

CASE STUDY ON THE SCOTTISH GUARDIANSHIP SYSTEM AND ON THE ROLE OF THE INDEPENDENT GUARDIAN IN ENSURING ADEQUATE RECEPTION CONDITIONS

This study visit is part of a series of study visits for experts involved in the protection and integration of unaccompanied minor asylum seekers and refugees, as part of the project, “No Longer Alone: Advancing Reception Standards for Unaccompanied Children”

June 2016

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European Refugee
Fund of the European
Commission

ACKNOWLEDGEMENT

The present case study report was written by Julia Ivan at the Hungarian Helsinki Committee (HHC), with contributions to the desk research from Graham O’Neill at the Scottish Refugee Council. The graphic design of the report was done by Azzam Daaboul at ECRE. Special thanks are also offered to Claire Rimmer at ECRE for her valuable feedback and editing.

The field visit to Scotland and the present case study report were prepared in the framework of ECRE’s “**No Longer Alone Advancing Reception Standards for Unaccompanied Children**” project. This report complements and should be read together with the study visit report¹ and other materials on the Scottish Guardianship Service (the SGS). The author would like to thank the Scottish Refugee Council and the Aberlour Child Care Trust (who are the partner organisations behind the SGS, and in particular Graham O’Neill from the Scottish Refugee Council, for his assistance in the preparation and conduct of the visit.

Both the author and the Scottish Refugee Council would like to thank all the interviewees who contributed with their valuable information. In addition, we would like to thank them for the time they dedicated to the project and the present case study.

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1. http://www.ecre.org/wp-content/uploads/2016/10/Scotland_Study_Visit.pdf

CONTEXT

The “No Longer Alone” project focuses on different aspects of five reception models to consider whether they are good practice amongst EU member states. This was done through field visits to develop an in-depth study of each of the reception models listed below to identify key challenges and solutions for improvement. The reception models/practices chosen to be part of this project were as follows:

- Dedicated facilities for trafficked children (Netherlands)
- Dedicated reception centre with a range of integrated services (Hungary)
- Reception and durable solutions through apprenticeship (France)
- Role of the guardians in ensuring appropriate reception (Scotland)
- Youth empowerment in relation to reception conditions (Sweden)

The project created a space for discussion and information sharing amongst different stakeholders, both at the national and local level through five study visits for European state officials, decision makers and other experts involved in the protection and integration of unaccompanied minor asylum seekers and refugees. These study visits offered the possibility to directly exchange experience and information on existing practices and concrete ways to adapt them in other national contexts. In addition, they were an opportunity for participants to visit specific sites and directly interact with the different stakeholders involved. Another objective was to develop common findings and recommendations by collecting feedback from the participants in order to provide national policy makers with a set of suggestions to further improve the system.

The case studies aimed to study of five reception models/practices and to underline key challenges and solutions for improvement. Each case study is a piece of in-depth descriptive qualitative and quantitative research into a particular range of policy areas relating to the reception, protection and integration of unaccompanied children in different countries. The case studies looked at the organization of reception and care, including additional support provided to children through those models (appointment and the relation with guardians, legal advice, psychological support. etc.)

Through desk research and interviews the aim of this analysis was twofold:

- to help other Member States identify opportunities and challenges related to the potential implementation of one reception model/practice, so that it could be taken into account when working in their national context,
- to help the Member State already applying these reception models/practices to improve their implementation.

Interviews, which were a crucial part of the research, complemented the information that was gathered through the desk research and contributed to the content of the case studies.

Other outputs of the project were a compendium of the five selected practices (including the case studies and the reports from the study visits) and a toolkit on empowering children and young people themselves to evaluate and take part in policy and decision-making processes.

The project was carried out from November 2014 to July 2016. It was coordinated by ECRE, in partnership with Nidos in The Netherlands, the Hungarian Helsinki Committee, Save the Children Sweden, the Scottish Refugee Council in cooperation with the Scottish Government and France terre d’asile in cooperation with the Directorate for Juvenile Justice Protection of the French Ministry of Justice and the *Groupement d’intérêt public ‘Justice Coopération Internationale’* (GIP JCI).

Key learning from the project

Many EU countries faced (in 2015) and still facing high levels of refugees seeking protection including many unaccompanied children. Therefore, identifying and sharing promising practices has never been more important than today for humane and effective reception models. However, the high number of children arriving in some countries has also made reflection on current practices and their improvement more difficult due to capacity. Nevertheless, the opportunity for MS and other stakeholders to exchange information and discuss best practice was useful for all who participated.

The main findings from the project include:

- The five reception models that are the subject of this project vary from one country to another and have emerged within, and in part reflect, different legal and socio-economic traditions and contexts. This means that even if an aspect of practice is considered promising it may not be directly replicable in another country. Some of the differences that were found in the project countries are:
 - o Different reception structures/models;
 - o Different national legislative and policy frameworks;
 - o The fact that some countries are transit countries, and others destination countries; and
 - o Different levels of national funding to provide better reception facilities and services for unaccompanied children.
- An 18-month project is too short a time-frame to witness which elements of good practice can be taken on board by others as this is inevitably a complex undertaking, however, elements of interest were found in each of reception models in the five countries studied.
- Even if common EU legislation is in place, and EU member states are subject to the same international legislation, reception practices for unaccompanied children do not always meet the same standards across the EU. The study visits involving cross-European delegations enabled all participants to better understand these disparities.

The study visits proved effective as, in general, participants felt that as a result they were better able to:

- assess their own system critically in comparing it to the reception model visited particularly to appreciate its relative strengths and weaknesses more clearly;
- interact with host member state authorities and learn about the recent, current, and future situation relating to unaccompanied children, in each country;
- Collect information and ideas useful for the development of their current and future work; and
- Build a network of practitioners and get to know their counter-parts in other countries.

METHODOLOGY

The research is based on a common methodology developed by ECRE in consultation with the partners. However, within the common terms of reference, some adjustments were made in order to take into account the specific nature of each practice.

This case study investigation into guardianship as part of reception for unaccompanied children in Scotland took place from 11 to 14 May 2015. The researcher was assisted by an expert/project partner from the Scottish Refugee Council, who carried out initial desktop research, including statistical research, which was then completed by the project researcher. In the course of an on-site visit to Scotland on 11-14 May 2015 the researcher carried out face-to-face interviews with stakeholders working on different aspects of reception conditions in Scotland. These interviews were based on a semi-structured questionnaire.

By using a holistic approach and a Strength, Weaknesses, Opportunities and Threats (SWOT) analysis the case study investigation report aims to capture aspects of the SGS. Furthermore, the report summarises the national framework in primary and secondary legislation and its implementation and to what extent it is in compliance with the international (eg. UN Convention on the Rights of the Child {the CRC}) and the EU legal framework. During the interviews the main areas of focus were the responsibilities and role of each stakeholder interviewed, the nature of the interviewees' work with unaccompanied children, experiences with the SGS, positive examples of a coordinated approach, difficulties and weaknesses of the system, and potential ways to improve the system.

Stakeholders interviewed

The following individual stakeholders and organizational representatives were interviewed at the national level as part of the case study investigation visit:

- Two Home Office officials who wished to stay anonymous;
- Catriona MacSween, Service Manager, SGS;
- Lyn Ma, Glasgow Clyde College;
- Alex De Voy, Scottish Government;
- Kirsty Thomson, Legal Services Agency;
- Chris Perkins, Glasgow City Council Social Work Department;
- Graham Connolly, Centre for Excellence for Looked After Children in Scotland (CELCIS);
- Ian Spittal, CAMPUS project; and
- Dr. Alastair Muir, NHS Greater Glasgow and Clyde

GENERAL OVERVIEW OF THE SCOTTISH GUARDIANSHIP MODEL

Legislative background

The most relevant legislation is the UN CRC, the UN Refugee Convention, the Charter of the Fundamental Rights of the European Union (the Charter), the Council of Europe European Convention on Human Rights (ECHR), and the EU Reception Conditions Directive. These international and regional instruments have been significant drivers behind recent legislation in different parts of the UK on anti-trafficking and related forms of servitude and exploitation. In Scotland, the most notable has been the Human Trafficking and Exploitation (Scotland) Act 2015.

The Scottish Government has a very proactive, child-sensitive and rights-based approach, which is clearly articulated and communicated in various policy documents. On its own website the Scottish Government claims that:

“This Government’s ambition is for Scotland to become the best place in the world for a child to grow up. Recognising, respecting and promoting rights is essential if we are to make that vision a reality. This means making practical changes in order to ensure that children experience their rights on a day to day basis, whether that be their right to be heard, to be brought up by their parents, to be protected from exploitation or to be supported in exercising their cultural beliefs.

Our approach is based on the United Nations Convention on the Rights of the Child (UNCRC) – a piece of international law which makes clear what children can expect from us and what our responsibilities are towards them. It builds on the range of broader human rights which apply to us all. None of what the UNCRC says conflicts with the rights of others.

Making rights ‘real’ for children requires creative thinking. We know that no one change will deliver the changes we want to see and it is important for us to use the range of tools available to us. After all, children are affected in some way or another by almost every aspect of the Scottish Government’s work.”²

In the Scottish system, there are various actors who are charged with safeguarding the rights of asylum seeking children and who take care of them. The parental rights of the parents of an unaccompanied non-UK child are not, however, transferred to any caretaker or guardian in the UK. This could be carried out by the court but this procedure has never been initiated. In the absence of a general guardian with a statutory mandate to represent and promote the child’s best interest under Article 3 of the CRC the main stakeholder remains the social worker of the local municipal authority, which is in the present case the social worker in the Social Work Department, Glasgow City Council.

An important distinction should be made: while the guardian would have an overarching role and experience in both child care (welfare) and immigration procedures, the social worker’s main responsibility is to ensure the proper reception and child care services, while the child’s immigration (asylum) status remains secondary in the social worker’s portfolio and approach.

The UN Committee on the Rights of the Child has called for the establishment of a system of guardianship in its General Comment No. 6.³ It says a guardian should be present in “all planning and decision-making processes”, to provide “the continuum of care required by the child”.

Guardianship as an institution was set up in Scotland in order to fulfil the requirements set forth by General Comment No.6 above by creating a function, which is fully independent aiming at ensuring that the rights of the child are better respected and professionals with an immigration background may participate in the asylum procedure. As a report in 2013 into the human rights of unaccompanied children and young people in the UK by the UK Parliament’s Joint Committee on Human Rights (the JCHR) states:

“The asylum and immigration process is complex, and can be difficult for the children involved to understand. One idea which has been gathering momentum over recent years is that of establishing a system of guardianship to support unaccompanied migrant children, and to take better account of the roles and responsibilities of the wide range of professionals with whom they come into contact.”⁴

2. <http://www.gov.scot/Topics/People/Young-People/families/rights>

3. <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

4. Human Rights of unaccompanied migrant children and young people in the UK, available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/9.pdf>

As the JCHR report underlines, guardianship may be established with statutory powers (as it is the case in Canada, France, Norway and Finland), or without formal powers. Scottish law and policy makers decided to choose to latter, by not granting statutory footing to the SGS.

The Practice Framework of the SGS defines a guardian as:

“A Guardian is someone who accompanies children and young people when they claim asylum or are trafficked and are cared for by health, education and welfare services. A Guardian will help a child or young person to be actively involved in decisions that affect their life and to get the help they need, when they need it. A Guardian is on the child’s side, can explain what is happening to them, will listen to their views and experiences and speak up for them when needed. A Guardian will also help a child or young person to plan their future, whether in the UK or elsewhere.”⁵

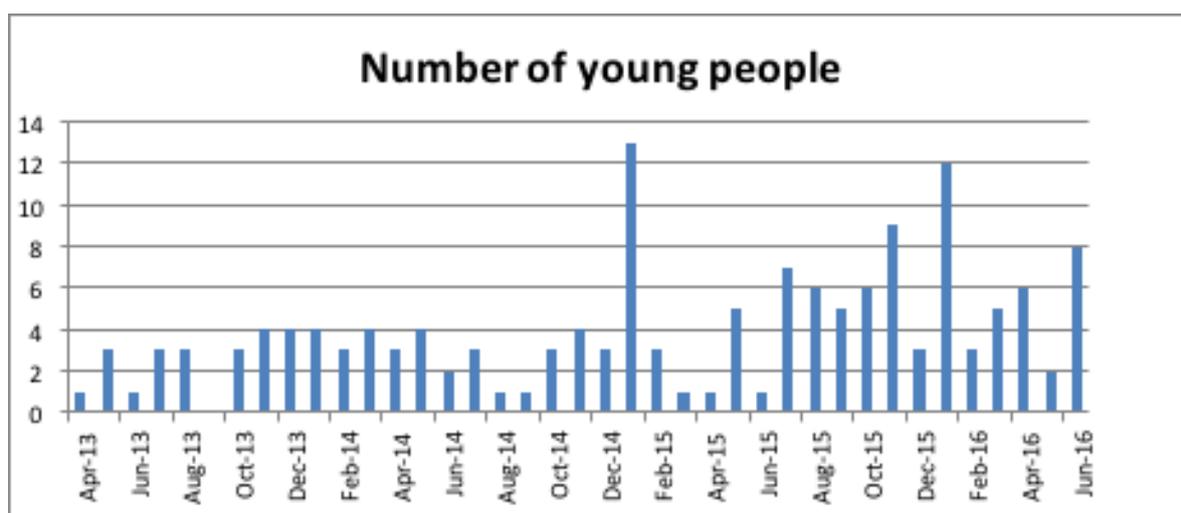
After an initial pilot period from September 2010 until the end of March 2013 the Scottish Government announced that it would fund the Scottish Refugee Council and the Aberlour Child Care Trust to deliver a core guardianship service from April 2013 for three years, and funding has continued to the present.

The Scottish system has challenges stemming from the UK’s constitutional arrangements whereby the respective legislative and policy competences of the UK and Scottish parliaments, respectively, that are relevant to unaccompanied children seeking asylum in the UK, overlap significantly. Asylum is a matter reserved to the legislative competence of the UK parliament and government but the reception-oriented provisions of social work and care of children and young people, health, education, housing, and legal assistance, are all via the Scotland Act 1998 devolved to the legislative competence of the Scottish Parliament.

Statistics from the SGS

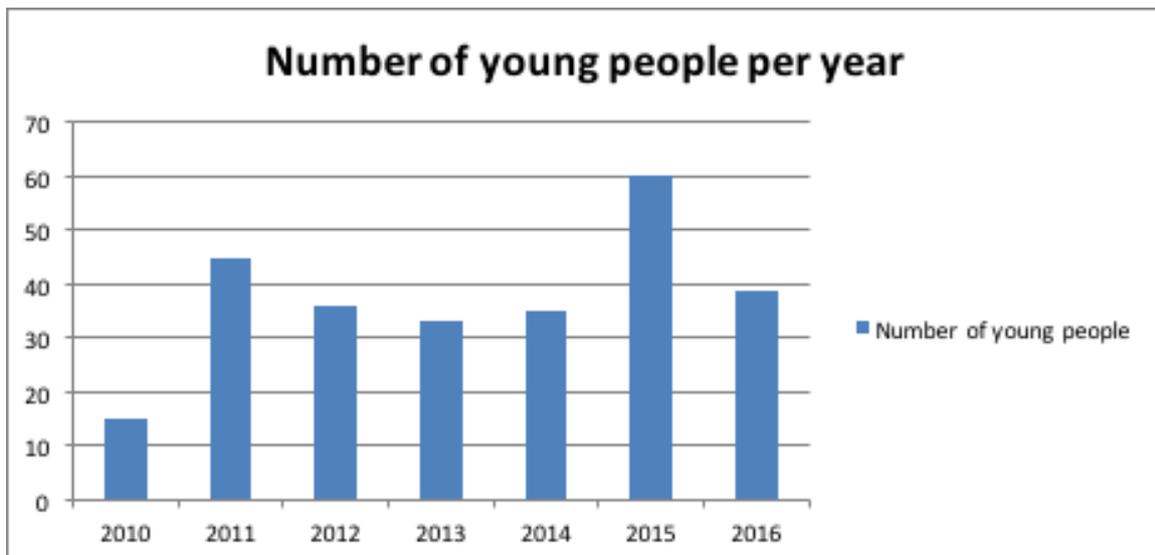
Due to world events and the unprecedented levels of forced displacement which significantly affects children including those separated from their care-givers, the numbers of unaccompanied minors seeking asylum is increasing in Scotland. The SGS works with nearly all of these children and young people. While the numbers are small in comparison to other European countries; they are rising compared to those assisted when the SGS first opened in 2010.

There have been 264 young people referred to the service since 1st September 2010. Since the Scottish Government began fully funding the service there have been 154 new referrals since 1st April 2013: 33 in year 1, 41 in year 2, 63 in year 3 and 17 since April 2016 (the figures are from the financial year April – March)



The increase in new referrals experienced in 2015 has continued to be an on-going trend. In 2016 there were 38 new referrals in the first 6 months of the year.

5. Scottish Refugee Council and Aberlour Child Care Trust: Practice framework for the Scottish Guardianship Service April 2013, available at: http://www.aberlour.org.uk/assets/0001/0152/SRC_Final_merged.pdf



There are 107 open cases.

There have been 156 cases closed to date:

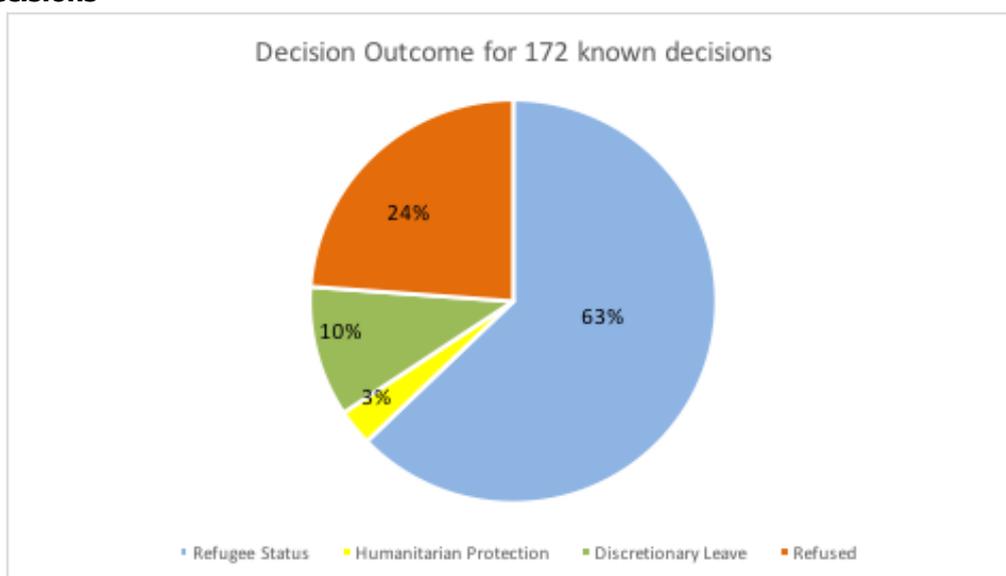
Nationality

The SGS is working with 29 nationalities speaking a variety of 31 different languages. The top 5 countries of origin are:

1. Vietnam = 22% (59)
2. Afghan = 16% (42)
3. Iran = 12% (32)
4. Somalia = 9% (23)
5. China = 7.5% (20)

Of the overall cases 74% are males and 26% females.

Status of decisions



There are 69 young people awaiting a decision and 22 unknown decisions. The unknown decisions are young people who have gone missing or whose age has been disputed.

Age Disputed

40% of young people's ages have been disputed and age assessments have been conducted. The Guardians act as the appropriate adults in the assessment interviews and offer the local municipal authorities advice to ensure that the assessments are carried out in line with the age assessment guidance.

Trafficking Statistics

38% (100 young people) have been trafficked. Also, many young people have experienced multiple exploitation.

Types of Exploitation

Cannabis Cultivation	25%
Sexual	25%
Forced Labour	21%
Domestic	14%
Drug Courier	1%
n/a	14%

Length of service given to current open cases

LENGTH OF SERVICE TO CURRENT OPEN CASES 19 July 2016 (107 open cases)	
5 + years	4 people
3-4 years	14 people
1-2 years	52 people
6 months and under (ie 2016)	37 people

Definition of a guardian in the SGS

"A Guardian is someone who accompanies children and young people when they claim asylum or are trafficked and are cared for by health, education and welfare services. A Guardian will help a child or young person to be actively involved in decisions that affect their life and to get the help they need, when they need it. A Guardian is on the child's side, can explain what is happening to them, will listen to their views and experiences and speak up for them when needed. A Guardian will also help a child or young person to plan their future, whether in the UK or elsewhere."⁶

Although its main office is in Glasgow, the SGS is a Scotland-wide service. It offers face-to-face and outreach support for all separated children in Scotland who have made themselves known to the authorities. It also supports local municipal authorities and external agencies providing information, advice and guidance about children in the asylum and immigration processes.⁷

The SGS was founded building on the results of the evidenced research commissioned by the Scottish Refugee Council in 2006, which showed that without designated assistance from a responsible adult, unaccompanied children's ability to understand and participate in complex asylum or immigration procedures was seriously hindered. The consequences were grave, as these UAMS' ability to present information on the merits of their asylum application was significantly limited and their protection claim was rejected.

Scotland's part of the UK's transposition of the EU Anti-Trafficking Directive⁸ generated the momentum to change the legal framework by giving statutory status to the role of the guardian through enshrining an entitlement to a guardian in s11 of the Human Trafficking and Exploitation (Scotland) Act 2015. The legislative modification aims at defining the guardians' role and responsibilities in legislation and that their entitlement is most appropriately open

6. Practice Framework, April 2013, page 4, available at: http://www.aberlour.org.uk/assets/0001/0152/SRC_Final_merged.pdf

7. Practice Framework, April 2013, page 8

8. DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

to children that have been trafficked as well as those who are vulnerable to such by reason of their unaccompanied status.

“The new Act ultimately provided this entitlement to an independent guardian to separated children that are considered as potential survivors of trafficking and those considered vulnerable to trafficking which includes those who are alone but who do not have trafficking indicators yet.”⁹

In particular s11 provides for this statutory entitlement to an independent guardian if the “relevant authority” (which means a local municipal authority and any other authority to be specified in regulations by Scottish Ministers) determines that in respect of a “child” (e.g. a person under 18) that there are reasonable grounds to believe that the child is, or may be, a victim of the offence of human trafficking or is vulnerable to becoming a victim of that offence, *and* no person in the United Kingdom is a person with parental rights or responsibilities in relation to the child. Scottish Ministers are also empowered through s11(7) to make regulations for further provisions about independent guardians. These will details the precise status and role of the independent guardians based on this entitlement.

Scottish Ministers’ recognition, through s11, of the relationship between a child being unaccompanied and alone with particular vulnerability to trafficked exploitation is to be welcomed. It reflects the tragically strong association between unaccompanied status and the risk of becoming a victim of trafficking. This relationship is reflected in the SGS’ own figures, as was noted above and emphasised by one of Scotland’s leading academics during the investigation: over 1/3 of unaccompanied children seeking protection and with the SGS were survivors of trafficking or exploitation or related servitude.

Organisation of the reception model

It is the social service department of the Glasgow local authority municipality that is the responsible agency for taking care of asylum seeking children and other children at risk, those who may be subject to harm under the Children (Scotland) Act 1995, the CRC, and the 1951 Refugee Convention.

The social services department’s tasks include looking after children and young people by providing accommodation, income, access to health care, and to education. They carry out the care planning and ensure the young person has access to legal services and immigration appointments. Up until only recently and whilst the SGS was in existence social workers were responsible for organising and accompanying the children to legal appointments (hearings, consultation with the legal representative). Regarding the practical arrangements, there is a special supported form of accommodation for young males between the age of 16 and 18, where social workers assist these minors. The supported accommodation is provided by an NGO, the [Mungo Foundation](#) where each child has a separate room while bathrooms, kitchen areas and common rooms are shared. In this reception structure the social workers regularly meet the young people and follow their progress to see if it is according to the care plan. Usually 30-40 children are the responsibility of one social worker (UK citizens and third country nationals as well).

Reception conditions are, however, significantly different for young girls, as they are accommodated in private flats or in hotels. One possible reason behind this difference is that the number of young unaccompanied girls arriving in Scotland is much smaller than the number of unaccompanied boys and that may be why a permanent reception facility for girls cannot be justified. This difference in provision is a concern for most stakeholders, including the service manager of the SGS. This situation does not seem to take into account the special needs and vulnerabilities of young girls in a foreign country sufficiently well given the importance of appropriate accommodation to ensure safety for young people aged 16-17 at such a difficult time in their lives.

It should to be noted that there is a different reception scheme for newly arriving children under 16 years of age, who are accommodated in child care homes together with Scottish children in state care. According to the experience of the social worker at Glasgow City Council interviewed, this model works reasonably well and the integration of these younger children is relatively smooth.¹⁰

Stakeholders involved and their roles

The first responsible adult that unaccompanied children meet is the social worker, whose main role is to provide

9. Study visit report in Scotland, page 5

10. Based on the interview with Chris Perkins on 12 May 2015

them with material and emotional assistance according to his/her needs. Social workers or their key worker colleagues also help children with cooking, doing the shopping, using public transport etc.

Besides the social workers another key stakeholder is the guardian who provides advice on the immigration and asylum procedures in order to regularise the status of the child. The guardian is the person who is trained to give detailed and professional advice on the asylum procedure, while the social worker's role is more to focus on reception conditions and associated practicalities.

At the time of conducting this investigation the guardians had no statutory status but that has now changed through, as noted above, s11 of the Human Trafficking and Exploitation (Scotland) Act 2015. For the moment, guardians are independent from any government agencies and this allows them to advocate on behalf of the unaccompanied child. Their independence is seen as a guarantee for balanced work to better ensure that the best interest of the child (article 3 of the CRC) is taken into account, but at the same time the lack of a statutory mandate may in practice lead to communication gaps since the authorities are not legally obliged to involve the guardian. As a result of the past few years' efforts to establish a guardianship system we can conclude that by 2015 guardians are mostly involved and invited to case conferences or can participate in age assessment exercises, but thankfully the new s11 entitlement described above now gives the guardian a right to receive appropriate information from all relevant statutory bodies.

Case conferences are the forum where most stakeholders meet. The social worker is responsible for organising a case conference and if the unaccompanied child is identified as vulnerable or a survivor of trafficking, the social worker should always invite the guardian to the case conference (core group meeting). These case conferences are held at least every six months.

The SGS is a partnership between the Scottish Refugee Council and the Aberlour Child Care Trust. It ran as pilot project from September 2010 to March 2013. The Scottish Guardianship Service was initially developed as a pilot service to test a hypothesis or a model for guardianship for separated children. As the pilot project was completed successfully the Scottish Government decided to fund the SGS from 1 April 2013 to the present.

At the time of this case study investigation visit the SGS operated with four full-time guardians (three core guardians and the manager), two relief guardians (one of them is based in the North and one in the South, of Scotland). One guardian tends to be responsible for approximately 20-25 children but this largely depends on the referral numbers from the Home Office and the social services.

Target group, eligibility criteria for children to benefit from guardianship

An unaccompanied child or young person is eligible for assistance by the SGS if s/he is seeking asylum or has been a victim of trafficking. In this case they may be referred to the SGS in order to receive support from a guardian. The SGS works with unaccompanied children who arrive in Scotland under 18 years of age and who

- are a new presentation to the authorities after 1 September 2010;
- are seeking asylum in Scotland or have been trafficked from outside the EEA;
- are currently being treated as a child under 18 but are age disputed and are undergoing an age assessment.

Referrals to the service can be made from any local municipal authority or agency in Scotland. The referral form can be found on the Aberlour website.

It should be noted that prior to the launching of the pilot guardianship project in 2010, the Scottish Refugee Council conducted a survey with unaccompanied children about how they would imagine an ideal guardian. The organisation's future effort to create the SGS reflects the interviewed children's views. In line with Article 12 of the Convention on the Rights of the Child, the opinion and the involvement of children were important in improving the SGS to better understand their needs, what they would like to know about their situation and future. To this end, over 14 information modules were built up, which are used by the guardians to provide unaccompanied children with information on their situation.¹¹

11. http://www.aberlour.org.uk/how_we_help/information_for_young_people

ASSESSMENT AND QUALITY INDICATORS OF THE SCOTTISH MODEL

Enhanced cooperation between stakeholders

It is evident that an independent guardian can only function if the necessary and relevant information is shared with him/her in a timely manner and s/he is involved in the procedure at the earliest possible time. To this end, it is essential that all stakeholders have a clear understanding of these roles and competencies, ideally in the form of a legally binding document which creates equal partners.

As noted during the study visit conducted to Scotland on 15-16 June 2015 it was concluded that over time relationships have improved between social workers and guardians as the former has recognised the unique role the latter play which is not in any competition to that of the social worker who remains invested with lead decision-making responsibility for the child. In an ideal situation the care planning process is a joint task, where guardians are equally involved. As practice shows the guardians have become gradually more and more involved in care planning processes to ensure that they represent the voice of the young person.

Political support cannot be disregarded as a success factor; in the present good practice observed it is also of key importance that the Scottish Government strongly supports the guardianship model and is committed to continue with it. This has been pivotal in moving the concept of independent guardianship into the centre of children's rights legislation, policy and practice in Scotland. The inclusion of independent guardianship in the Human Trafficking and Exploitation (Scotland) Act 2015 is the most recent demonstration of this political support and commitment. This is in contrast to the uncertain status of independent guardianship in England and Wales where, despite a provision in the Modern Slavery Act 2015 enabling a similar model, this is yet to be implemented.

The present guardianship model has not yet been able to address the issue of age assessment where the social workers have a leading and decisive role. This can sometimes create tension between the two professionals (the guardian and the social worker). Besides the social worker conducting the age assessment someone else should be present (who is ideally the guardian). In the Scottish practice it is an assessment not only focusing on physical appearance, but more on the unaccompanied child's or young person's social, psychological and emotional maturity. A medical examination does not usually take place because it is not seen as an ethical examination by the majority of the professionals in this field.

During the age assessment examination the guardian should stay reasonably impartial, to see if procedural norms were respected, if the methodology of the examination was acceptable, and to state if they think errors or misinterpretations have been made. The guardian's presence is considered by many to be a helpful safeguard.¹²

Eligibility criteria to qualify as a guardian, standards

It has to be kept in mind that there is no definitive model of guardianship either in Scotland, or elsewhere, therefore the SGS relies on the results of academic research and analysis evaluating the pilot project.¹³

The Council of Europe under the Daphne programme elaborated a set of core standards for guardians with several child care and child rights experts.¹⁴ The core standards of guardians may be summarized as follows.

v As regards the role and responsibilities of the guardian:

Standard 1: The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

The guardian is able to advocate, assess and adjust the best interest of the child on a regular basis, involves all

12. Interview with Catriona MacSween, Service Manager of the Scottish Guardianship Service on 11 May 2015

13. The analysis was carried out by Professor Heaven Crawley of the University of Swansea and Professor Ravi Kohli from the University of Bedfordshire

14. Goeman M, van Os C, Bellander E, Fournier K, Gallizia G, Arnold S, Gittrich T, Neufeld I, Uzelac M (2011) Core Standards for Guardians of Separated Children in Europe. Goals for Guardians and Authorities, Leiden: Defence for Children – ECPAT The Netherlands, available at: www.defenceforchildren.nl/images/69/1632.pdf

relevant actors and ensures that the assessment of the best interest of the child is based on the views of the child and the individual circumstances.

Standard 2: The guardian ensures the child's participation in every decision which affects the child.

The guardian provides information in a child friendly way and checks if the child understands and recalls the information, listens carefully to the child and ensures plans are based on the views of the child and shared with the child, is open to feedback and manages expectations.

Standard 3: The guardian protects the safety of the child.

The guardian gives the highest possible priority to the child's safety, knows the signals of child abuse and trafficking, acts and reports upon signals of any harm or danger, ensures the child knows he/she is welcome to voice anything concerning his/her safety, only breaks the confidentiality norm when a child is at risk, ensures victims get appropriate treatment and is open to being monitored on own behaviour.

Standard 4: The guardian acts as an advocate for the rights of the child.

The guardian is an assertive, committed watchdog, dedicated to defending the rights of the child, shows emotional strength, opposes decisions which are not taken in the best interests of the child and pursues fair procedures concerning the child.

Standard 5: The guardian is a bridge between and focal point for the child and other actors involved.

The guardian keeps in contact with all relevant actors, ensures to be informed about all decisions which have an impact on the child and is where necessary present at meetings, assists in establishing links with the child's community and developing relationships that give the child a sense of belonging to a family or group.

Standard 6: The guardian ensures the timely identification and implementation of a durable solution.

The guardian ensures the identification of a durable and safe solution and challenges others to prove that their proposed solutions take the best interest of the child as a primary consideration, supports the reunification of the child with his/her family and supports the integration of the child in the host country when this is in the best interest of the child, defends safety guarantees when a child is returned and prepares the child for all predictable changes which will occur after turning eighteen.

Standard 7: The guardian treats the child with respect and dignity.

The guardian demonstrates appropriate behaviour, treats the child unprejudiced with respect to the child's identity, privacy and cultural differences, supports the child in developing peer relationships and shows a flexible approach tailored to the individual needs of the child.

Standard 8: The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

The guardian is always honest with the child, keeps his/her promises and keeps all information confidential unless it is necessary to break confidentiality to keep a child safe, pays attention to verbal and nonverbal communication, is empathic towards the child and gives moral support and makes clear to the child that a child who disappears is always welcome to return.

Standard 9: The guardian is accessible.

The guardian can be reached easily, lives near enough to the child to be able to respond quickly to difficulties, sees the child as soon as possible after his/her appointment and pays visits to the child on a frequent basis and communicates in a way which fits the age and development of the child, making use of interpreters whenever necessary and contacts the child to keep in touch also when there is no specific need to do so.

v As regards the qualifications of the guardian:

Standard 10: The guardian is equipped with relevant professional knowledge and competences.

The guardian is proactive in identifying learning and development needs, manages his/her caseload and available resources, is accountable, works according to a set methodology, knows personal and professional limits, seeks support and counselling whenever necessary and is open to supervision and monitoring.

According to the Scottish model, the guardians must have at least **diploma of higher education** (SCQF level 8 qualification), and they must undergo immigration training (OISC level 2), which is a UK-based immigration training. In practice in the Scottish model guardians are technically level 2 advisors, which means that they are qualified to take statements from the client. Their role is distinct from that of the legal representative as the guardian's responsibility is broader and not limited to legal procedural elements.

Knowledge

As regards the knowledge of a guardian, s/he must be familiar with the situation of separated children and asylum procedures. Their knowledge requirements include:

- Anti-discriminatory practice
- Effects of trauma, deprivation and environment on young people
- Child care law and child protection/vulnerable groups
- Asylum law and immigration law the implications of all of the processes
- Human and child development
- Children's and vulnerable groups' right and responsibilities
- Social policy and its application asylum and social care
- Legislation and policy in relation to trafficking
- Physical, sexual and mental health knowledge
- Social work theories and methods of intervention
- Local knowledge in respect of available services such as social work supports, education and leisure

Skills

All guardians have to have skills that enable them to communicate clearly and sensitively with their clients (UAMs), other agencies and their colleagues. Given the diverse social and cultural background of UAMs, it is also beneficial to have intercultural skills and practice (or background).

Abilities

Guardians must be able to:

- Put into practice child-centred values and to empower children/young people
- Recognise and respond to the effects of deprivation, trauma and the environment on service users' functioning
- Work within established systems of work, including the ability to manage difficult and challenging behaviour
- Initiate, engage in, and promote meaningful activities for service users
- Develop and maintain appropriate relationships, with children and young people colleagues and other agencies
- Engage in reflective practice
- Deliver services in a way which enables and empowers the service user
- Undertake assessment of need and risk
- Prioritise competing demands in a varied workload on an ongoing basis
- Debrief and deal with trauma

According to the experience of the Scottish Refugee Council, the guardians share different information modules with unaccompanied children that address the different stages of the asylum process (screening interview, substantive interview). The service manager of the Scottish Guardianship Service gave an example how it may be that

the most practical details are part of the information shared and discussed, e.g. the environment may be explained in details to the unaccompanied child or young person in order to better prepare them for the interview: how to arrive there, security, the process of fingerprinting etc.

Guardians try to emphasise to unaccompanied children or young people not to take anything for granted, which means that in preparation to the interview they typically go through the questions of a hearing to encourage them to speak up, tell the truth, and not feel under pressure. In the Scottish Refugee Council's experience both asylum and age assessment interviews tend to be very stressful for those children whose age is disputed and who are often very worried whilst they await a decision. This gets to another important role of the guardian, which is to prepare the unaccompanied child or young person for the possible outcomes of decisions and enable them to better handle these if adverse.

Jointly elaborated protocols¹⁵

"A protocol was drafted between the Scottish Guardianship Service, Glasgow City Council Asylum Assessment Team and the then Regional UK Border Agency (UKBA) with the aim of improving inter-agency working, clarifying responsibility for key tasks when working with separated children and young people and clarifying procedures for ensuring that tasks are carried out effectively. This protocol plays an important role in consolidating and cementing the understanding of service providers about the role of the Guardian, not least because it can be used as a point of clarity where disagreements or tensions arise."

It has become clear through the series of interviews that the present SGS is functioning due to the commitment of all stakeholders to participate despite the lack of legal obligations to do so. In order to strengthen the cooperation and create a reliable system with clear roles and responsibilities it is essential to have minimum standards and a common understanding of the cooperation in the form of protocols or *standard operating procedures* (SOP). These documents must be respected by all stakeholders as they create the basis of the collaboration and the framework which provides that all parties may work towards ensuring that the rights of the child are better ensured.

The protocol used in the Scottish model provides practical guidance to enable to cooperation between the different agencies by describing:

- 1) the aim of the guardianship services;
- 2) foreseeing concrete procedural steps to be taken when the child presents him/herself at one of the agencies concerned;
- 3) the protocol to be followed when the child's age is disputed;
- 4) if there are indicators suggesting they may be the victim of trafficking;
- 5) appointments with the legal representative;
- 6) responsibilities related to family tracing;
- 7) roles of the guardian and the social worker (and also the UKBA) at the screening and substantive interview and the preparation prior to the interviews;
- 8) tasks and responsibilities related to the decision on asylum and immigration status,
- 9) return to the country of origin;
- 10) accommodation arrangements (*Looked After and Accommodated Review* (LAAC));
- 11) organisation and roles at the Vulnerable Young Person (VYP), Core Group meeting or equivalent;
- 12) roles related to the schooling and education of the UAM;
- 13) access to healthcare;
- 14) the social workers' and the guardians' responsibilities in preparing for the transition to 18;
- 15) review/extension of refugee status (or discretionary leave, or humanitarian protection).

The **added value** of the Scottish model is that building on a fair partnership between the different agencies dealing with unaccompanied children it gives clear definitions on the role of the guardian. The guardian in this model functions as a hub, a focal point that is responsible for coordinating between stakeholders from an entirely inde-

15. Practice Framework, April 2013, Appendix 1, page 71

pendent position. The guardian is not liaised to any government agency; the funding of the SGS is independent from the funding of the social services, which have a statutory role in child protection in Scotland. Through this "external" role, it is hoped that the guardian will be in a position to better represent the best interest of the child, having no interest in central or local government structures or funding.

In the Scottish guardianship model it was recognised that a key relationship is between the social worker and the independent guardian with the former invested with decision-making responsibilities and associated budgets and the latter endowed with complete independence working with and for only the child or young person. The key difference is that the independent guardian is unfettered from any extraneous consideration outside of what they have discussed and agreed with the child or young person, and the uniqueness of this role was widely recognised and welcomed.

From a protection point of view, the strength of the Scottish model is that the guardian's primary role is to assist the unaccompanied child or young person through the immigration and asylum procedures aiming at obtaining the best possible form and level of protection, and help contribute to their successful integration.. The guardian is seen as an advocate for the rights of the child, a bridge or hub between the child and the various authorities or agencies (social services, immigration agency, school etc.) who is always available and who has built a relationship of trust.

- The importance of safe accommodation and early access to it were highlighted both at the roundtable and at the site visit to the Campus Project in May 2015. There was consensus that there needs to be greater access to safe accommodation and straight away after identification as this is a vital protection factor for all unaccompanied children seeking asylum and, especially, for those that have been trafficked or suffered related forms of servitude. There was also discussion on the need for a more outcome-focused approach to housing e.g. the goal for all unaccompanied children and young people should be a safe and nurturing living environment which may be fostering, supported living or carers, or for young people, independent living. There was discussion and general agreement that the Campus Project provided safe accommodation and a degree of supported living assistance for a limited number of boys but there was a need for more such provision. And, there was even greater agreement that something at least equivalent should be put in place for young unaccompanied women as there was no such gender-appropriate accommodation for 16-17 year old young women.

SWOT ANALYSIS OF THE SCOTTISH MODEL

Strengths

- enhanced information sharing and understanding
- independence, the best interest of the child is the driving force
- relationship of trust may be built between the child and the guardian
- the guardianship service offers face-to-face support and outreach support for all separated children in Scotland

The core of the guardianship model is to provide unaccompanied asylum seeking children (hereinafter referred to as UASC) with a professional who will assist him or her through the asylum procedure and other immigration related legal procedures by connecting other professionals around the given child and by safeguarding his/her best interest. This solution aims at facilitating that these UASC better understand the legal procedures that they are subject to in order to improve their ability to successfully participate in shaping their own future.

The project responds to the UASC's need for tailor made assistance, which is a separate profession, which requires other skills than those in the child welfare system, so the guardian may be the person to bridge various professions. Unaccompanied asylum seeking and trafficked children from outside the EEA arriving in Scotland were provided with an advocate (the guardian) independent of the immigration authorities and local municipal authority. The guardian was available for the child to help him/her in disclosing certain crucial pieces of information related to the asylum claim and also to comprehensively explain the processes to the child.

Weaknesses

- reluctance to accept the newly established guardianship institution on behalf of the social services
- roles and responsibilities seen as parallel by various actors in the field (Home Office, Social Services)
- lack of a clear referral mechanism from the social services to the guardianship services
- lack of formal powers and institutionalism for guardianship
- the system is not "future-proof", guardians may leave one day and their experience and dedication may be difficult to reproduce

Any tensions between the two professions of social work and guardianship run the risk of hindering the joined-up working that should be relentlessly centred on what unites these professionals, which is to secure the best interests of the unaccompanied child and with them lift them out of their vulnerable predicaments and overcome difficulties participating in the asylum and other procedure impacting on the lives of unaccompanied children or young people.

Despite the fact that the social work services have been in charge of assisting these children for a long time, they are not immigration or asylum professionals and their focus understandably lies elsewhere. Their primary task is to ensure that the UASC is in a safe environment, proper accommodation is provided, access to education is granted and these children receive the appropriate health services' attention should there be a need. It has been clearly pointed out in UNCRC General Comment No.6. that an experienced guardian who is familiar with immigration procedures could significantly contribute to a better protection scheme for the unaccompanied child or young person in consideration.

Scottish professionals interviewed confirmed this: representatives of the Home Office and the Scottish Government, the English teacher in the Glasgow Clyde College, the local GP dealing with refugee children and also the Legal Services Agency commended the SGS for their commitment and preparedness. The overriding view was that professional guardianship is a positive development and should continue.

Opportunities

- The transposition of the EU Trafficking Directive¹⁶ gave a momentum to rethink the Scottish approach, inter alia, to unaccompanied children or young people including those that have suffered trafficked exploitation. This transposition was the driver behind the Human Trafficking and Exploitation (Scotland) Act 2015, which as noted, now includes the above-mentioned statutory entitlement to an independent guardian
- it is promising that almost all stakeholders are satisfied with the SGS finding its role and cooperation both fruitful and effective
- the support of the Scottish Government will be pivotal to further entrench and improve this unique role and specialist practice of independent guardianship vis-à-vis this distinctively vulnerable group of unaccompanied children and young people.

The present situation is important for the continuation and the institutionalisation of the SGS model. The transposition of the EU's Trafficking Directive gave rise to a new discussion between various stakeholders, government agencies, local authorities and civil society organisations to discover whether a more formal, statutory guardian could and should be appointed to enhance the best interest of children who are victims of trafficking from third countries.

Threats

- the Scottish Government stops funding the SGS
- the number of UASC seeking asylum in Scotland increases/decreases dramatically and this in practice delays the implementation of the entitlement to an independent guardian

16. DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

FINDINGS OF THE CASE STUDY

1. Consideration was given to the independent advocate model of guardianship in Scotland, which is now on a statutory basis, with guardians not as decision-makers but there absolutely as decision-informers and, therefore, there to advocate for and with the child or young person in relation to those responsible for making decisions.
2. Learning was drawn from the context in Scotland on the imperative of early intervention, appropriate accommodation and support especially psychological and legal support being available at the earliest opportunity after the identification of an unaccompanied child.
3. Guardianship in Scotland was in general well-received by the delegation for the study visit with positive comments in the evaluation albeit there was broad consensus that this model may not be replicable in some of the delegates' jurisdictions given that guardians in those countries have decision-making powers and not the same degree of independence as the guardians have in Scotland.
4. Consideration was given to the uniquely qualified role of the guardian in the Scottish context and whether and how this unique skill-set of child rights, legal expertise, immigration, trafficking and exploitation, and social protection may be tailored in other jurisdictions.

RECOMMENDATIONS

1. To avoid delays in accessing the guardian's assistance the codification of a formal standard operating protocol (SOP) could be considered to better define a reference mechanism with concrete deadlines between the social services and the SGS. It could be that the regulations defining the role of the guardian through s11 of the Human Trafficking and Exploitation (Scotland) Act facilitate the development of such a national procedure.
2. The Scottish government should ensure continuous funding for the SGS's operation.
3. To ensure sustainability a formalised recruitment mechanism and specific introductory and continuous learning training should be developed for future guardians to maintain the high quality of their services (to deal with any potential fluctuation).
4. The same or equivalent accommodation should be put in place for young unaccompanied women as there was no specific gender-appropriate accommodation for 16-17 year old young women. Also more frequent placement in foster care as an accommodation arrangement should be encouraged.
5. As an overall consideration for the better respect of the rights of the child it is recommended to ensure that children are treated equally in accessing assistance and care regardless of their immigration status, in other words equality between child survivors of trafficking and unaccompanied asylum seeking children should be ensured.

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The overview table serves as a compilation of rights codified in the UN Convention on the Child and key EU provisions which provide for their implementation and/or application. It serves as a check-list for national partners to provide information as to where domestic reception practice/model are based on legal instruments referred to in the table.

Analysis of the 1995 Child (Scotland) Act¹⁷ in the light of international and European child rights instruments:

UN CRC Cluster	Rights	CRC	Recast reception conditions.	Antitrafficking directive	Recast Asylum procedure	Scotland
II General Principles	Best interest of the child	Art 3.1	Preamble 9 (22), Arts 2 (j), II. 2.23.24	Preamble 8 and 22 Art 13		Art 61 (8) Art 68 (10) b (i) Art 73 (4) c Art 22A (1) 0
	Right to information, Right to be heard/ Right to participation	Art. 12.	Art. 23.2			A Art 45
	Right to life, survival and development		Art. 23		Preamble 33	Art 1 (1) a
III Civil rights and freedom	Identification as a child		Arts 21,22	Preamble 23	Preamble (22) Art. 25.5	
	Registration and documentation	Arts. 7,8		Art.6		B
IV. family environment and alternative care	Rehabilitation and reintegration of victims of violence	Art, 19,39	Art.23.4	Preamble 18,22		-
	Assistance of victims of trafficking/ violence	Art, 19,39	Arts 23.4,25.1	Art. 13,14,17		-
	Reception staff specific training		Art. 18.7,24.4,25.2	Preamble 25		-
V. Basic health and welfare	Access to health services	Art. 24	Art; 19	Art. 11.5		C
	Accommodation	Art. 27.1-3	Art.24.2	Art. 11.5		D
	Right to social security	Art 26.				E
	Right to adequate standards of living/ material support	Art. 27.1-3	Art. 17,18,20,23.1	Art. 11.5		F
VI Education, leisure and cultural activities	Right to education	Art. 28	Art. 14	Art.14.1		G
	Right to rest, play and participate in artistic and cultural activities	Art.31	Arts. 11.2,23.3			-
VII. Special protection measures	Guardianship/ representation	Arts18.1, 20	Art. 24.1	Preamble (23), (24), art. 16.3	Art.25	Art 2 Art 4 Art 7
	Legal information, assistance and representation	Arts 37 (d), 40.2 (ii)	Arts. 9.6,26.2-3-6	Art.15.2	Arts. 19,20,21,22,23,25.4	Arts 42-47
	Durable solutions			Preamble 23, arts/ 14,16.2 Arts. II.5-6,12.3		-
	Access to protection procedures				Art. 7.3-4	Art 52
	Child sensitive procedural measures	Art,3, 12,19			Art. 8,15.3,12.3	Arts 42-47

17. <http://www.legislation.gov.uk/ukpga/1995/36/contents>

VIII General measures of implementation (GMI)	Actors training and qualifications		Arts, 29.1	Preamble 15, 25, Arts, 9.3, 15.3,18.3	Preamble 16,26 arts, 4.3, 6.1,14.1, 25.3,34.2,	Arts 27 (2); 39 (2); 40 (4) b; Schedule 1 (9);
	Monitoring and review		Preamble 30, arts 28, 30	Art. 23	Preamble (55), art.50	-
	Complaints					-

- **O** Some specific mention as listed above, many times the Law only mentions the 'interest of the child'. The Sheriff has the right to issue a child protection order if the vital interests of the child seems to be threatened.
- **A** The right is explicitly mentioned in the Act. Apart from Art 45, the Act constitutes other measures which strengthen the provision in the Act and the Scottish legal system. See Art 42 which enables the Secretary of State to make rules to constituting and arranging children's hearings
- **B** Registration of Births, Deaths and Marriages (Scotland) Act 1965 Art 13
- **C** This right is not explicitly stated in the Act, however it enacts provisions which indicate that this right is upheld and considered to be important. See Art 19, according to which local authorities need to publish a plan for the provision of relevant services for the children living in their area. In the drawing up of such a plan and carrying out any review the Health Board and the National Health Services need to be consulted.
- **D** Yet again, no specific mention, however children at risk of harm are provided with short-term refuge as of Art 38 (1) and the Sheriff has the right to issue a child protection order if he has reasonable grounds to believe that the child is in danger at his/her current accommodation (Art 57)
- **E** See Art 52 for the list of events which are considered as threatening to the child's well-being and are highly likely to trigger official action, thus indirectly indicating that the child has the right to social security. The Sheriff's above-mentioned child protection order can also be issued if the child is believed to be treated in a way which does not comply with her/his needs (Art 57).
- **F** See E
- **G** No specific mention, however the issue is partly regulated by the Education Act. Art 52 (2) h) indicates that compulsory measures of protection should be taken if a child fails to attend school regularly without a reasonable excuse. Art 27 constitutes that the local authorities should provide day care and pre-school for children in need.



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