



## 2015 CHAPTER 2

### **PART 3** **N.I.**

#### ASSISTANCE AND SUPPORT

##### **Interpretation of this Part** **N.I.**

17.—<sup>[F1]</sup>(A1) For the purposes of this Part, there is a conclusive determination that a person is, or is not, a victim of—

- (a) slavery or servitude, or
- (b) forced or compulsory labour,

when, on completion of an identification process corresponding to one required by Article 10 of the Trafficking Convention, a competent authority concludes that the person is, or is not, such a victim.]

(1) For the purposes of this Part there is a conclusive determination that a person is, or is not, a victim of trafficking in human beings when, on completion of the identification process required by Article 10 of the Trafficking Convention, a competent authority concludes that the person is, or is not, such a victim.

<sup>[F2]</sup>(1A) A reference in this Part to—

- (a) slavery or servitude, or
- (b) forced or compulsory labour,

is to be construed in accordance with Article 4 of the Human Rights Convention.]

(2) In this Part—

“competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention;

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**Changes to legislation:** *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, PART 3 is up to date with all changes known to be in force on or before 24 September 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*

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“the Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005);

“trafficking in human beings” has the same meaning as in the Trafficking Convention.

#### Textual Amendments

- F1** S. 17(A1) inserted (28.4.2022) by Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (c. 19), ss. 21(2)(a), 30(1)(a)
- F2** S. 17(1A) inserted (28.4.2022) by Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (c. 19), ss. 21(2)(b), 30(1)(a)

### Assistance and support pending determination by competent authority **N.I.**

**18.—(1)** The Department must ensure that a person to whom this section applies is provided with assistance and support in accordance with this section.

(2) This section applies to a person if—

- (a) that person is aged 18 or over or, in a case where the age of the person is uncertain, the Department reasonably believes that person is aged 18 or over; and
- (b) a reference relating to that person has been, or is about to be, made to the 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 person is a <sup>F3</sup>qualifying victim] .

(3) Assistance and support is to be provided under this section until there is made in relation to that person—

- (a) a determination that there are not reasonable grounds to believe that the person is a <sup>F3</sup>qualifying victim] ; or
- (b) a conclusive determination that the person is or is not a <sup>F3</sup>qualifying victim] ;

but if a conclusive determination that a person is a <sup>F3</sup>qualifying victim] is made within the relevant period, assistance and support is to be provided until the end of that period.

(4) The relevant period is the period of 45 days <sup>F4</sup>, or such longer period as the Department thinks necessary,] from the date on which the determination mentioned in subsection (2)(b) is made by the competent authority.

(5) Assistance and support provided to a person under this section—

- (a) must not be conditional on the person's acting as a witness in any criminal proceedings;

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- (b) must only be provided with the agreement of that person;
- (c) must be provided in a manner which takes due account of the needs of that person as regards safety and protection from harm;
- (d) must be provided to meet the assessed needs of that person, having regard in particular to any special needs or vulnerabilities of that person caused by gender, pregnancy, physical or mental illness, disability or being the victim of serious violence or serious abuse.

(6) Assistance and support under this section must be offered from a person who is of the same gender as the person receiving it.

(7) The assistance and support which may be provided under this section includes, but is not to be restricted to, the provision of—

- (a) appropriate and safe accommodation;
- (b) material assistance (including financial assistance);
- (c) assistance in obtaining healthcare services (including counselling);
- (d) appropriate information on any matter of relevance or potential relevance to the particular circumstances of the person;
- (e) translation and interpretation services;
- (f) assistance in obtaining legal advice or representation;
- (g) assistance with repatriation.

(8) Where assistance and support has been provided to any person under this section, it may continue to be provided even if that person leaves Northern Ireland.

(9) Where—

- (a) assistance and support has been provided to a person under this section; and
- (b) that person ceases, by virtue of a conclusive determination that the person is a [<sup>F3</sup>qualifying victim] or the ending of the relevant period, to be a person to whom assistance and support is to be provided under this section,

the Department may nevertheless ensure that assistance and support continues to be provided to that person under this section for such further period [<sup>F5</sup>of up to 12 months, or longer than 12 months,] as the Department thinks necessary.

(10) Nothing in this section affects the entitlement of any person to assistance and support under any other statutory provision.

[<sup>F6</sup>(11) In this section, “qualifying victim” means—

- (a) a victim of trafficking in human beings, or
- (b) a victim of—
  - (i) slavery or servitude, or
  - (ii) forced or compulsory labour.]

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#### Textual Amendments

- F3** Words in s. 18 substituted (28.4.2022) by [Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022 \(c. 19\), ss. 21\(3\)\(a\), 30\(1\)\(a\)](#)
- F4** Words in s. 18(4) inserted (28.4.2022) by [Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022 \(c. 19\), ss. 21\(3\)\(b\), 30\(1\)\(a\)](#)
- F5** Words in s. 18(9) inserted (28.4.2022) by [Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022 \(c. 19\), ss. 21\(3\)\(c\), 30\(1\)\(a\)](#)
- F6** S. 18(11) inserted (28.4.2022) by [Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022 \(c. 19\), ss. 21\(3\)\(d\), 30\(1\)\(a\)](#)

### Assistance and support for exiting prostitution **N.I.**

**19.—(1)** The Department of Health, Social Services and Public Safety must, in conjunction with the other Northern Ireland departments, prepare and publish a strategy in relation to actions to be taken by Northern Ireland departments in the exercise of their respective functions to ensure that a programme of assistance and support is made available to persons who wish to leave prostitution.

(2) The strategy must—

- (a) be published no later than 10 months after the coming into operation of this section; and
- (b) provide for a programme of support and assistance to be made available in accordance with the strategy no later than 1 April 2016.

(3) The strategy must ensure that assistance and support provided to a person—

- (a) is not conditional on the person acting as a witness in any criminal proceedings;
- (b) is provided only with the agreement of that person; and
- (c) is provided in a manner which takes due account of the needs of that person as regards safety and protection from harm.

(4) The strategy must ensure that assistance and support is offered from a person who is of the same gender as the person receiving it.

(5) The Department of Health, Social Services and Public Safety must, in conjunction with the other Northern Ireland departments—

- (a) review the strategy (or revised strategy) for the time being published under this section at intervals of not more than 3 years; and
- (b) if appropriate, revise the strategy and publish the revised strategy.

(6) Nothing in this section affects the entitlement of any person to assistance and support under any other statutory provision.

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(7) For the purposes of this section “prostitution” has the same meaning as in Article 58 of the Sexual Offences (Northern Ireland) Order 2008.

### **Guidance as to compensation for victims** **N.I.**

**20.**—(1) The Department shall issue guidance as to—

- (a) the procedures to be followed by a person to whom this section applies to apply for compensation under the Criminal Injuries (Compensation) (Northern Ireland) Order 2002;
- (b) the grounds on which compensation may be awarded under that Order; and
- (c) the arrangements available to assist and support such a person in applying for such compensation.

(2) This section applies to a person if (and only if) there has been a conclusive determination that the person is a victim of trafficking in human beings.

### **Independent guardian** **N.I.**

**21.**—(1) [<sup>F7</sup>The Department] 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 [<sup>F8</sup>the Department] to be a separated child.

(4) Arrangements under this section must—

[<sup>F9</sup>(a) be made with a charity;]

- (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);

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- (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, [<sup>F10</sup>the Department] 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) [<sup>F11</sup>The Department] 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;

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- (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) [<sup>F12</sup>The Department] 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;

[<sup>F13</sup>charity” means an institution which is—

- (a) a charity within the meaning of section 1 of the Charities Act (Northern Ireland) 2008 or treated as such a charity by virtue of the Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2013;
- (b) a charity within the meaning of section 1 of the Charities Act 2011; or
- (c) a charity within the definition set out in section 106 of the Charities and Trustee Investment (Scotland) Act 2005;]

[<sup>F14</sup>the Department” means the Department of Health;]

“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

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(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.

#### Textual Amendments

- F7** Words in s. 21(1) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 247\(a\)](#); S.R. 2022/102, art. 2(b)
- F8** Words in s. 21(3) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 247\(b\)](#); S.R. 2022/102, art. 2(b)
- F9** S. 21(4)(a) substituted (25.7.2015) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), [ss. 101\(2\)](#), 106(1)(c)
- F10** Words in s. 21(4)(e)(iv) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 247\(b\)](#); S.R. 2022/102, art. 2(b)
- F11** Words in s. 21(5) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 247\(c\)](#); S.R. 2022/102, art. 2(b)
- F12** Words in s. 21(9) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 247\(c\)](#); S.R. 2022/102, art. 2(b)
- F13** Words in s. 21(11) inserted (25.7.2015) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), [ss. 101\(3\)](#), 106(1)(c)
- F14** Words in s. 21(11) inserted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 247\(d\)](#); S.R. 2022/102, art. 2(b)

#### Commencement Information

- I1** S. 21 wholly in operation at 14.11.2015; s. 21(5) in operation at 14.1.2015 see s. 28(2); s. 21(1)-(4) and (6)-(12) in operation at 14.11.2015 see [s. 28\(6\)](#)



**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. 18(10A) inserted by [2023 c. 37 s. 28\(5\)](#)