



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.

Changes to legislation: Human Trafficking and Exploitation (Scotland) Act 2015, Section 11 is up to date with all changes known to be in force on or before 01 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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

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\(4\)](#)