

Child Rights and Wellbeing Impact Assessment (CRWIA)

for **Independent Child Trafficking
Guardian**

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Introduction

Policy Aim

The aim of the Independent Child Trafficking Guardian (ICTG) service is to provide assistance, support and representation to a children and young people who are, or may be, a victim of the offence of human trafficking, or who are vulnerable to becoming a victim of human trafficking. The service will provide support to children and young people who arrive in Scotland unaccompanied and who will have undergone an arduous migration journey alone. Although these children will receive looked after status and receive local authority support, they face many wider challenges and additional support is therefore required. This can include going through the trafficking process, via the [National Referral Mechanism](#), and in many cases, the asylum process as well. They also face further barriers such as breaks in their education, adapting to a new country, and learning a new language.

Establishment of ICTGs will fulfil the duty set out under Section 11 of the Human Trafficking and Exploitation (Scotland) Act 2015 ('the 2015 Act'). ICTGs will work closely with other professionals when supporting a child or young person. The ICTG's role will be to draw together a network around each young person, with the aim of building close and productive relationships with other professionals. This will include social workers, lawyers and health care professionals. It is the intention that the functions of the ICTG must be such that they complement, rather than conflict or compete with, existing statutory roles. The ICTGs will focus on where they can add value in supporting these eligible children and address any gaps in support which are needed to meet their specific needs. These functions will be described in more detail within non-statutory guidance to be published.

The desired outcome is that every child or young person that needs support from an ICTG will be appointed one.

The National Outcomes¹ which this policy contributes to are, that people:

- grow up loved, safe and respected so that they realise their full potential
- respect, protect and fulfil human rights and live free from discrimination

1. Which articles of the UNCRC does this policy/measure impact on?

Article 1 – Definition of the child - Everyone under the age of 18 has all the rights in the Convention.

¹ [National Outcomes | National Performance Framework](#)

Article 2 - Non-discrimination - Children should not be discriminated against in the enjoyment of their rights. No child should be discriminated against because of the situation or status of their parent/carer(s).

Article 3 - Best interests of the child - Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing - and that the institutions, services and facilities responsible for their care and protection conform with established standards.

Article 6 - Life, survival and development - Every child has a right to life and to develop to their full potential.

Article 7 – Birth registration, name, nationality, care – Every child has the right to be registered at birth, to have a name and nationality, and, where possible be cared for by their parents.

Article 8 – Protection and preservation of identity – Every child has the right to an identity. Governments must respect and protect that right and prevent any unlawful challenges.

Article 9 – Separation from parents – Children must not be separated from their parents against their will unless it is in the best interest of the child. Children whose parents are separated have the right to stay in contact with both parents unless this would cause them harm.

Article 10 – Family reunification – Governments must quickly and sympathetically respond if a child or their parents apply to live together in the same country. Every child has the right to visit and keep in touch with both parents if they are separated in different countries.

Article 11 – Abduction and non-return of children – Governments must do everything in their power to stop children being taken illegally out of or prevented from returning home to their own country by anyone, including by their parents or relatives.

Article 12 - Respect for the views of the child - Every child has a right to express their views and have them given due weight in accordance with their age and maturity. Children should be provided with the opportunity to be heard, either directly or through a representative or appropriate body.

Article 13 - Freedom of expression - Every child must be free to say what they think and to seek, receive and share information, as long as the information is not damaging to themselves or others.

Article 14 - Freedom of thought, belief and religion - Every child has the right to think and believe what they choose and also to practise their religion, as long as they are not stopping other people from enjoying their rights.

Article 15 - Freedom of association - Every child has the right to freedom of assembly: to meet with other children, and to join groups and organisations, as long as it does not stop others from enjoying their rights.

Article 18 - Parental responsibilities and state assistance - Parents, or legal guardians, have the primary responsibility for the upbringing and development of the child, and should always consider what is best for the child. Governments must provide appropriate assistance to parents and carers to help them. Governments must take all appropriate measures to ensure the children of working parents have the right to benefit from childcare services and facilities.

Article 19 - Protection from all forms of violence - Children have a right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Governments must do all that they can to ensure this.

Article 20 – Children unable to live with their family – If a child cannot be looked after by their immediate family, the government must give them special protection and assistance. This includes, providing alternative care that is continuous and respects the child’s culture, language and religion.

Article 22 – Refugee children – Children who have or are seeking refugee status must be provided by appropriate protection and assistance from the Government to help them enjoy their rights. This includes reuniting refugee children if their parents if they have been separated.

Article 23 - Children with disabilities - A disabled child has the right to enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Governments must recognise the right of the disabled child to special care, and ensure the disabled child has effective access to education, training, health care, rehabilitation, preparation for employment, and recreational opportunities.

Article 24 - Health and health services - All children have a right to the highest attainable standard of health, and to health care services that help them to attain this. Governments must provide good quality health care, clean water, nutritious food and a clean environment so that children can stay healthy.

Article 25 – Review of treatment in care – If a child has been placed away from home for the purpose of care or protection they have the right to a regular review of their treatment, the way they are cared for and their wider circumstances.

Article 26 – Social security – Every child has the right to benefit from social security. Governments must provide social security, including financial support and other benefits, to families in need of assistance.

Article 27 – Adequate standard of living – Every child has the right to a standard of living that is good enough to meet their physical and social needs and support their development.

Article 28 - Right to education

Every child has a right to education on the basis of equal opportunity. Primary education must be free. Secondary education must be available to every child, with financial assistance available in case of need. Information and guidance on education should be available to all. Governments should take measures to encourage regular attendance and reduce drop-out rates. School discipline should be administered in a manner consistent with the child's human dignity.

Article 30 - Children of minorities/indigenous groups - Every child has the right to learn and use the language, customs and religion of their family, whether or not these are shared by the majority of people in the country where they live.

Article 31 - Leisure, play and culture - Every child has a right to rest and leisure, to engage in play and recreational activities, and to take part in a range of cultural and artistic activities.

Article 34 - Sexual exploitation - Governments must protect children from all forms of sexual exploitation and abuse.

Article 35 – Abduction, sale and trafficking - Governments must protect children from being abducted, sold or moved illegally to a different place in or outside their country for the purpose of exploitation.

Article 36 – Other forms of exploitation - Governments must protect children from all other forms of exploitation, for example the exploitation of children for political activities, by the media or for medical research.

Article 37 – Inhumane treatment and detention - Children must not be tortured, sentenced to the death penalty or suffer other cruel or degrading treatment or punishment. Children should be arrested, detained or imprisoned only as a last resort and for the shortest time possible. They must be treated with respect and care, and be able to keep in contact with their family. Children must not be put in prison with adults.

Article 39 - Recovery and rehabilitation of child victims - Children who have been the victims of any form of exploitation or abuse; cruel, inhuman or degrading treatment or punishment; or who are victims of war should receive the help they need to recover their health, dignity and self-respect, and reintegrate into society.

Article 40 – Juvenile justice - Every child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to legal assistance and a fair trial that takes account of their age. Governments must set a minimum age for children to be tried in a criminal court and manage reintegration into society.

Article 42 - knowledge of rights - Governments must actively work to make sure children and adults know about the Convention

Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography Governments - prohibit the sale of children, child prostitution

and child pornography, and recognise the vulnerability of child victims, protect their privacy, provide appropriate support services and ensure their safety.

2. What impact will your policy/measure have on children's rights?

Positive, as the policy has the potential to advance the realisation of the rights for unaccompanied children arriving in Scotland.

ICTGs will be appointed to support children who are or may have been a victim of, or may be vulnerable to becoming a victim of, human trafficking, who arrive in Scotland unaccompanied by someone who has parental responsibilities and rights in respect of them (and for whom no one in the UK has parental responsibilities and rights).

Recognising that these children and young people are vulnerable, the ICTG will provide assistance and support in navigating the complex welfare, care, immigration, asylum, and trafficking systems, often in a foreign language. The ICTG can represent young people in engaging with the various authorities and speak on the child's behalf to avoid the need for them to re-live their experiences through constant re-telling of their story to different authorities.

The Getting it right for every child (GIRFEC) continuum² articulates the importance of GIRFEC in protecting children and making sure that all children receive the right help at the right time. Appointing ICTGs to children who have no parental guardian in the UK allows for the linking of the UNCRC Articles to the SHANARRI wellbeing indicators:

- Safe: Articles 3, 11, 19, 20, 22, 25, 27, 34, 35, 36, 37
- Healthy: Articles 6, 24,
- Achieving: Articles: 28
- Nurtured: Article 18
- Active: Article 31
- Respected: Articles 2, 7, 8, 10, 12, 13, 14, 15, 30, 40
- Responsible: Articles 12, 22
- Included: Articles 1, 6, 9, 22, 23, 26, 39, 42.

3. Will there be different impacts on different groups of children and young people?

Yes – generally only children and young people that are in scope of support from ICTGs are expected to be affected. As set out in the act, only children who are, or may be, a victim of the offence of human trafficking, or who are vulnerable to becoming a victim of human trafficking and for whom no one in the UK has parental responsibilities and rights will be eligible for an ICTG. The 2015 Act defines a 'child' as being under 18 years of age. There are some circumstances however where a

² [Getting it right for every child \(GIRFEC\) - gov.scot \(www.gov.scot\)](http://www.gov.scot)

young person will still be eligible to receive support from an ICTG after the age of 18. For instance if a young person was still waiting for a decision from the Home Office on their trafficking or asylum case when they turn 18, then support would continue until their case is resolved. ICTGs will have discretion to use their professional judgement to decide when support should continue for a young person over the age of 18. The ICTG regulations do however specify that support will not continue past the age of 26 in line with other continuing care and aftercare provisions applicable to formerly looked after children under the Children (Scotland) Act 1995.

4. If a negative impact is assessed for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?

No apparent negative impact on the rights of children and young people. It is important to note however that although support provided to unaccompanied asylum seeking children is a devolved matter, nationality and immigration, including the UK asylum system, is a reserved matter. This means that the wider policy landscape that ICTGs operate within is outside the control of the Scottish Government. Changes to this wider policy landscape could have a negative impact and make it more difficult for ICTGs to provide support to eligible children in a way that complies with UNCRC. The Scottish Government will have responsibility, alongside the Service Provider, for mitigating this risk by working with the UK Government to ensure the UK asylum system represents the interests of Scotland.

5. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?

The role of the ICTG service is to ensure consistent consideration of the wellbeing and rights of children who are or may have been a victim of, or may be vulnerable to becoming a victim of, human trafficking, and for whom no one in the UK has parental responsibilities and rights. The Service will ensure these children have awareness of and access to the rights, services and support to which they are entitled.

ICTGs will consider the voice of the child in decisions made about them, incorporating Articles 12 (respect for the views of the child) and 14 (freedom of thought, belief and religion) whilst always having Article 3 (best interests of the child) at the forefront of the service with a consideration to Article 30 (Children from minority or indigenous groups).

By introducing ICTGs as a statutory service providing support through the GIRFEC practice approach which remains central to how risks and needs are understood and addressed, the UNCRC should underpin all policy decisions regarding the rights and wellbeing of UASC.

For example, in relation to Articles 9 (separation from parents), and 20 (children unable to live with their family) the ICTGs will address the rights of the child to appropriate protection by ensuring that unaccompanied children arriving in Scotland will receive looked after status and receive local authority support. ICTGs will provide government assistance to UASC arrivals in line with Article 22 (refugee children), also allowing for the provisions outlined in Article 24 (health and health services), Article 27 (adequate standard of living) and Article 28 (right to education). UASC arriving in Scotland may have been victim to abuse, including trafficking and exploitation. The ICTG service will work to address Articles 34 – 39 to ensure the rights of the children are upheld in any case with particular reference to Article 35 (abduction, sale and trafficking).

6. How have you consulted with relevant stakeholders, including involving children and young people in the development of the policy/measure?

Scottish Guardianship Service (SGS)

ICTGs will be replacing the existing non-statutory Scottish Guardianship Service that is part funded by the Scottish Government. SGS, which was established in 2010, has gathered a wealth of expertise and skill in understanding the needs of unaccompanied asylum seeking children, and supporting social workers in the provision of that support. As part of Scottish Government's grant management of SGS, regular data is provided regarding the children they are supporting, including a breakdown on some protected characteristics. SGS are also able to respond to bespoke data requests.

Consultation

Consultation to seek views on the appointment, role and functions of the ICTG and wider operational issues opened on 26 August 2019 and closed on 17 November 2019. Analysis of the 40 responses received has been carefully considered by the Scottish Government.

In September 2020 SGS ran three focus groups, on behalf of Scottish Government, with young people they were supporting at the time. The aim of these focus groups was to hear young people's experiences of having a guardian in order to inform the development of the ICTG service. The discussions confirmed the valuable role that Guardians play in these young people's lives. Some common themes included:

- assistance for young people on arrival in Scotland to help them understand the laws and asylum system
- attending legal appointments with young people to provide support in getting the best outcomes
- their availability to discuss the young peoples' experiences, before and after arrival, and in building relationships with other young people in similar situations

Regular meetings are held between the Scottish Government and the Scottish Guardianship Service, including discussions on provision of the ICTG which fed into the development of this impact assessment.

7. What evidence have you used to inform your assessment?

A public consultation was carried out in 2019 in relation to the launch of ICTGs³, with analysis of the responses published on 11 May 2020. Of the 19 organisations and 18 individuals who responded, a majority were in agreement with the proposed functions of the new role, reflecting a desire to see the service launched.

Data and evidence has also been provided by SGS who currently run the service on a non-statutory basis.

8. How will the impact of the policy/measure be monitored?

To ensure the adequate monitoring of the policy the below evaluation measures will be in place with the ICTG service provider.

- Annual Reports
 - The appointed service provider shall submit annual reports to the Scottish Government's designated contact(s).
- Monitoring Reports
 - The appointed service provider shall submit quarterly monitoring report which shall include: statistical information on the service, the demand for the service, and emerging trends.

The appointed service provider shall also provide information on an ad hoc basis as requested by the Scottish Government.

9. How will you communicate to children and young people the impact of the policy/measure on their rights?

We will continue to work with the ICTG service provider to ensure that the young people are aware of how the ICTG service will impact on their rights and also consider the option of a child friendly version of the CRIWA and/or a child friendly version of ICTG guidance.

10. Sign & Date

Policy Lead Signature & Date of Sign Off:

Deputy Director Signature & Date of Sign Off:

³ [Independent child trafficking guardians: consultation analysis - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Once signed off, please send to CRWIA@gov.scot
and publish on gov.scot website.

Annex 1 – UNCRC Article Clusters

[CRC Clusters \(unicef-irc.org\)](https://www.unicef-irc.org/)

I General measures of implementation

[Article 4](#) implementation obligations

[Article 41](#) respect for existing standards

[Article 42](#) making Convention widely known

[Article 44\(6\)](#) making reports widely available

II Definition of a child

[Article 1](#)

III General principles

[Article 2](#) non-discrimination

[Article 3\(1\)](#) best interest to be a primary consideration

[Article 3\(2\)](#) State's obligations to ensure necessary care and protection

[Article 3\(3\)](#) standards for institutions services and facilities

[Article 6](#) the right to life, survival and development (see also: [VI Basic health and welfare](#))

[Article 12](#) respect for the views of the child

IV Civil rights and freedoms

[Article 7](#) right to name, nationality and to know and be cared for by parents

[Article 8](#) preservation of child's identity

[Article 13](#) freedom of expression

[Article 14](#) freedom of thought, conscience and religion

[Article 15](#) freedom of association and peaceful assembly

[Article 16](#) protection of privacy

[Article 17](#) child's access to information, and role of mass media

[Article 37\(a\)](#) [right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment](#)

V Family environment and alternative care

[Article 5](#) parental guidance and child's evolving capacities

[Article 18\(1\) and \(2\)](#) parental responsibilities and State's assistance

[Article 9](#) separation from parents

[Article 10](#) family reunification

[Article 11](#) illicit transfer and non-return

[Article 27\(4\)](#) recovery of maintenance for the child

[Article 20](#) [children deprived of their family environment](#)

[Article 21](#) [adoption](#)

[Article 25](#) periodic review of placement and treatment

[Article 19](#) protection from all forms of violence

[Article 39](#) rehabilitation and reintegration of victims of violence (see also: [VIII - Special protection measures](#))

VI Basic health and welfare

[Article 6](#) right to life, survival and development (see also: [III - General principles](#))

[Article 18\(3\)](#) support for working parents

[Article 23](#) rights of disabled children

[Article 24](#) right to health and health services

[Article 26](#) right to social security

[Article 27\(1\)-\(3\)](#) right to adequate standard of living

VII Education, leisure and cultural activities

[Article 28](#) right to education

[Article 29](#) aims of education

[Article 31](#) right to leisure, play and participation in cultural and artistic activities

VIII Special protection measures

A - Children in situations of emergency

[Article 22](#) refugee children

[Article 38](#) children and armed conflict

[Article 39](#) rehabilitation of child victims (see also: [V Family environment and alternative care](#))

B - Children involved with the system of administration of juvenile justice

[Article 40](#) administration of juvenile justice

[Article 37\(a\)](#) prohibition of capital punishment and life imprisonment

[Article 37\(b\)-\(d\)](#) restriction of liberty

[Article 39](#) rehabilitation and reintegration of child victims (see also: [V Family environment and alternative care](#))

C - Children in situations of exploitation

[Article 32](#) child labour

[Article 33](#) drug abuse

[Article 34](#) sexual exploitation

[Article 35](#) sale, trafficking and abduction

[Article 36](#) other forms of exploitation

D - Children belonging to a minority or an indigenous group

[Article 30](#)

[Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict](#)

[Governments](#) should ensure that children under 18 who are members of the armed forces do not take a part in combat. Any recruitment of children under 18 must be voluntary and carried out with the full consent of the child's parents/carers. The UK Government has entered interpretive Declarations to this Optional Protocol. The UK would not exclude the deployment of under 18s who are members of the armed forces in direct combat if there is a genuine military need; it is not practicable to withdraw them before deployment; or doing so would undermine the operational effectiveness of their unit. The minimum age at which children may join the UK armed forces is 16 years, with parental consent required.

[Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography](#) [Governments](#) must prohibit the sale of children, child prostitution and

child pornography, and recognise the vulnerability of child victims, protect their privacy, provide appropriate support services and ensure their safety.

Annex 2 – General Comments

General Comments are non-legally binding interpretive aids issued by the UN Committee on the Rights of the Child to provide State parties with assistance regarding the interpretation of an article or issue relating to the UNCRC, and what actions governments should take to ensure its implementation. New General Comments appear at irregular intervals.

[Treaty bodies Search \(ohchr.org\)](#)

1. [The aims of education \(2001\)](#)
2. [The role of independent National Human Rights Institutions in the protection and promotion of the rights of the child \(2002\)](#)
3. [HIV/AIDS and the rights of children \(2003\)](#)
4. [Adolescent health and development in the context of the Convention on the Rights of the Child \(2003\)](#)
5. [General measures of implementation on the Convention on the Rights of the Child \(2003\)](#)
6. [Treatment of unaccompanied and separated children outside their country of origin \(2005\)](#)
7. [Implementing child rights in early childhood \(2005\)](#)
8. [The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment \(2006\)](#)
9. [The rights of children with disabilities \(2006\)](#)
10. [Children's rights in juvenile justice \(2007\)](#)
11. [Indigenous children and their rights under the Convention \(2009\)](#)
12. [The right of the child to be heard \(2009\)](#)
13. [The right of the child to freedom from all forms of violence \(2011\)](#)
14. [On the right of the child to have his or her best interests taken as a primary consideration \(2013\)](#)
15. [On the right of the child to enjoyment of the highest attainable standard of health \(2013\)](#)
16. [State obligations regarding the impact of the business sector on children's rights \(2013\)](#)
17. [On the right of the child to rest, leisure, play, recreational activities, cultural life and the arts \(2013\)](#)
18. [On harmful practices \(Joint General Comment with the Committee on the Elimination of Discrimination against Women\) \(2019\)](#)

19. [Public budgeting for the realisation of children's rights \(2016\)](#)
20. [Implementation of the rights of the child during adolescence \(2016\)](#)
21. [Children in street situations \(2017\)](#)
22. General principles regarding the human rights of children in the context of international migration ([Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families \(2017\)](#))
23. State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return ([Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families \(2017\)](#))
24. [General comment No. 24 \(2019\)](#) on children's rights in the child justice system
25. [General comment 25 \(2021\)](#) Children's Rights in relation to the digital environment.