
# Summary Report of Responses to the Consultation on the draft proposed Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland)

**March 2016**

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**1. Introduction – the consultation process**

1.1 Public consultation on the draft Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations (Northern Ireland) ran from 10 September 2015 until 6 November 2015.

1.2 The draft Regulations, to be made under section 21(5) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, will specify:

1. the training and qualifications required for a person to be eligible for appointment as an Independent Guardian (IG); and
2. the support to be provided for, and the supervision of, an IG.

1.3 The consultation generated a total of 18 responses, representing the views of stakeholders from the voluntary, statutory and legal sectors. A list of all of those who responded is attached at Annex B.

1.4 This document summarises the content of the responses received during the consultation process and the Department’s consideration of them. Every effort has been made to ensure that the views of respondents have been accurately reflected throughout this document.

1.5 The Department would like to take this opportunity to thank all those who input to the public consultation.

**2. Summary of Consultation Responses**

2.1 Responses to the public consultation exercise were submitted in a variety of ways, including completed questionnaires, e-mails and letters. A total of 18 written responses were submitted for consideration during the consultation and were categorised into the following groupings:

* completed consultation pro-forma questionnaires (N = 9); and
* other correspondence which did not conform to the pro-forma questionnaire, but which identified specific factors or general observations (N = 9).

Quantitative Analysis of Consultation Responses

2.2 There were 11 questions posed in the consultation document. Of those, 8 related to the provisions included in the draft Regulations and 3 related to Human Rights and Equality implications. The Response Form invited a ‘tick box’ response, as well as asking respondents to provide additional comments to explain their response or to respond to the issue in further detail.

2.3 The table provided below summarises the 9 responses to the consultation made using the pro-forma questionnaire.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Question** | **Yes** | **No** | **Don’t Know / No opinion** | **Total** |
| **Q1.** Do you agree that, in order to be eligible for appointment as an IG, a person should have to be registered as a social worker in the principal part of the register maintained by the Northern Ireland Social Care Council? | **6***66.6%* | **3***33.3%* | **0** | **9** |
| **Q2** Do you agree that, in order to be eligible for appointment as an IG, a person should have a minimum of five years’ post qualifying social work experience with children and families, including direct work with children, court related experience and inter-agency working? | **6***66.6%* | **3***33.3%* | **0** | **9** |
| **Q3** Is there any other training which you consider should be specified as a requirement to be eligible for appointment as an IG? | **5***55.6%* | **1***11.1%* | **3***33.3%* | **9** |
| **Q4** Are there any other qualifications which you consider should be specified as a requirement to be eligible for appointment as an IG?  | **3***33.3%* | **4***44.4%* | **2***22.2%* | **9** |
| **Q5** Do you agree with the proposed definition of “support” provided at regulation 4(2)? | **7***77.7%* | **0** | **2***22.2%* | **9** |
| **Q6** Is there any other support which you consider the charity should provide to the IG? | **4***44.4%* | **4***44.4%* | **1***11.1%* | **9** |
| **Q7** Do you agree that access to formal supervision once a month is sufficient? | **7***77.7%* | **0** | **2***22.2%* | **9** |
| **Q8** Do you have any comments in respect of the definitions of “formal supervision” and “senior employee”? | **3***33.3%* | **4***44.4%* | **2***22.2%* | **9** |
| **Human Rights and Equality Implications**  |
| **Q1** Are the actions/proposals set out in this consultation document likely to have an adverse impact on any of the nine equality groups identified under Section 75 of the Northern Ireland Act 1998? | **0** | **8***89%* | **1***11%* | **9** |
| **Q2** Are you aware of any indication or evidence – qualitative or quantitative – that the actions/proposals set out in this consultation document may have an adverse impact on equality of opportunity or on good relations? | **0** | **8***89%* | **1***11%* | **9** |
| **Q3** Is there an opportunity for the proposed Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations to better promote equality of opportunity or good relations?  | **1***11%* | **6***67%* | **2***22%* | **9** |

Qualitative Analysis of Consultation Responses

2.4 All comments received during the public consultation, be they comments made on the pro-forma questionnaires or written responses made in other formats, have been considered and are summarised in sections 3 to 5. This document is intended to be a summary of the responses so does not cover in detail the full range of feedback. **Please note that not every comment is included.**

**3. Training and Qualifications of the Independent Guardian**

3.1 **Question 1** sought views on whether, in order to be eligible for appointment as an IG, a person should have to be registered as a social worker in the principal part of the register maintained by the Northern Ireland Social Care Council.

3.2 56% of all respondents agreed that an Independent Guardian should have to be registered as a social worker. Comments provided in support of this proposal included:

* *“the international discourse on guardians for unaccompanied children notes the importance of experience in the field of childcare so that guardians may ensure that the child’s interests are protected. This standard is noted under General Comment No. 6 of the UN Committee on the Rights of the Child. Requiring that the IGs have social work experience follows both national and international guidance in ensuring that unaccompanied children are properly safeguarded.”*
* *“shortcomings identified within the guardian system in Scotland were traced back to a lack of social work experience on the part of Scottish Guardians”*
* *“The importance of and necessity for multi-agency engagement and working is recognised and in this regard the requisite skills and knowledge, require a practitioner at a senior level. Such practitioners should be experienced and have an in depth knowledge in the areas of child development and child protection with a good grounding in partnership and multi-disciplinary working.”*
* “*We agree that the IG should be expert in their area of work. Post-holders must be able to inspire confidence in the new office. We consider that registration as a social worker should be a desirable criterion for the IG. This is in line with the recommendation of the Scottish Guardianship Pilot which has been operating a model of guardianship for separated children since June 2010.”*
* *“The necessary skills and knowledge to work with trafficked children requires an understanding of the impact of trauma and a capacity to communicate effectively and engage with children, young people and other professionals.*

*Ideally the IG should have a background in working with children & YP who have been separated from their families and country of origin and an ability to work with people from diverse cultural backgrounds. Working as part of a multi-disciplinary system, the IG should be;*

* *skilled in assessing children’s needs, identifying trafficking victims alongside any specific needs;*
* *possess a working knowledge of UK legislation relating to children and immigration;*
* *skilled in report writing;*
* *have effective communication skills to elicit the ‘wishes and feelings’ of children & YP.”*

3.3 However 33% of respondents disagreed. Some, whilst recognising that qualified social workers have the professional skills and experience relevant to the role of an IG, expressed the view that restricting the role of IG to registered social workers was overly prescriptive and may exclude other suitable applicants, such as youth and community workers, teachers or those with a nursing, medical or legal background.

3.4 One organisation was of the view that such an approach wouldprohibit the recruitment of very experienced professionals who have a long history of working with separated and / or trafficked children and suggested that a background in youth work more generally or working with refugee children or vulnerable/exploited young people, would be preferred. It was also suggested that requiring IGs to only be social workers might remove some of the independence that the role stipulates and the way in which the service is perceived.

**Departmental Response**

3.5 In drafting the regulations, the Department took account of the findings in the evaluation of the pilot Scottish Guardianship Service[[1]](#footnote-1) (SGA) , the interim report on the Child Trafficking Advocates (CTAs)[[2]](#footnote-2) in England and the FRA (European Union Agency for Fundamental Rights) paper, *Guardianship systems for children deprived of parental care in the European Union*.[[3]](#footnote-3)

3.6 In the Scottish evaluation, various requirements were identified by the Service itself as being central to the Guardianship Role; the social work qualification was identified as being desirable. Some of the other requirements mentioned were:

* Training in relevant fields e.g., OISC, working with interpreters, trauma, resilience, child protection;
* A good understanding or experience of the asylum and trafficking processes;
* A knowledge and understanding of trauma, resilience, attachment, child development;
* A knowledge and understanding of legislation, including the UNCRC, the Refugee Convention, Humanitarian Protection;
* An understanding of the concept of ‘best interests’ which takes account of the young person’s right to be heard and express their own view.

3.7 These requirements are typical of the overall knowledge and skills-set of an experienced social worker who has worked with children and young people, including within the court arena.

3.8 Similarly, in the interim report on the Child Trafficking Advocates in England, one of the issues raised for further consideration was in relation to the qualifications and experiences of advocates. It was pointed out that whilst the advocates have a wide range of expertise, further discussions on what the standardised qualifications and experiences of the CTAs should be, would be needed, particularly as their expertise needs to be spread over a “width of professional territories”.

3.9 In the FRA paper, it was highlighted that:

*“One of the standards set by international and EU law pertaining to guardianship and representation of chil­dren is the necessity of expert knowledge and adequate training on a wide range of issues related to welfare and child protection. In addition, guardians must have the necessary expertise to address the particular situ­ation and needs of specific groups of children, such as child victims of trafficking. In cases where guardianship is institutionalised and therefore exercised by civil servants or other employ­ees of designated welfare and/or child protection insti­tutions or specialised NGOs, guardians are in principle social workers, psychologists or legal professionals.*

3.10 In addition, the UNCRC General Comment No.6 /2005[[4]](#footnote-4) – *Treatment of unaccompanied and separated children outside their country of origin,* explained the importance of the necessary expertise in the field of child care:

*“The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of child care, so as to ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child”.*

3.11 One respondent suggested that the draft regulations should specify that due regard should be given to the UNCRC Comment No. 6. The Department considers that this is not necessary and would, in any case, be ultra vires i.e. the regulation making powers contained in section 21(5) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 do not provide sufficient powers to do so.

3.12 A separated / trafficked child will require access to a range of professional services. These are set out in the diagram and accompanying table attached at **Annex A**. The IG must have an equivalent level of status, knowledge and skills in order to understand and oversee this process. The Department considers that, whilst other professional qualifications may cover some of the knowledge and skills required, the social work qualification covers the full range and, as a result, experienced social workers will be best placed to fulfill this role.

3.13 Arrangements for the provision of an IG will be made with a registered charity, which will appoint an IG to each eligible child. Guardians must be employees of that charity. These arrangements, which are set out in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, will ensure that IGs will remain independent. Section 21(6) of the Act also requires the IG to always act in the best interests of the child. The Department does not, therefore, consider that requiring IGs to only be social workers will remove some of the independence that the role stipulates and the way in which the service is perceived.

3.14 Some organisations argued that restricting the pool of applicants to qualified social workers would be to the detriment of certain organisations. The purpose of the Regulations is not to provide favourable circumstances to any particular organisations or applicants; rather the priority must be to ensure that the best possible service is made available for these very vulnerable children and young people.

3.15 The Department concludes that the requirement for the Independent Guardian to be a qualified social worker should remain and should not be extended to include other professional qualifications.

3.16 **Question 2** sought views on whether, in order to be eligible for appointment as an IG, a person should have a minimum of five years’ post qualifying social work experience with children and families, including direct work with children, court related experience and inter-agency working.

3.17 Again, 56% of all respondents agreed that the most appropriate period of post qualifying experience should be a minimum of 5 years. Among those that agreed, one organisation stated that *“ the advantage to the child of having well trained, specialist social work practitioners is that they possess the necessary range of skills, wider knowledge base and practice wisdom, which better informs an understanding of the complex, economic and cultural factors which interact to increase risk and guide service provision”.* Another respondent considered that *“the range of experience outlined in the proposal would be very relevant to the nature of the role of Independent Guardian”.*

3.18 However, some respondents argued that, consistent with the view that the qualifications required should not be restricted to social work, the experience required should also not necessarily be restricted to the social work profession. Suggestions included that those who are professionally qualified and work in the social care sector should be eligible. One respondentrecommended a slight alteration of the requirement so that it requires a minimum of five years’ post qualification experience working with children but not necessarily as a social worker and also suggested that the requirement for court experience, which a social worker would have, should be removed.

**Department’s Response**

3.19 The Department remains of the view that the IG should have to be a registered social worker with a minimum of five years’ post qualifying social work experience with children and families, including direct work with children, court related experience and inter-agency working.

3.20 Whilst one respondent suggested that the requirement for court experience be removed from the regulations, the majority of respondents agreed that such experience was actually required. The Department considers that removing such a requirement, simply to enable individuals who don’t have experience of court related work to be eligible to apply, is not justified. We should aspire to the highest calibre of candidate to support these children and young people through all of the services that they will require access to, including court proceedings.

3.21 Another respondent suggested that, of the five years’ post qualifying social work experience with children and families, one year’s experience of working specifically with trafficked children should be a requirement. The Department deems this to be impractical due to the small numbers of trafficked children entering Northern Ireland to date. In 2014, the UK National Referral Mechanism received 45 referrals of potential victims of trafficking first encountered in Northern Ireland, 8 of whom were referred for exploitation as a minor; this represents 2% of all UK referrals to the NRM.[[5]](#footnote-5)

3.22 One respondent suggested that the draft Regulations should be amended to include a definition of court related experience and inter-agency working. The Department does not propose to further define these terms in the Regulations and, as a result, they will be given their ordinary and natural meaning. If further definition is required, this will be considered for inclusion in the job description.

3.23 **Question 3** asked whether other training should be specified as a requirement to be eligible for appointment as an IG.

3.24 There was some confusion in responding to this question. Paragraph 3.9 of the consultation document explained that, in relation to training which should be specified as a requirement to be eligible for appointment as an IG, the powers provided in the primary legislation only allow for the prescription of specific training and qualifications and the inclusion of such additional knowledge and competences would be “ultra vires”, that is, beyond the scope of the powers contained in the Act. The intention is that such additional knowledge and competences deemed necessary will be set out in the job description which will be prepared as part of the recruitment process.

3.25 Many respondents helpfully provided suggestions as to the additional knowledge, skills and experience which they consider would be necessary for an IG to effectively undertake their role and responsibilities. These included:

* Advocacy skills and experience.
* Knowledge of relevant human trafficking and exploitation legislation (both national and international) including the EU Trafficking Directive (2011/36/EU) to understand the legal rights of child victims of trafficking.
* Knowledge and understanding of the nature and common traits of human trafficking and exploitation and specifically trafficking and exploitation of children.
* Knowledge of asylum and immigration law and policy, so that they may identify erroneous decision making and prevent adverse decisions being made by their wards.
* Understanding of asylum and immigration processes and specifically knowledge of issues relevant to separated children going through these processes.
* Understanding of the criminal justice system.
* Understanding of the safety and security needs of trafficked children in local authority care.
* Experience of working with vulnerable children.
* Training in the Joint Protocol processes at least PIA level and be familiar with working with the PSNI.
* Experience of working with victims of human trafficking or people at risk of trafficking.
* Experience of coping with trauma, loss and impact of violence as a result of human trafficking, up to date knowledge and awareness of relevant aspects of social security legislation and any legislation that pertains to homelessness.
* Training or experience with working with children from different ethnic backgrounds.
* Cultural competence training, so that they have an understanding of any special/cultural needs of the children they will work with.
* If the focus is to promote good and robust assessments and decision making based on multidisciplinary working, any person appointed as an IG should be well grounded in this area of work. The IG will require a sound understanding of the many barriers to effective collaborative working, in particular cross jurisdictional considerations and legal requirements in different countries, which can restrict family tracing and the planned repatriation of children.

**Departmental response**

3.26 The Department welcomes these suggestions and will share these with the Health and Social Care Board, for consideration for inclusion in the job description for the IG.

3.27 In addition, respondents also suggested a range of training that should be undertaken by an IG following appointment. Suggestions included:

* A bespoke and tailored programme should be developed to be delivered to those who have been appointed as an independent guardian. We believe that the role of an independent guardian should be developed as a specialism and that the level and nature of the training should reflect this.

* Basic induction training should also be provided to a person appointed as an IG. This induction training can be personalised to reflect the prior experience of the appointed person but should also ensure a basic level of knowledge of the specific issues relating to human trafficking, separated children and immigration processes.
* Training should be provided covering the requirements identified in the Scottish evaluation report:
	+ A good understanding or experience of the asylum and trafficking processes.
	+ Knowledge and understanding of trauma, resilience, attachment, child development
	+ Knowledge and understanding of the legislation i.e. UNCRC, Refugee Convention, Humanitarian Protection.
* Guardianship authorities should ensure a variety of training initiatives, potentially through partnerships with NGOs or educational institutions.
* Training on the National Referral Mechanism, as well as wider safeguarding issues, such as FGM, forced marriage, torture, child sexual exploitation.

**Departmental response**

3.28 The Department is grateful for the suggestions for additional training that the IG should have to undertake following appointment. However, it should be noted that the draft Regulations only allow for training to be specified for eligibility to apply criteria. Any post appointment training suggestions arising from the consultation will be shared with the Health and Social Care Board for consideration for inclusion in the service specification, and will be a matter for the registered charity to take forward.

3.29 **Question 4** asked whether any other qualifications should be specified as a requirement to be eligible for appointment as an IG.

3.30 Whilst a third of respondents stated that there were other qualifications that should be specified, the examples stipulated were actually experience and skills and these have been included in the list set out in paragraph 3.25.

3.31 One organisation cautioned against setting the standards too high in relation to the criteria for appointment in that they may become too restrictive to potential candidates.

3.32 One respondent requested that the OISC registration should be a requirement prior to appointment, so as to ensure the IG is not giving unlawful advice contrary to the 1999 Act. It was also suggested that, if this is not practicable, the Department should consider requiring OISC level 1 registration or that regulation 4(2)(b)(ii), which includes OISC level 2 training and registration within the meaning of “support,” states an appropriate timeframe within which this should be achieved.

3.33 The functions of an IG are set out in section 21(7) of The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 and do not include the provision of formal immigration advice or immigration services as defined under section 82(2) of the 1999 Act. The role of the IG will include supporting the young people by helping them navigate the immigration and welfare processes, assisting them to access the help they need when they need it, and make informed decisions about their future. Requiring OISC registration ensures that they have sufficient knowledge and understanding of immigration law and issues so that they can then assist the young person in their understanding and support them to make decisions.

3.34 The Department considers that requiring OISC registration prior to appointment would restrict the potential pool of applicants. Those wishing to be considered eligible for appointment as an IG would have to apply individually and cover the cost of fees and expenses to undertake training and examinations without the support of an organisation. We do not therefore consider that OISC registration should be required prior to appointment. Draft regulation 4, however, provides that the support to be provided to the IG following appointment will include training and development that will enable the IG to achieve OISC level 2 registration. The job specification will also set out the timescales within which an IG will be expected to achieve OISC level 2 registration. It is also proposed that during the intervening period, the IG will be supported by way of more frequent, fortnightly supervision (see paragraph 4.16).

3.35 Some respondents also suggested that the senior employee (who will be undertaking the supervision) should also be required to achieve OISC registration and that the registered charity should also be registered as an organisation. Whilst such requirements cannot be included in the Regulations, the Health and Social Care Board will consider whether to include such requirements in the service specification.

**4. Support and Supervision of the Independent Guardian**

4.1 **Question 5** sought views on the proposed definition of “support” provided at regulation 4(2). The Department proposed that “support” should be defined as including “administrative support, advice and assistance, and training and development that will enable the IG to enhance their knowledge and skills and also to meet post registration training and learning requirements set by the Northern Ireland Social Care Council.”

4.2 The Department also proposed that the job description/specification will state that the IG, once appointed, will be expected to undertake the necessary training and achieve OISC registration and that the definition of “support” includes training and development to enable the IG to achieve OISC level 2 registration.

4.3 The majority of all respondents (89%) either agreed with the proposed definition or had no opinion on the issue. Respondents indicated that it was crucial that IGs are able to access appropriate training to continue their professional development and it was suggested that consideration should be given to the Service Practice Framework of the Scottish Guardianship Service which *“provides a clear structure for the Guardians in their professional competence and development and, most importantly, in structuring their work in a person-centred manner with the separated child”*.

4.4 One respondent who was of the view thateligibility for appointment as an IG should not be restricted to registered social workers, also considered that the reference to post registration and learning requirements in regulation 4(2)(b)(i) should be removed.

4.5 Another respondent did not consider post registration training and learning requirements in accordance with the Northern Ireland Social Care Council as being the only appropriate support for the IG but stated that there should be a requirement for the IG to operate within a regulatory framework.

**Department’s response**

4.6 As outlined in paragraph 3.19 above, the Department considers that the IG should be a registered social worker. Therefore, it does not agree that the reference to post registration and learning requirements in regulation 4(2)(b)(i) should be removed.

4.7 **Question 6** asked whether there was any other support which the charity should provide to the IG.

4.8 Respondents provided a number of suggestions for other support that should be provided to the IG. These included:

* Access to legal advice.

* Access to support networks available to staff in Great Britain.
* Access to interpretation and translation services, available in all required languages and dialects.
* Certain key elements should be included in all training programmes, including:
	+ Principles and provisions of the Convention
	+ Knowledge of the country of origin of separated and unaccompanied children
	+ Appropriate interview techniques
	+ Child development and psychology
	+ Cultural sensitivity and intercultural communication.
* Initial training programmes should also be followed up regularly, including thorough on the-job learning and professional networks.
* IGs should be supported to access training that includes the following:
	+ How separation and trauma can impact on child development
	+ The process of age assessment
	+ Working with interpreters
	+ If required as part of the role, acting as an ‘appropriate adult’ in substantive, screening and age assessment interviews
	+ Statutory and other protections and support for vulnerable witnesses
	+ Report writing and acting as witness in a legal context
	+ International and domestic provisions relating to children’s rights, including the UN Convention on the Rights of the Child
	+ The mental health needs of separated, unaccompanied and trafficked children
	+ On-going learning regarding child exploitation, and asylum law and policy relating to children
* IGs should have access to counselling and support services and should be encouraged to use these services if they require it.

* The IG must receive training in a wide range of issues including working with interpreters, child protection, and the trafficking process with particular focus on the UN indicators, impact of trauma on child victims of trafficking and asylum seekers as well as age assessment awareness training and human rights. It will be appropriate for some of this training to be carried out by other agencies/NGOs in the form of multi-disciplinary training. This will also have the benefit of enhancing networking and cooperation as well as enforcing the common understanding of the needs and rights of this group of children.

**Department’s Response**

4.9 The Scottish Guardianship Service has advised that, since its service came into operation in 2010, there has been no requirement for any of its Guardians to access legal advice. On this basis, the Department does not consider it necessary to amend the definition of “support” to include access to legal advice.

4.10 With regards to access to translation services for the IG, Article 21(7)(b)(i) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 already provides that an IG, as part of their functions, must make representations to, and liaise with, bodies or persons responsible for providing translation and interpretation services to or in respect of the child.

4.11 The remaining suggestions relate to support to access training and further professional development. These suggestions will be shared with the Health and Social Care Board for consideration for inclusion in the service specification, and will be a matter for the registered charity to take forward.

4.12 **Question 7** sought views on whether access to formal supervision once a month is sufficient.

4.13 The majority of all respondents (89%) either agreed that access to formal supervision once per month was sufficient or had no opinion on the issue. However, some respondents suggested that formal supervision should take place on a fortnightly basis during the first 6 months following appointment. The reasons cited werethe level of complexities in cases involving trafficked and separated children and young people*,* ensuring that the IG can benefit from regular guidance and support when first in post and particularly during the time that the IG is working towards OISC registration.

4.14 One respondent also stated that crucial to the provision of a quality service to the child will be the agency’s ability to ensure that the IG has access to support in a timely manner.

4.15 One respondent suggested that professional supervision should take place once a month and case supervision should occur on a weekly basis, arguing that each has a different role and function.

**Department’s Response**

4.16 The Department considers that there is sufficient justification for requiring fortnightly formal supervision during the first 6 months following appointment and will amend the draft Regulations to reflect this. However, it considers that professional supervision should cover all aspects of the IG’s work, training and development and it is not necessary to specify two separate systems for supervision.

4.17 **Question 8** sought comments in respect of the definitions of “formal supervision” and “senior employee”.

4.18 Several respondents made additional comments in relation to the definitions. Respondents were keen to ensure that the IG receives robust supervision and has access to professional supervision. One respondent suggested that formal supervision should be based on the DHSSPS guidance on supervision policy, standards and criteria guidance.

4.19 In relation to the definition of “senior employee”, some respondents were of the view that the senior employee need not be a social work professional and should be extended to include a professionally qualified individual or suggested that it could be provided by a senior work manager within the agency or commissioned additionally from an external source. It was also suggested that the Regulations should be amended to require that the senior employee should also be OISC level 2 registered.

**Department’s Response**

4.20 The Department can confirm that the definition of “formal supervision” is based on the DHSSPS Supervision Policy, Standards and Criteria Guidance.

4.21 The Department considers that the senior employee should be as skilled and knowledgeable as the IG, in order to effectively provide advice, support and supervision of all aspects of the IG’s work. This is consistent with the social work framework, with one consistent qualification that can be supervised under one structure, safeguarding the best interests of the child or young person.

4.22 The Department will amend the definition of “senior employee” to replace the words “at least one year’s experience as a manager” for “at least one year’s experience of managing or supervising social workers”.

4.23 As outlined in paragraph 3.35, the Health and Social Care Board will consider whether to include, in the service specification, a requirement that the senior employee must achieve OISC level 2 registration.

**5. Further Issues**

5.1 One respondent enquired whether a Legal Aid Impact Assessment was undertaken prior to consultation to assess the extent to which this new role will impact on the services provided if the child were to be funded from legal aid as this may have a financial impact for the legal aid funded service providers providing legal aid services to children. As the Regulations relate only to the training and qualifications required to be eligible for appointment as an IG and the support and supervision to be provided to an IG once appointed, legal aid for the young person availing of the service is not relevant to these Regulations. A separated / trafficked child who has an IG appointed will continue to require access to a range of professional services. The role of the IG not replace these services, rather it will include assisting the young person to access the help they need when they need it and make informed decisions about their future. The Department does not therefore consider that a Legal Aid Impact Assessment is required.

5.2 One respondent queried whether guidance on the role and functions of the IG will be produced. The role and functions of the IG are set by the Act and do not require further clarification. The Regulations will be supported by an explanatory memorandum, a service specification will be produced by the Health and Social Care Board, the registered charity will be require‎d to produce a job specification when recruiting and the IG will also be subject to policies and procedures developed by the employing charity.

5.3 Another respondent enquired about engagement with children during the consultation. The Department considered that specific consultation with children was not necessary in relation to the content of these Regulations. The Health and Social Care Board’s Equality Unit, as part of the procurement process, is consulting directly with separated children to inform the service specification.

5.4 One respondent also raised concerns that the consultation did not run for a full 12 week period. As part of its work on drafting of the Regulations, the Department identified that a further amendment was required to the primary legislation to ensure that charities already registered under the Charities Act (Northern Ireland) 2008, charities waiting to be called forward to register under that Act and charities registered in either England and Wales or Scotland are eligible to be considered by the Health and Social Care Board to provide an independent guardian service in Northern Ireland. Section 21(11) of the Act was subsequently amended by section 101(3) of the Justice Act (Northern Ireland) 2015. The consultation on the Regulations was delayed until the amendment to the Act was made.

5.5 Section 28(6) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 provided that section 21 (arrangements to be made by the Health and Social Care Board for the appointment of IGs) came into operation 10 months following Royal Assent of the Act i.e. November 2015. The Health and Social Care Board cannot proceed with the procurement exercise for the Service until the Regulations, to which this consultation relates, are made. The Department therefore considered it necessary to reduce the normal consultation period of 12 weeks to 8 weeks in order to ensure that arrangements for the procurement of the Service can commence as early as possible in 2016.

5.6 The Department would like to take the opportunity to thank all stakeholders for responding within the timescales provided and for their detailed responses and suggestions.

5.7 Regulation 15 of the Children’s Homes Regulations (Northern Ireland) 2005 (SR 2005/176) requires the registered person to ensure that facilities are provided within the children’s home for any child accommodated there to meet privately at any reasonable time with his parents, relatives and friends and the persons listed in paragraph (2) of that regulation. The persons specified include, among others, a solicitor, Guardian ad Litem, social worker, independent visitor. The Department considers that an independent guardian should be added to that list and, following consultation with the Health and Social Care Board and the Health and Social Care Trusts, intends to include provision in the Regulations to amend regulation 15(2) of the Children’s Homes Regulations, using powers contained in the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.

**6. Next Steps**

6.1 The Department will now proceed to amend the draft Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Independent Guardian) Regulations, with a view to making the Regulations in March 2016.

6.2 Work is already underway on the preparation for the procurement exercise in relation to the IG Service. Many of the suggestions offered by respondents in relation to additional supports and training will be considered by the Health and Social Care Board for incorporation in the service specification.

**ANNEX A**

**Independent Advocate**

**Guardian Ad Litem**

**Social Worker**

**(Caseholder)**

**Legal Representative**

**Personal Adviser**

**Key Worker / Foster Carer**

**Independent Guardian**

|  |  |  |
| --- | --- | --- |
| **Welfare** | **Legal** | **Multi-Sectoral** |
| * Care, Protection, Safeguarding Arrangements
* Assessment;
* Care / Pathway Planning;
* Education
* Emotional Wellbeing
* Placement Support
* Child Protection
* Dual Process
* Joint Protocol (ABE)
* National Referral Mechanism
* Cultural Awareness
* Identity / Location of Family / primary carers
* Transition Planning
* Reunification / Repatriation
* Social Networks and Support
 | * Asylum
* Immigration / Citizenship
* Criminal Investigation / convictions
 | * PSNI
* Border Force
* UKVI
* Legal Representative
* Advocacy Service
* Interpreter Service
* Carers / Care Placement
* National /International Agencies
* NSPCC CTAC
 |

**ANNEX B**

**List of respondents**

Black and Minority Ethnic Women's Network

British Red Cross

CARE NI

Children's Law Centre

ECPAT UK

Evangelical Alliance

Law Centre NI

Legal Services Agency

Local Adult Safeguarding Partnership

NI Commissioner for Children and Young People

NI Guardian Ad Litem Agency

Northern Health and Social Care Trust

Northern Ireland Council for Ethnic Minorities

NSPCC

Regulation and Quality Improvement Authority

South Eastern Health and Social Care Trust

Southern Health and Social Care Trust

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1. She Endures with Me – An Evaluation of the Scottish Guardianship Pilot(Heaven Crawley and Ravi KS Kohli 2013)

http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjQ3Yy9tr\_JAhUFWxQKHT9WBXYQFggcMAA&url=http%3A%2F%2Fwww.scottishrefugeecouncil.org.uk%2Fassets%2F6798%2FFinal\_Report\_2108.pdf&usg=AFQjCNFT6ueVgwI-kMJAdw1iJVaiALXiAQ [↑](#footnote-ref-1)
2. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409125/Child_Trafficking_Advocates_Evaluation_-_Interim_Findings_FINAL.pdf> [↑](#footnote-ref-2)
3. <http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-guardianship-systems-in-the-eu_en.pdf> [↑](#footnote-ref-3)
4. <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf> [↑](#footnote-ref-4)
5. <http://www.nationalcrimeagency.gov.uk/publications/502-national-referral-mechanism-statistics-end-of-year-summary-2014/file> [↑](#footnote-ref-5)