



Human Trafficking and Exploitation (Scotland) Act 2015

2015 asp 12

PART 2 **S**

PROTECTION OF VICTIMS

Support and assistance for child victims

11 Independent child trafficking guardians **S**

- (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.

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- (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

I1 S. 11 in force at 31.5.2016 for specified purposes by S.S.I. 2016/128, reg. 2, Sch.

I2 S. 11 in force at 1.4.2023 in so far as not already in force by S.S.I. 2023/17, reg. 2

12 Presumption of age **S**

- (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

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(b) a local authority.

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

Commencement Information

I3 S. 12 in force at 31.5.2016 for specified purposes by S.S.I. 2016/128, reg. 2, Sch.

I4 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:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 9(10) inserted by [2023 c. 37 s. 28\(3\)](#)
- s. 10(3) inserted by [2023 c. 37 s. 28\(4\)](#)