2015 CHAPTER 2

# PART 3

## ASSISTANCE AND SUPPORT

**Independent guardian**

**21.**—(1) The Regional Health and Social Care Board must, in accordance with this section, make arrangements to enable a person (an "independent guardian") to be appointed to assist, represent and support a child to whom this section applies.

(2) This section applies to a child if—

(a) a reference relating to that child has been, or is about to be, made to a competent authority for a determination for the purposes of Article 10 of the Trafficking Convention as to whether there are reasonable grounds to believe that the child is a victim of trafficking in human beings; and

(b) there has not been a conclusive determination that the child is not such a victim;

and for the purposes of this subsection a determination which has been challenged by way of proceedings for judicial review shall not be treated as conclusive until those proceedings are finally determined.

(3) This section also applies to a child who appears to the Regional Health and Social Care Board to be a separated child.

(4) Arrangements under this section must—

(a) be made with a registered charity (within the meaning of the Charities Act (Northern Ireland) 2008);

(b) provide for the appointment of a person as the independent guardian for a child to whom this section applies to be made by that charity;

(c) ensure that a person is not so appointed by that charity unless that person—

(i) is an employee of the charity; and

(ii) is eligible to be so appointed in accordance with regulations under subsection (5);

(d) provide for the appointment of an independent guardian only where the person with parental responsibility for the child—

(i) is not in regular contact with the child or is outside the United Kingdom;

(ii) is suspected of having committed an offence under section 2 in relation to the child; or

(iii) for other reasons has interests which conflict with those of the child;

(e) include provision for the termination of the appointment of an independent guardian, including in particular provision for such termination—

(i) if the child ceases to be a child to whom this section applies;

(ii) on the child attaining the age of 18 (unless subsection (10) applies);

(iii) on paragraph (d) ceasing to apply in relation to the child;

(iv) where, after consulting the independent guardian, the Regional Health and Social Care Board is of the opinion that it is no longer necessary to continue the appointment because long-term arrangements have been made in relation to the child.

(5) The Department of Health, Social Services and Public Safety shall by regulations make provision for—

(a) the training and qualifications required for a person to be eligible for appointment as an independent guardian;

(b) the support to be provided for, and the supervision of, an independent guardian.

(6) An independent guardian appointed in relation to a child must at all times act in the best interests of the child.

(7) The functions of an independent guardian include (where appropriate)—

(a) ascertaining and communicating the views of the child in relation to matters affecting the child;

(b) making representations to, and liaising with, bodies or persons responsible for—

(i) providing care, accommodation, health services, education or translation and interpretation services to or in respect of the child; or

(ii) otherwise taking decisions in relation to the child;

(c) assisting the child to obtain legal or other advice, assistance and representation, including (where necessary) the appointment and instructing of legal representatives to act on behalf of the child;

(d) consulting regularly with the child and keeping the child informed of legal and other proceedings affecting the child and any other matters affecting the child;

(e) contributing to a plan to safeguard and promote the future welfare of the child based on an individual assessment of that child's best interests;

(f) providing a link between the child and any body or person who may provide services to the child;

(g) assisting in establishing contact with members of the child's family, where the child so wishes and it is in the child's best interests;

(h) accompanying the child to meetings or on other occasions.

(8) Any person or body providing services or taking administrative decisions in relation to a child for whom an independent guardian has been appointed under this section must recognise, and pay due regard to, the functions of the guardian and must (to the extent otherwise permitted by law) provide the guardian with access to such information relating to the child as will enable the guardian to carry out his or her functions effectively.

(9) The Department of Health, Social Services and Public Safety may by regulations confer additional functions on independent guardians.

(10) The arrangements under this section may provide for an independent guardian appointed in relation to a person under the age of 18 to continue (with the consent of that person) to act in relation to that person after that person attains the age of 18 but is under the age of 21.

(11) In this section—

"administrative decision" does not include a decision taken by a court or tribunal;

"parental responsibility" has the meaning given by Article 6 of the Children (Northern Ireland) Order 1995, except that it does not include parental responsibility conferred by a care order (within the meaning of Article 49(1) of that Order);

"separated child" means a child who—

(a) is not ordinarily resident in Northern Ireland;

(b) is separated from all persons who—

(i) have parental responsibility for the child; or

(ii) before the child's arrival in Northern Ireland, were responsible for the child whether by law or custom; and

(c) because of that separation, may be at risk of harm.

(12) A reference in any other statutory provision to the guardian of a child does not include a reference to an independent guardian appointed under this section.