an offence of human trafficking, and
 - (b) the authority is not certain of the person's age but has reasonable grounds to believe that the person may be a child.
- (2) Until an assessment of the person's age is carried out by a local authority, or the person's age is otherwise determined, the relevant authority must assume that the person is a child for the purposes of exercising its functions under the relevant enactments.
- (3) The “relevant enactments” are—
 - (a) an enactment which applies to a child who is looked after by a local authority within the meaning of section 17(6)(a) of the Children (Scotland) Act 1995 (child for whom a local authority is providing accommodation),
 - (b) section 22 of the Children (Scotland) Act 1995 (promotion by a local authority of welfare of children in need),
 - (c) section 25 of the Children (Scotland) Act 1995 (provision by a local authority of accommodation for children),
 - (d) Part 4 of the Children and Young People (Scotland) Act 2014 (provision of named persons),
 - (e) Part 5 of the Children and Young People (Scotland) Act 2014 (child's plan), and
 - (f) section 11.
- (4) In this section, “relevant authority” means—
 - (a) a Health Board constituted under section 2(1) of the National Health Service (Scotland) Act 1978, and
 - (b) a local authority.

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(5) The Scottish Ministers may by regulations modify subsections (3) and (4).

Commencement Information

I2 S. 12 in force at 31.5.2016 for specified purposes by S.S.I. 2016/128, reg. 2, Sch.

I3 S. 12 in force at 31.1.2018 in so far as not already in force by S.S.I. 2018/9, reg. 2(a)

Changes to legislation:

There are currently no known outstanding effects for the Human Trafficking and Exploitation (Scotland) Act 2015, Cross Heading: Support and assistance for child victims.