# Child trafficking victims and legal guardians: Exploring the fulfilment of the EU trafficking directive in the context

of the UK modern Slavery Act 2015 – Best practice or not fit for purpose?

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Abstract

Child victims of trafficking are recognisedas particularly vulnerable victims, who require additional protection and support and a more rigorous legal framework. The regional anti- trafficking instruments1 explicitly enforce the importance of protecting child trafficking victims, requiring Member States to ‘appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities’.2 The problem of child

1. See also Article 10(4), Council of Europe Convention on Action against Trafficking in Human Beings (2005), states that as soon as an unaccompanied child is identified as a victim, Member States must ‘provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child’; Recital, 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 states that ‘Member States should ensure that specific assistance, support and protective measures are available to child victims.’; EUROSTAT, Trafficking in Human Beings, 2015 edition, p. 25.
2. Article 14(2), 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/

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trafficking and exploitation has received increased attention in England and Wales in recent years, with record number of minors referred to the National Referral Mechanism in 2016. Running parallel to this are the apparent failings of the domestic social care system to safeguard not only trafficked children but also those who are seeking asylum or unaccompanied. Over a quarter of officially identified trafficked children were found to have gone missing between 2014 and 2015.3 Across the United Kingdom when transposing the European Union (EU) legal framework, the Government maintained that existing provisions by local authorities under their statutory child protection obligations, including social workers and independent reviewing officers, fulfilled the guardian requirements in the Directive. The Modern Slavery Act 2015 has placed significant emphasis on reforming the approach to the protection for child trafficking victims, culminating in the introduction a specific statutory provision establishing Independent Child Trafficking Advo- cates (ICTAs).4 Such a scheme is the first guardian of its kind, designed specifically for child traf- ficking victims in Europe. Taking into account the recent evaluation of pilot schemes,5 and the slight variation in approach taken in the devolved jurisdictions of the United Kingdom,6 this article will consider the extent to which the protection of child trafficking victims under the jurisdiction of the Modern Slavery Act 2015 is sufficient to fulfil the legal positive obligations imposed by EU Law. This article will demonstrate that as it stands the Modern Slavery Act 2015 fulfils the obligations of the EU Trafficking Directive in relation to the protection of child trafficking victims. However, its fully effective enforcement requires further efforts in policy to ensure that these legal obligations are implemented in practice.

Keywords

Child trafficking, EU Law, guardianship, Modern Slavery Act 2015, positive obligations

## Introduction

Child trafficking involves the movement of children for the purpose of exploitation, including sexual exploitation, labour exploitation or the removal of organs. The particular vulnerability of children to exploitation requires additional protection and support when a child is identified as a potential victim of child trafficking. Regional anti-trafficking instruments7 reflect this by enforcing

JHA. See also Article 16(3) which requires Member States to ‘take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings’.

1. End Child Prostitution and Trafficking (ECPAT) UK, Missing Children, Heading Back to Harm – A study on trafficked and unaccompanied children going missing from care in the UK (2016) 10
2. Section 48, Modern Slavery Act 2015.
3. Home office, *Evaluation of Independent Child Trafficking Advocates Trial: Final Report*, 17 December 2015.
4. Section 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 and section 11 Human Trafficking and Exploitation (Scotland) Act 2015 provide for an independent legal guardian for trafficked and separated children.
5. See also: Article 10(4), Council of Europe Convention on Action against Trafficking in Human Beings (2005), states that as soon as an unaccompanied child is identified as a victim, Member States must ‘provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child’; Recital, 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 states that ‘Member States should ensure that specific assistance, support and protective measures are available to child victims.’

a rigorous legal framework that explicitly emphasises the importance of protection and safeguard- ing child trafficking victims. Such a high threshold for minimum standards for Member States secures a child-friendly approach that is compliant with international and regional law on funda- mental rights of the child8 and victim protection.

Across Europe, 16% of trafficking victims are minors9 and, following recent migration into Europe at the Central Southern and Eastern Mediterranean border, a large number of unaccompa- nied minors are deemed to be at high risk of exploitation.10 One significant issue arising from the increased numbers of unaccompanied minors is the large number of children who disappear when placed under the supervision of the state.11 Reasons for this being problematic vary between professionals and those who are unaccompanied themselves, but common factors included, among others, the continued control/influence of traffickers, a lack of trust in authorities/adults and the lack of certainty surrounding immigration status.12 Thus the ‘appoint[ment] of a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities’13 is a core measure14 that should be applied in conjunction with the provision of safe accommodation for child trafficking victims caused by their continuing vulner- ability of being under the control of exploiters.15 Across the European Union (EU), the problem of child trafficking and exploitation is growing in magnitude, with the 2016 Report from the Eur- opean Commission on the progress made by the EU painting a picture of inadequacy not only in the broader anti-trafficking strategy but specifically in regard to the increased level of child traffick- ing.16 The Report recommended that:

concerted and coordinated efforts are made to prevent and address child trafficking, reduce the vulner- ability of at-risk children, provide adequate support to child victims, and ensure that a child protection dimension is incorporated into all measures targeting children, particularly through strengthening integrated child protection systems and their cross-border cooperation.

Unfortunately, it appears that across the EU, the implementation of age-specific support remains inadequate.17 This is acutely apparent in the case of the United Kingdom and its approach

1. Article 3 (3) of the Treaty on European Union; Article 24 of the EU Charter of Fundamental Rights.
2. EUROSTAT, Trafficking in Human Beings, 2015 edition, p. 25.
3. Europol, Migrant Smuggling in the EU, February 2016, pp. 11–12: In 2015, 85,482 unaccompanied minors applied for asylum in the EU. This number is three times higher than in 2014.
4. Europol, Migrant Smuggling in the EU, p. 12.
5. ECPAT UK, Missing Children, Heading Back to Harm – A study on trafficked and unaccompanied children going missing from care in the UK (2016) 55.
6. Article 14(2), 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. See also Article 16(3) which requires Member States to ‘take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings’.
7. M. Goeman, C. van Os, E. Bellander, K. Fournier, G. Gallizia, S. Arnold, T. Gittrich, I. Neufeld and M. Uzelac, *Core Standards for Guardians of Separated Children in Europe. Goals for Guardians and Authorities* (Leiden: Defence for Children – ECPAT The Netherlands, 2011).
8. FRA, Guardianship systems for children deprived of parental care in the European Union with a particular focus on their role in responding to child trafficking.
9. European Commission, *Report on the progress made in the fight against trafficking in human being s* (Brussels, 2016), GRETA, 6th General Report of GRETA’S Activities (2016) 35.

17. Op. cit., p. 11.

to anti-trafficking and the protection of minors. In 2017, statistics demonstrated that there had been a 66% rise in the number of child victims identified in 2016. The end of year summary of National Referral Mechanism (NRM) Statistics for 2017 published by the National Crime Agency states that 5145 potential victims were referred into the system, of this number 2118 were potential child trafficking victims; this represents 41% of overall referrals.18 Further to this, research carried out by End Child Prostitution and Trafficking (ECPAT) revealed that from September 2015 to 2015, 28% of trafficked children and 13% of unaccompanied children in care went missing at least once, of this number, 207 of these children had not been found.19 It appears that despite the requirement of age-specific victim protection at the EU level, and the introduction of the Modern Slavery Act 2015, measures implemented in the United Kingdom are not always fit for purpose.

Part 1 of this article will consider the EU framework and approach to ensuring that child protection systems take into account the need to ensure the safety of child trafficking victims. ‘The EU legal framework and obligations for the protection of child victims of trafficking’ section outlines the obligations on states to ensure the protection of child victims of trafficking. ‘Guardian- ship systems: Ensuring the safety, security and best interests of child trafficking victims’ section focuses upon one particular measure considered as one way of reinforcing child protection: the appointment of guardians.20 In this article, a guardian refers to an ‘independent person who safe- guards the child’s best interests and general well-being, and to this effect complements the limited legal capacity of the child, when necessary, in the same way that parents do’.21

In part 2, as the Westminster government has positioned the United Kingdom as a beacon in the anti-modern slavery movement, this article will consider the extent to which the creation of ICTAs is as an example of best practice. As will be shown, this is in stark contrast to the position prior to the Modern Slavery Act 2015, with no uniform approach to guardianship.22 With this context in mind, ‘The existing legal framework for guardian requirements’ section provides an overview of the limited measures deemed necessary to ensure compliance with the Directive, as established in  the 2011 Home Office Guidelines, and queries the impact of a lack of willingness to develop further specialised measures has on ensuring protection of child trafficking victims. ‘The Modern Slavery Act 2015 and the child trafficking advocates pilot: An example of best practice for the EU?’ section addresses the process through which the provisions for legal guardianship of child trafficking victims were vastly overhauled during the legislative process which has culminated in the explicit recognition of the need for specialised ICTAs (section 48 Modern Slavery Act 2015). ‘Analysis: Derogation of obligations: Does the Modern Slavery Act 2015 do enough?’ section will consider the ‘pilot’ implementation of section 48, as the extent to which the protection of child trafficking victims under the jurisdiction of the Modern Slavery Act 2015 is sufficient to fulfil the legal positive obligations imposed by EU law. Overall, it will be suggested that the full and effective

1. National Referral Mechanism Statistics – End of Year Summary 2017.
2. ECPAT UK, Missing Children, Heading Back to Harm – A study on trafficked and unaccompanied children going missing from care in the UK (2016) 10.
3. NB this article refers to guardians who are legal persons who have been appointed by a court or another

competent authority to perform guardianship duties, the term does not refer to a child’s relative or other persons within the child’s family environment.

1. FRA, Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, October 2014, p. 14.
2. FRA, Guardianship systems for children deprived of parental care in the European Union with a particular focus on their role in responding to child trafficking, June 2015, p. 26.

implementation of the Modern Slavery Act 2015 will require further efforts in policy to ensure the fulfilment of the provisions that seek to secure support and assistance to child trafficking victims.

## Part 1: The EU’s response to child trafficking in Europe

### The EU legal framework and obligations for the protection of child victims of trafficking

Addressing the phenomenon of trafficking has become an issue of increasing importance on both an international level and an EU level. As an institution, the EU had made previous attempts at interacting with this issue and attempting to provide and harmonise anti-trafficking frameworks across the Member States.23 With the entry into force of the Treaty of Lisbon,24 the use of framework decisions25 under Article 34 of the Treaty on EU – which were adopted in the area of trafficking – could no longer be adopted. The Treaty on the Function of the EU confers explicit competence on the EU to formulate a legal response to the problem of human trafficking.26 Therefore, the EU took steps to codify its anti-trafficking law in the form of a new EU Trafficking Directive which was finally adopted on 5 April 2011.27

The EU Trafficking Directive creates a new framework and positive obligations upon Member

States for the prevention of trafficking, the prosecution and punishment of perpetrators and the protection and support for victims.28 The Directive highlights not only the importance of victim support and protection but also draws particular attention to the vulnerable position occupied by child victims of this phenomenon. This is not merely a superficial recognition of vulnerability but echoes the growing concern at both a European and International level to protect rights of the child.

The anti-trafficking legislation is premised upon the protection of childrens’ rights as enshrined in Article 3 (3) of the Treaty on European Union and Article 24 of the EU Charter of Fundamental Rights. In all instances, the child’s best interest must be of primary importance, Article 20 United Nations Convention on the Rights of the Child 1989. Furthermore, child-specific provisions are included in the 2012 Victim’s Directive,29 which requires a child-friendly approach to be adopted taking into account their age, maturity, concerns and needs.30

1. Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking who co-operate with competent authorities, Council Framework Decision 2002/629/JHA on combating trafficking in human beings, Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings (The United Kingdom opted out of this Framework Decision).
2. European Union, Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13 December 2007, 2007/C 306/01.
3. European Union, Treaty of Nice, Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 11 December 2000, Official Journal C 80 of 10 March 2001; 2001/C 80/01, Article 34.
4. Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01, Article 79 2(d).
5. 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.
6. See A. Bosma, C. Rijken, ‘Key Challenges in the Combat of Human Trafficking: Evaluating the EU Trafficking Strategy and EU Trafficking Directive’, *New Journal of European Criminal Law* 7(3) (2016).
7. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/ 220/JHA, OJ 2012 L 315.
8. Op. cit., Article 1(2).

When it comes to the protection of child victims of trafficking, the EU Directive specifies that ‘Member States should ensure that specific assistance, support and protective measures are available to child victims’.31 This position was also re-emphasised in the EU strategy for the Eradication of Trafficking in Human Beings, 2012–2016, which calls for a ‘comprehen- sive child-sensitive protection systems that ensure interagency and multidisciplinary coordi- nation are key in catering to diverse needs of diverse groups of children, including victims of trafficking’.32

The Trafficking Directive provides a basic requirement for the appointment of a guardian or representative upon the identification of child trafficking victims. Under EU law, directive provi- sions are binding upon Members States – in this case the United Kingdom. The deadline for the United Kingdom to transpose the Directive and fulfil its legal obligations was 6 April 2013. This therefore means that the UK Government was obligated to create a guardianship scheme by the expiration of the transposition deadline.

### Guardianship systems: Ensuring the safety, security and best interests of child trafficking victims

In recognition of the particularly vulnerable position of unaccompanied child victims of traffick- ing, the Trafficking Directive provides a basic requirement for the appointment of a guardian or representative upon the identification of child trafficking victims.

From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed in order to safeguard the minor’s best interests.33

In addition, a legal representative must be appointed in criminal investigations and proceed- ings,34 such representation and assistance must be free to child victims.35 Developing further on the core obligations that are provided by the anti-trafficking legislation, there are a number of other legal provisions that are applicable to child trafficking victims, for instance, in the EU asylum

1. Recital, 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 states that ‘Member States should ensure that specific assistance, support and protective measures are available to child victims.’
2. European Commission, EU Strategy for the Eradication of Trafficking in Human Beings, 2012–2016, p. 7.
3. 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, Article 14(2) see also Article 16(3) which requires Member States to ‘take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings’.
4. Article 15(1) and Article 16(4) 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.
5. Article 15(2) 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/JH.

acquis, provisions on legal guardianship and legal assistance in case of criminal investigations and proceedings are also included.36

The role of a guardian is not just required once a child has been identified as a potential victim of trafficking, but also, in identifying victims,37 where they are at increased risk of exploitation due to their vulnerability resulting from separation from their families. Such a role requires guardians and other responsible agencies to ensure effective collaboration including data sharing protocols, regular communication and awareness of their role in identifying possible trafficking situations.38

However, the lack of uniformity across EU Member States when it comes to the implemen- tation of the guardianship provision and the understanding of the scope of their role is a wider problem,39 that is not unique to guardians for child trafficking victims, but to the guardianship systems more generally, for all unaccompanied children.40 Furthermore, the provision of child protection systems more generally is called into question,41 which is indicative of the ‘addi- tional role of additional actors in anti-trafficking responses, such as child protection and child welfare authorities, professional groups such as social pedagogues, paediatricians, teachers and school bodies, child ombudspersons, as well as child rights organisations and networks’.42 When it comes to anti-trafficking efforts, the need to address child trafficking is considered as a matter of urgency. According to national data collected by Group of Experts on Action against Trafficking in Human Beings (GRETA), in a study of 12 EU Member States between 2012 and 2015, children represented half of the identified victims.43 The second round of reports published by GRETA identifies numerous failings with the implementation of guardian- ship systems across the EU.44

With specific reference to the way in which guardianship schemes are implemented, the fol- lowing aspects were raised as principal areas of concern:

Not only are guardianship schemes fragmented among EU Member States but also at the national level where the provision of services is not uniform and different approaches are

1. Article 31 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uni- form status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). Established the duty to ensure that unaccompanied children granted protection are represented by a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors. Article 24 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) and Article 25 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection both provide for the appointment of a ‘representative’ to unaccompanied children (without referring to a ‘guardian’ specifically), to enable these children to benefit from the rights and comply with the obligations provided for in these directives.
2. I. Derluyn, V. Lippens, T. Verachtert and W. Bruggeman, ‘Minors Travelling Alone: A Risk Group for Human Trafficking?’, *Eric Broekaert International Migration* 48(4) (2010), 164–185, p. 180.

38. Op. cit., p. 164–185, p. 181.

1. European Commission, EU Strategy for the Eradication of Trafficking in Human Beings, 2012–2016, p. 7.
2. S. Martin, A. Christie, D. Horgan and J. O’Riordan, ‘‘‘Often They Fall Through the Cracks’’: Separated Children in Ireland and the Role of Guardians’, *Child Abuse Review* 20 (2011), pp. 361–373, 362.
3. H. Sax, ‘Child Trafficking – A Call for a Rights-Based Integrated Approach’, in R. Piotrowicz, C. Rijken and B.H. Uhl, eds., *Routledge Handbook of Human Trafficking*,(Routledge 2017), p. 251.

42. Op. cit., p. 252.

1. COE Greta, 6th report on GRETA’s activities, covering the period from 1 January to 31 December 2016., p. 32.
2. COE Greta, 64th Report on GRETA’S activities covering the Period from 1 January to 31 December 2016, p. 51.

implemented in different local areas.45 Ensuring a uniform approach to guardianship requires a focus on the functions and roles of the professionals who are entrusted in safeguarding the child’s best interests, promotes their safety and well-being and exercises legal representation on behalf of the child.46 For instance, guardians are very often recruited and selected by local authorities who provide child protection services, thus bringing into question the independence of the guardians and the possibility for a conflict of interests when representing the best interests of the child.

Of particular relevance to child trafficking victims, when it comes to the application of child protection mechanisms, the migration and residence status of the child can have a significant impact on the level and type of protection granted to them, and until individuals are identified as child trafficking victims, then they are subject to migration and asylum law, rather than the protection offered by civil and/or family law provisions.47

Despite the need for guardians to have specialist expertise when it comes child trafficking victims, there is a significant variation in the professional and educational requirements. Furthermore, there is a lack of ‘systematic specialised training on the identification and protection of and assistance for child victims of trafficking’, meaning that there is a lack of understanding and awareness of the complexity of the needs of child trafficking victims needs that extend beyond their welfare but also to criminal justice processes and asylum and migration procedures.48

The legal obligation requires the immediate appointment of a guardian or representative, but in practice there is no specified timeframe in legislation and a delay often results from the ‘lack of human resources, insufficient identification and referral mechanism, long court pro- ceedings or structural issues’.49 Finally, the effectiveness of guardianship mechanisms is also put into question as a result of minimal oversight and external monitoring and a lack of complaint mechanisms.

Taking into account the gaps identified above, with the aim of assisting the coherent and consolidated approach to guardianship in the EU, the FRA (European Union Agency for Fundamental Rights)published a Handbook on Guardianship for children deprived of parental care50 that provides concrete measures for reinfor- cing the protection of child trafficking victims in need of care and support that can assist in overcoming some of the challenges identified in this section.51

## Part 2: A national case study: Guardianship in the United Kingdom

The analysis in part 2 of the recent developments in the United Kingdom will take into account the fundamental principles of guardianship (non-discrimination, child participation, sustainability,

1. FRA, Guardianship systems for children deprived of parental care in the European Union with a particular focus on their role in responding to child trafficking, June 2015, p. 21.

46. Op. cit., p. 22.

47. Op. cit., pp. 33–35.

48. Op. cit., p. 43.

49. Op. cit., p. 51.

1. FRA, Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, October 2014.
2. The Handbook provides a comprehensive overview of the fundamental principles of guardianship systems, provides guidance on managing and strengthening guardianship systems, outlines the tasks of the guardian in ensuring the safeguarding of the child’s best interests and the promotion of safety and well-being, facilitating participation and exercising representation of children during legal proceedings.

accountability, quality and independence and impartiality) identified in the FRA Handbook52 and determine the extent to which the United Kingdom adheres to its legal obligations according to the anti-trafficking legal framework so that the best interests of the child are always of paramount importance when determining the level of support and protection required to ensure their safety.

### The existing legal framework for guardian requirements

Taking into account legal obligation to transpose the EU Trafficking Directive by 6 April 2013 (‘The EU legal framework and obligations for the protection of child victims of trafficking’ section), and the importance attached to the appointment of a guardian or a representative for ensuring the protection and safeguarding of child trafficking victims (‘Guardianship systems: Ensuring the safety, security, and best interests of child trafficking victims’ section), the British Government was obliged to create a guardianship scheme by the expiration of the transposition deadline. This section will provide an overview of the existing framework since 2011 and its compliance with the Directive.

Despite the explicit recognition of specialised care and support required for child trafficking victims in the Directive, there was no consideration of the need to adapt the existing child protection measures situating child trafficking victims in the scope of the child protection and safeguarding measure.53 Such a position has been contested by organisations advocating on behalf of and providing support to child trafficking victims.54

In 2011, as part of the transposition of the EU Directive, the Home Office published a traffick- ing strategy, which (among other measures) confirmed the government’s commitment to improv- ing identification and care arrangements for child victims of trafficking.55 Two further commitments were made to address the issue of trafficked children going missing from care (coordinated by Child Exploitation and Online Protection Command) and to introduce streamlined information gathering about children’s needs and experiences by local authorities, the police and the Home Office to ensure children’s vulnerabilities are taken into account.56

Notwithstanding, concern was raised on numerous occasions as to the lack of consideration of the specific vulnerabilities of child trafficking victims,57 such as their vulnerability to the con- tinuing control of their traffickers, and that the complexity of their circumstances called for

1. FRA, Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, October 2014, pp. 23–28.
2. HL, Child Trafficking, 09 June 2011, Vol 728, Col 368. This had also been the position prior to the implementation of the Directive in the national anti-trafficking framework: UK Government, *UK Consolidated 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child*, 15 July 2007, p. 149, para 8.12. Available at: [http://webarchive.](http://webarchive/) nationalarchives.gov.uk/20120504183014/<http://media.education.gov.uk/assets/files/pdf/u/> uk%20government%20periodic%20report%20to%20the%20uncrc%20-%20july%202007.pdf
3. Independent, Government failing to bring Britain in line with European rules on human trafficking, say charities, 13 December 2013. Available at: [http://www.independent.co.uk/news/uk/home-news/government-failing-to-bring-brit](http://www.independent.co.uk/news/uk/home-news/government-failing-to-bring-britain-in-line-with-european-rules-on-human-trafficking-say-charities-8528099.html/) [ain-in-line-with-european-rules-on-human-trafficking-say-charities-8528099.html/.](http://www.independent.co.uk/news/uk/home-news/government-failing-to-bring-britain-in-line-with-european-rules-on-human-trafficking-say-charities-8528099.html/)
4. Home Office, Human Trafficking: The Government’s Strategy, July 2011, p. 11. Available at: [https://www.gov.uk/](https://www.gov.uk/government/publications/human-trafficking-strategy) [government/publications/human-trafficking-strategy.](https://www.gov.uk/government/publications/human-trafficking-strategy)
5. Home Office, Human Trafficking: The Government’s Strategy, July 2011, pp. 24–28, Available at: [https://www.gov. uk/government/publications/human-trafficking-strategy.](https://www.gov.uk/government/publications/human-trafficking-strategy)
6. Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, FIRST EVALUATION ROUND (2012), p. 58.

enhanced protection: ‘the current safety measures for children are completely inadequate [and] the accommodation is neither safe nor appropriate’.58 Furthermore, it has been reported that ‘children displaying clear signs of having been trafficked are often not referred into the National Referral Mechanism (NRM) and are offered instead generic services for children in need, which are unfit for trafficked children’.59

Across the United Kingdom, local authorities are under a statutory duty to safeguard and promote the welfare of children in need, including child trafficking victims.60 Under the legisla- tion, local authorities must investigate whether they have a reasonable cause to believe that a child who lives or is found in their area is suffering from harm.61 However, the provision of support and assistance and in particular the professionals who are responsible for ensuring the welfare of the child varies.

In England and Wales, where a child is identified as a child victim of trafficking, local author- ities have a statutory duty to safeguard and promote the welfare of all children62 by allocating a social worker who will assess their needs and determine a care plan which takes into account their wishes and feelings. The child will be placed with a carer and allocated an independent reviewing officer (IRO) who is responsible for regularly reviewing the care plan, ensuring the child under- stands and takes an active part and obtaining legal advice. An advocate, an individual who is involved in the management or resource of the child’s case, can be identified to represent the views and wishes of the child.

In Northern Ireland, health and social care trusts are responsible for the provision of care and support to children. Child trafficking victims are identified as ‘children in need’ under the Children (NI) Order 1995, and all child victims are entitled to the full range of services afforded to ‘looked after children’ under the 1995 NI Order. A trust should consider making an application for a legal order to establish ‘parental responsibility’ in respect of the child and ensure that appropriate measures are put in place to safeguard and promote his/her welfare. ~~6.10~~ When an application is made for an order under Article 63 or 57 of the Children (NI) Order 1995, a Guardian ad Litem is appointed by the court to independently represent the young person’s interests. The Guardian ad Litem appoints an independent legal representative to act on behalf of the child and further represent his or her interests.

In contrast to England, Wales and Northern Ireland, the Scottish Government has, since 2010, funded the Aberlour Child Care Trust and the Scottish Refugee Council to pilot the Scottish Guardianship Service, a non-statutory provision for all children, separated from their families, including those who may have been trafficked. Upon referral to the service, children are appointed a guardian who sees them as regularly as necessary and acts as a link between all services and professionals that are involved in their case. The service also assists the children in understanding the complex immigration and welfare processes, advocating on their behalf and helping them to make informed decisions.

1. Hansard, Second Reading, Human Trafficking (Further Provisions and Support for Victims) Bill [HL] col. 1261.
2. Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), SECOND EVA- LUATION ROUND (2016), p. 47.
3. The Children Act 1989 (England and Wales), the Children (Northern Ireland) Order 1995 and the Children (Scotland) Act 1995.
4. Section 47, Children Act 1989; section 66 Children (Northern Ireland) Order 1995.
5. Section 11, Children Act 2004 (England); section 27 Children Act 2004 (Wales).

It is important to note that in addition to the provision of support provided by public authorities, an alternative form of support for child trafficking victims is provided by organisations such as ECPAT UK, AFRUCA and the Refugee Council, however, ‘the availability of these programmes is subject to the changing resources of these organisations and as their ‘guardians’ do not have any statutory responsibility for the child, they are therefore limited in how they can act on the child’s behalf’.63 In direct contrast to the position of civil society, the government made continued representations that the current approach was sufficient to comply with EU legal obligations, the lack of specific support and assistance to child trafficking victims has been criticised for falling short of adequately addressing the identification and protection of this vulnerable group:

As regards child victims of trafficking, GRETA is concerned by reports according to which a signif- icant number of unaccompanied children who are placed in local authority care go missing. GRETA urges the British authorities to take further steps to improve the identification of child victims of trafficking, and to ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian and are provided with suitable safe accommodation and adequately trained supervisors or foster parents.64

Numerous reports and research have highlighted the concerns regarding child trafficking vic- tims and the need to take special account of their vulnerabilities and needs that are often complex due to their uncertain migration status, possible criminalisation and vulnerability to continued control by their traffickers, among many other complex issues.65

Research conducted by ECPAT UK66 highlighted the failings of the current provisions in regard to the vulnerable position of child victims of trafficking. The report showed that in the period of 2014–2015, there were 4744 unaccompanied children in the care system, of this number 590 were potential trafficking victims.67 Of the 590 potentially trafficked children in care, 28% (167) went missing at least once across 39 local authorities. However, the compiled data showed a total of 331 missing incidents across 167 missing children, equating to an average of 2.4 incidents per child. At the end of the reporting period, 207 unaccompanied and trafficked children remained missing and unaccounted for.68 Furthermore, while child trafficking victims are at high risk of re-trafficking, empirical data suggest that the risk is increased according to the gender and nationality, with male victims (359 of 368) and children from Vietnam (22%) and Albania (19%) being at higher risk.69 Reasons for this being problematic vary between professionals and those who are unaccompanied themselves, but common factors included, among others, the continued control/influence of

1. Establishing Britain as a world leader in the fight against modern slavery Report of the Modern Slavery Bill Evidence Review, 16 December 2013, Rt Hon Baroness Butler-Sloss Rt Hon Frank Field MP (Chair) Rt Hon Sir John Randall MP, p. 38.
2. Group of Experts on Action against Trafficking in Human Beings (GRETA), First evaluation round, 2012 (6), Strasbourg, 12 September 2012, p. 8.
3. For example, UNICEF UK (2011), Stop the Traffic!; Refugee Council (2013), Still at risk: A review of support for trafficked children, September 2013, The Anti-Trafficking Monitoring Group. (2013). In the Dock: Examining the UK’s Criminal Justice Response to Trafficking, The Anti-Trafficking Monitoring Group. (2013). Hidden in Plain Sight: Three years on: updated analysis of UK measures to protect trafficked persons.
4. ECPAT UK and Missing People, Heading back to harm – A study on trafficked and unaccompanied children going missing from care in the UK, November 2016.

67. Op. cit., p. 11.

1. Op. cit., p. 9.
2. ECPAT UK and Missing People, p. 50.

traffickers, a lack of trust in authorities/adults and the lack of certainty surrounding immigration status.70 Such complexity and trends regarding gender and nationality suggest that a different response is required to that for other children who go missing from local authority care as there is a strong possibility that children return to their traffickers and further exploitation in these circumstances.71 A report was also conducted by the Home Office and Department of Education in December 2017.72 The report states that factors which increased the likelihood of going missing included placements which do not promote trusting relationships, carers who are not adequately trained to understand the experiences and risks associated with child trafficking victims and a lack of consistent support from a trusted individual, such as an independent advocate or guardian.73

Furthermore, the use of statutory child protection provisions that are not specific to the needs of

child trafficking victims is problematic as they do not take into account the need to ensure a focus on child protection and safeguarding rather than on prosecution for involvement in criminal activities and/or focus on irregular migration status. Notwithstanding, the professionals who offer support and advocacy on behalf of child trafficking victims must have specialist knowledge and understanding of complex criminal justice process and immigration procedures.

In order to address the complexity of the needs of child trafficking victims, the introduction of an independent advocate remains one of the main recommendations, as it is a measure that ensures that a ‘trusted adult, who was independent from statutoryservices [ .. . ] could help children to navigate the care, immigration and criminal justice processes, and to challenge service providers who were not meeting their entitlements.’74

### The Modern Slavery Act 2015 and the child trafficking advocates pilot: An example of best practice for the EU?

The Modern Slavery Act 2015 is the cornerstone of the anti-slavery strategy, which aims to strengthen criminal justice responses to the so-called problem of ‘modern slavery’. It was stated in the House of Commons by the then Home Secretary, Theresa May, that the proposed Modern Slavery Act would seek to ‘ensure that victims receive the protection and support they deserve during the judicial process and in accessing vital victim support services’.75

As discussed in section one, the EU Trafficking Directive requires special provision for child trafficking victims including the appointment of guardians.76 The introduction of the Draft Modern Slavery Bill did not include any reference to provisions that would address the gap in support and assistance to child trafficking victims.77 The Draft Modern Slavery Bill was published by the government in October 2013. Notably, the draft Bill pre-dated the conclusions of an Evidence Review led by MP Frank Field, that had been mandated to consult on the views of NGOs,

1. ECPAT UK, Missing Children, Heading back to harm – A study on trafficked and unaccompanied children going missing from care in the UK (2016) 55.
2. Refugee Council, Still at risk: A review of support for trafficked children, September 2013, p. 5.
3. Cordis Bright, Local authority support for non-EEA migrant child victims of modern slavery (December 2017).

73. Op. cit., p. 23.

1. Refugee Council, Still at risk, p. 7.
2. HC Deb 10 June 2014, vol 582, col 178.
3. 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.
4. Home Office, Draft Modern Slavery Bill, December 2013.

campaigners, frontline professionals, international experts and victims with a view to providing evidence-based recommendations for the drafting of modern slavery legislation.78 Notwithstand- ing, at the first reading of the Bill, the government informed parliament that the Bill would include enabling legislation to implement a pilot scheme for child trafficking advocates to determine the best model that would be most appropriate for addressing the needs of child trafficking victims.79 The inclusion of such a scheme would be the first occasion an EU Member State establishes a separate guardianship system exclusively for child victims of trafficking.80

The Joint Committee report on the Draft identified the gaps in coverage in relation to child victims, highlighting the need for specially designated advocates in light of the unsuitability of Children and Family Court Advisory and Support Service81 guardians and IROs.82 In response, the Government announced the introduction of a pilot scheme of child trafficking advocates, ‘who will ensure that the child victims’ voices are heard and that they receive the support and assistance they need in relation to the social care, immigration, and criminal justice systems’.83 Despite this commitment, and prior to the commencement of the pilot, dissatisfaction was voiced in the House of Commons, suggesting that the proposed Modern Slavery Bill did not fulfil the requirements of the EU Trafficking Directive.

‘We would also like a system of independent guardians to be introduced. They are a requirement of the EU directive that the Government eventually signed up to, and the system has been implemented elsewhere in Europe and shown to work well. After three years of campaigning, we welcome the Government’s pilots for child advocates and the enabling provisions, but we do not believe that they go far enough. The position is unclear, but the advocates do not appear to be the same as the child guardians for which a huge coalition of charities, including Barnardo’s, UNICEF and the Children’s Society, have called. During the Bill’s passage, we will seek to strengthen the powers given to child advocates, thereby establishing guardians who can act independently of local authorities and in the best interests of the child’.84

This is a sentiment echoed throughout the debates on the Modern Slavery Bill. In fact, up until a month before the Bill received Royal Assent dissatisfaction permeated debates on the robustness and boldness of section 48.85 Further to this, the Joint Committee remarked that while they

1. Establishing Britain as a world leader in the fight against modern slavery Report of the Modern Slavery Bill Evidence Review (December 2013).
2. HC Deb, 10 June 2014, Col 418.
3. FRA, Guardianship systems for children deprived of parental care in the European Union With a particular focus on their role in responding to child trafficking, October 2015, p. 8. NB that due to the delay in implementing the scheme in England and Wales, the legislation in the devolved administrations established guardianship schemes on a stronger statutory footing that were immediately implemented on a national scale (see section ‘ Analysis: Derogation of obligations: Does the Modern Slavery Act 2015 do enough?’).
4. The Criminal Justice and Court Services Act 2000 mandates the Children and Family Court Advisory and Support Service to act as an independent body that ensures the best interests of the child and that the voice of the child is heard during represent children in family court cases in England. Family Court Advisers act on behalf of children during, public and private law proceedings such as divorce and separation, adoption and care proceedings.
5. Joint Committee on the Modern Slavery Bill Report, Session 2013–2014, HL Paper 166, HC 1019, 67.

83. HC Deb, 10 June 2014, vol 582, col 178.

1. HC Deb, 8 July 2014, vol 584, col 183, Yvette Cooper.
2. see HC Deb, 8 25 February vol 579 .

welcomed the introduction of a pilot scheme, ‘it is not, however, a substitute for a statutory advocate scheme’.86

The Government’s commitment to introducing some form of child advocates system during Parliamentary debates was carried through in section 48 of the Modern Slavery Act 2015.87 It provided the statutory footing for the Child Trafficking Advocate Scheme upon completion of the pilot programme. Section 48(7) required the Secretary of State to lay a report before Parliament 9 months after the passing of the Act and further required the basic requirements of the guardianship scheme88 to be elaborated in Regulations.89 In accordance with the Act, an ICTA will promote the well-being of the child and promote the child’s best interests90 and may (where appropriate) assist the child to obtain legal or other advice, assistance and representation, including (where necessary) by appointing and instructing legal representatives to act on the child’s behalf.91 A child should be as far as practicable ‘represented and supported by someone who is independent of any person who will be responsible for making decisions about the child’.92 However, the use of this statutory provision was to be subject to the ‘successful’ completion of pilot schemes and specific provisions on the functions of the advocates is subject to Regulations that will be made by the Secretary of State93 – at the time of writing, not yet provided for.

During the drafting of section 48, little reference was made in Parliamentary debates to the FRA Handbook and its fundamental principles of guardianship. Calls were made on two occasions by ministers on 8 December 2014 and 25 February 2015 for the advocate system to ensure the function of the advocate be ‘based on internationally recognised best practice guidance from UNICEF and, more recently, from the European Union Agency for Fundamental Rights’.94 Assur- ances were given by the Parliamentary Under Secretary of State that ‘the regulations and guidance outlining the functions of the advocate will indeed be in line with international best practice, including the EU FRA and the UNICEF best practice and scoping review’.95

The ICTA pilot scheme was operated by Banardo’s over a period of 12 months starting in September 2014. The trial was undertaken in 23 local authorities across England and Wales, which represented a mix of ‘rural and urban areas with varied experiences in dealing with children trafficked for the purposes of different forms of exploitation96 The trial involved 158 children, 86 of which were allocated to an advocacy group and 72 children to a comparator group and was subject to an independent evaluation upon completion of the trial.97

1. Joint Committee on the Modern Slavery Bill Report, Session 2013–2014, HL Paper 166, HC 1019, 70.
2. G. Craig, ‘The UK’s Modern Slavery Legislation: An Early Assessment of Progress’, *Social Inclusion* 5(2) (2017), p. 23.
3. FRA, Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, October 2014, p. 28
4. Modern Slavery Act 2015s.48(6). 90. Op. cit., 48(4).

91. Op. cit., 48(5).

92. Op. cit., 48(2).

93. Op. cit., 48(6)(d).

1. HC DEB, 25th February 2015 Volume 759 Col 1658.
2. Op. cit.
3. ‘R. Kohli, P. Hynes, H. Connolly, A. Thurnham, D. Westlake, K D’Arcy (University of Bedfordshire), Evaluation of independent child trafficking advocates trial: Final report. (Home Office, 2016) p. 8.
4. Op. cit., p. 4.

The main features of the scheme included six advocates covering all 23 local authorities, recruitment of trained volunteers to spend time with the children and support them in leisure and recreational activities and the creation of a 24-h helpline manned by an advocate. The report, which provides rich qualitative data on the impact of the role of the ICTA, concluded that for the children placed in the advocacy group, the advocate provided an ‘anchor’ for the child:

I can call my social worker and then she tells me OK but I’m busy or something. But if I call [the advocate] then she can make things happen. (Child interview, advocacy group) I feel confident that my advocate gives me all the information I need to know about what they’re doing for me. (Child interview, advocacy group)98

Whereas for the children in the comparator group, the data collected suggest that there were constant changes and instability with children often relying on themselves for support:

Right now, in the foster carer places, sometimes I cope myself. I wash my clothes myself and I tidy up my room myself. I think that this is not a problem for me. (Child interview, comparator group)99

The independent report concluded that, from the evidence collated, the use of advocates added value to the existing systems.100 There were several identifiable benefits for the children in the advocate group including keeping the children safely visible, the creation of relations of trust and credibility and maintaining momentum in the case suitable to the child’s needs.101

As the trial progressed, and those experiencing the work of advocates widened to immigration and criminal justice services, evidence of the benefits to the children and other service providers accrued; tightening the strings and filling gaps helped trafficked children to be visible and kept safe. In such complex and fast-moving environments, the function of an ICTA service appears to be important in ensuring clarity, coherence, and continuity for the child, as well as for other services responsible for the child, over time and across contexts.102

Such expertise and extensive knowledge of the different procedures related to criminal justice, asylum and immigration is of added value,103 as it takes into account the complexity of the needs of child trafficking victims. For instance, in addition to ensuring legal representation and assistance, a guardian may need to liaise with immigration authorities on granting a recovery and reflection period and/or issuing a residence permit.104

However, despite this clear statement of the beneficial effect of advocates, the Government’s own report stated, ‘there was also limited evidence of benefits in terms of involvement with the immigration and criminal justice systems’.105 Further to this, the report highlighted the fact that the advocate pilot did not address the issue of missing children. During the trial, 15 of the children who

98. Op. cit., p. 27.

99. Op. cit.

100. Op. cit., p. 39.

101. Op. cit., p. 39.

102. Op. cit., p. 39.

103. FRA, Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, October 2014, p. 33.

104. Op. cit., p. 103.

105. Report on the trial of independent child trafficking advocates and next steps (Home Office, 2015), p. 2.

were assigned an advocate were permanently missing at the end of the trial, compared to 12 children from the comparator group who were not assigned one. The Government report appears to be drawing a correlation between children who were designated and advocate and rates of disappearance. The independent report first indicates that the sample size is too small and that any number of variables including nationality and quality of care can affect the risk of disappear- ance.106 However, the independent report specifies evidence that this was not necessarily due to failings on behalf of the child trafficking advocates. In cases where there was evidence of children having gone missing before their referral to the independent trafficking advocates, local authorities were notified of the risks of a child disappearing;

There was substantial evidence of the ICTA service seeking to warn, persuade and challenge local authorities to provide adequate protection and sustainable care. However, the advocates could not readily influence decisions about accommodation provision and it is not known what resource con- straints local authorities were operating with. Also, the sample size is small, and a number of variables, including nationality and the quality of care planning, influence the heightened risk of children dis- appearing and remaining missing.

Despite the positive evidence provided by the children themselves in the independent report, and the Government’s own acknowledgment of the fact that children in the advocate group felt ‘listened to and valued’,107 the Government concluded that while some ‘aspects of the independent child trafficking advocates model show promise’ it did not deliver on the key outcomes of ensuring ‘every child always receives the support that they need and prevents the child from going miss- ing’.108 For this reason, the Home Office announced that it would not be carrying through section 48 of the Modern Slavery Act, at that time.

The issue of missing children cannot be resolved simply by introducing ICTAs, it is also important the additional steps are taken, including: regular risk assessment as to the likelihood the child may go missing,109 reporting mechanisms in accommodation facilities to ensure that any disappearances are reported within 24 h,110 ensuring that the guardian and law enforcement agencies act together to locate the child and prevent re-disappearance.111

Following the end of the trial, there was silence from the Government on the fate of section 48 and the rollout of ICTA on a national scale. On 28 June 2016, MPs across the House of Commons converged to question the delay of nationwide advocacy for trafficked children. It was commented that the year-long delay to establish a scheme was ‘disappointing in the light’of the positive evaluation of the scheme.112 Further to this, MPs pointed out that the conclusions of the Govern- ment report were contrary to the evidence presented by the independent assessment.113 It was announced by Karen Bradley MP, Former Minister for Modern Slavery and Organised Crime, that the Government was fully committed to rolling out section 48 and in an effort to improve advocacy

106. Kohli et al. (2015), p. 29.

1. Home Office (2015), p. 2.
2. Op. cit., p. 3.
3. FRA, Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, October 2014, p. 77.

110. Op. cit., p. 79.

111. Op. cit., p. 79.

1. ‘ HC Deb 28 June 2016, Vol 612 Col 33WH.
2. Op. cit., Col 35WH.

in the short term that ICTA would be introduced in three early adopter sites in order to refine the model.114 The three early adopter sites are located in Hampshire, Wales and Greater Manchester, and this pilot will run until March 2019. These sites were not rolled out until January 2017, meaning that once again there was a substantial delay in the delivery of protection and support for vulnerable child victims.

## Analysis: Derogation of obligations: Does the Modern Slavery Act 2015 do enough?

The inclusion of Section 48 in the Modern Slavery Act 2015, in contrast to the non-engagement with a specialised system of protection and safeguarding discussed above, demonstrated an acknowledgement of the need to truly provide meaningful and effective support for chid traf- ficking victims. Of course, law on the books and law in practice can be very different, as has been shown in the previous section. The developments during the passage of the Modern Slavery Bill and following its Royal Assent are positive developments, however, for some progress is not fast enough and still fails to address the entirety of the obligations placed on the government by EU law.

The introduction of ICTA has thus far been a long road and the end is still not in sight. It is a road, which has been mired by many obstacles of the Government’s own creation. Further to this, there is a disparity across the United Kingdom when it comes the support of the child trafficking victims, the Northern Ireland115 and Scottish equivalents of the Modern Slavery Act 2015 both include existing provisions for guardianship of child victims.116

In Northern Ireland, section 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 provides for independent legal guardians for trafficked and separated children who will act in the child’s best interests. The legislation also places on a statutory footing the requirement for public authorities who provide services to a child or making decisions about the child must pay due regard to the functions of the guardian and provide access to information to allow the guardian to function properly.117 This provision, taking into account the evaluation of the ICTA pilot, provides guardians with a strengthened mandate and role in supporting and advocating for the child.

The legislative requirements introduced by Northern Ireland’s Human Trafficking and Exploi- tation Act are the most ‘comprehensive and detailed of all three laws.’118 Section 21 applies to all children who are suspected or known to be trafficked and separated children from abroad who are not suspected to be trafficked, but may be at risk. The appointment of a guardian is not conditional upon an NRM decision and can be appointed prior to such a decision being reached; this differs to section 41 of the Modern Slavery Act which remains unclear on the existence of such a require- ment. Further to this, the Northern Ireland Act provides guardianship post 18 years old and makes provision up until the age of 21. Unlike the languishing section 41 of the Modern Slavery Act,

1. Op. cit., Col 50WH.
2. Human Trafficking and Act Exploitation (Criminal Justice and Act 2015 Support for Victims) Act (Northern Ireland) 2015 s21.
3. Human Trafficking and Exploitation (Scotland) 2015 s11.
4. Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 s21(8).
5. The Anti Trafficking Monitoring Group, Class Acts: Examining Anti-Slavery Legislation across the UK (October 2016) 57.

section 21 of the Human Trafficking and Exploitation (Northern Ireland) Act was fulfilled with the launch of the Independent Guardian Scheme in April 2018; the scheme will be run by Barnados Northern Ireland.

In Scotland, matters are complicated by the existence of the non-statutory Scottish Guardian- ship Scheme. This scheme is run by Aberlour and is aimed at supporting un-accompanied asylum seeking and trafficked children. The Human Trafficking and Exploitation (Scotland) Act provides a statutory obligation to introduce a guardianship service for unaccompanied children who are victims of trafficking or may vulnerable to the crime.119 Unlike England, Wales and Northern Ireland, there is an existing guardianship framework in Scotland, which operates a well-regarded model. The scheme was named ECPAT UK’S 2016 Children’s Champion. ECPAT have com- mented that the scheme is ‘unrivalled in the United Kingdom, serving as a template to help campaigners secure broadly commensurate systems in Scotland, Northern Ireland, and England and Wales’.120 The 2015 Act creates a requirement that all public bodies in Scotland refer to the Guardianship Scheme.

Taking into account the inconsistent provision of legal guardianship, it is important to highlight that child trafficking figures in the United Kingdom have reached an all-time high, increasing by 66% to 2118 in 2016.121 This year alone between January and June there has been already 711 referrals to the NRM.122 Therefore, the extent to which section 48 fulfils the requirements of the EU Directive also requires consideration of whether or not the Westminster Government is also failing to comply with its own statutory requirements by making guardianship and support a ‘postcode lottery’.123 In order to ensure equal protection for all children within the state’s territory, irrespective of the place of residence it is imperative that there is consistency of standards and practices among different regions and localities within their territory.124

As highlighted in section ‘The Modern Slavery Act 2015 and the child trafficking advocates pilot: An example of best practice for the EU?’, following the evaluation of the pilot of the ICTAs, the Government hesitated with a national roll-out as it was considered that ‘the trial model showed promise but did not deliver on some key outcomes such as preventing children going missing’.125 It is contended that in addition to the primary importance of a system of legal guardianship, a holistic approach must be taken to ensure the safety and protection of child trafficking victims. For instance, the introduction of guardian service, on its own, will not reduce the prevalence of child trafficking victims going missing; other measures must be adopted to ensure comprehensive protection.126 It is therefore not surprising that the current system is still not considered to be

1. Hum an Trafficking and Exploitation (Scotland) 2015 s11.
2. Available at: [https://www.ecpat.org.uk/News/scottish-guardianship-service-named-ecpat-uks-2016-childrens- champion.](https://www.ecpat.org.uk/News/scottish-guardianship-service-named-ecpat-uks-2016-childrens-champion)
3. National Referral Mechanism Statistics – End of Year Summary 2017.
4. Modern Slavery and Human Trafficking: National Referral Mechanism Statistics January to May 2018.
5. The Anti Trafficking Monitoring Group, Class Acts: Examining Anti-Slavery Legislation across the UK (October 2016) 54.
6. FRA, Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, October 2014, p. 27.
7. Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, SECOND EVALUATION ROUND Adopted on 8 July 2016 Published on 7 October 2016, GRETA(2016) 2, p. 51.
8. Supra FN 86-88.

robust enough to meet the obligations to provide child trafficking victims with free access to an independent legal guardian.127

For instance, the identification of victims causes problems in the initial stages when assessing a child’s protection and safeguarding needs. In 2014, guidelines were published that recognised the need for everyone involved in the care of unaccompanied and trafficked children to be trained to recognise and understand the particular issues likely to be faced by these children, including recog- nising the indicators of trafficking.128 However, the guidance does not contain detailed statutory guidance on steps the local authorities should take to identify and protect trafficked children.129

The final two points refer to the measures that can be taken to provide continuity in support so as to ensure that the risk of child trafficking victims from going missing is reduced. First of all, it is of vital importance for multi-agency working and information sharing between relevant stakeholders, such as law enforcement, local authorities and immigration.130 One area where there is room for improvement is the need to improve collaboration between authorities, as there currently does not appear to be a system whereby child victims at risk of disappearing can be accommodated in another local authority area than the one where they have been found.131

The provision of secure and appropriate accommodation for separated/unaccompanied chil- dren/young people is of vital importance, with the role of the guardian being key to ensuring that the accommodation is fit for the child’s physical, mental, spiritual, moral and social development and ensuring that the child is informed of any issue relating to accommodation.132 Since 2014, in Northern Ireland, the Health and Social Care Board commissioned a civil society organisation to provide accommodation for children of secondary school age upwards (i.e. above 11) who may be victims of human trafficking. A range of protection measures are implemented, determined by an individualised risk assessment. Security and protection measures include CCTV in the reception area and in the hall. Access to computers is in a communal area and supervised. A range of activities are organised and access to education is ensured, with specialist support provided. Notably, no child placed there has gone missing.133 The provision of accommodation must be tailored to take into account the increased vulnerability of child trafficking victims and provided on a larger scale basis to take into account the increasing identification of potential child trafficking victims and the number of unaccompanied minors, who are vulnerable to further exploitation in the United Kingdom.134

1. Committee on the Rights of the Child, Concluding observations on the report submitted by the United Kingdom of Great Britain and Northern Ireland under Article 12, para. 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, document CRC/C/OPSC/GBR/CO/1, published 8 July 2014; Group of Experts on Action against Trafficking in Human Beings (GRETA), (2016) 2, p. 51.
2. Department for Education, Care of Unaccompanied and Trafficked Children, 2014. Available at: [https://www.gov.uk/](https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children) [government/publications/care-of-unaccompanied-and-trafficked-children.](https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children)
3. See: Department for Education and Home Office, Safeguarding children who may have been trafficked, 2011. Available at: [https://www.gov.uk/government/publications/safeguarding-children-who-may-have-been-trafficked-](https://www.gov.uk/government/publications/safeguarding-children-who-may-have-been-trafficked-practice-guidance) [practice-guidance.](https://www.gov.uk/government/publications/safeguarding-children-who-may-have-been-trafficked-practice-guidance)
4. Group of Experts on Action against Trafficking in Human Beings (GRETA), GRETA(2016) 2, p. 50.
5. Refugee Council and The Children’s Society, ‘Still at Risk – A Review of Support for Trafficked Children’ (2013).
6. FRA, Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, October 2014, p. 84.
7. Group of Experts on Action against Trafficking in Human Beings (GRETA), p. 49.
8. UNICEF, Ni sain, ni sauf – enqueˆte sur les enfants non accompagne´s dans le Nord de la France (Neither safe, nor sound – study on unaccompanied children in the North of France, 2016). Available in French only at: [https://www.](https://www.unicef.fr/sites/default/files/atoms/files/ni-sains-ni-saufs_mna_france_2016.pdf) [unicef.fr/sites/default/files/atoms/files/ni-sains-ni-saufs\_mna\_france\_2016.pdf.](https://www.unicef.fr/sites/default/files/atoms/files/ni-sains-ni-saufs_mna_france_2016.pdf)

The discussion regarding the protection of child trafficking victims in the United Kingdom demonstrated the importance of a holistic approach in order to ensure that the provisions outlined in Article 13 and Article 14 of the EU Directive are complied with in a manner which fulfils their rights. Furthermore, full compliance requires additional measures to be adopted that ensure the provision of guardianship respects the fundamental principles of non-discrimination, child partic- ipation, sustainability, accountability, quality and independence and impartiality.

## Conclusion

It is clear from the foregoing that the phenomenon of human trafficking has become an issue of paramount importance at both the EU and therefore the domestic level. The response of the EU in the form of the Trafficking Directive places an emphasis not only on the traditional criminal justice response of prosecution and punishment but also on the vital importance of victim protection and support for victims. However, the Directive also highlights the increased vulnerability experienced by child victims of trafficking and exploitation. The importance of addressing issues pertaining to the vulnerability of child trafficking victims within the EU is of increasing importance in light of an emerging trend of increased referrals of children into the UKs National Referral Mechanism. The EU Trafficking Directive requires Member States to adopt provisions which will facilitate the provision of guardians for child trafficking victims. The adoption of such measures across the United Kingdom creates a patchwork of support and protection whereby the provision of a guard- ian comes down to a postcode lottery. The role of guardians is the most effective change to existing statutory social care provisions to ensure that children receive specialist care, taking into account the complexity of trafficking – criminal justice process, immigration process and social care combined. This will allow all child trafficking victims to receive support at all points post- identification process in which more social workers and IROs can offer no support. The indepen- dent report of the ICTA pilots pointed to demonstrable benefits of the system and pointed directly to areas for work and improvement and such further operationalisation of the advocate model in England and Wales could be identified by taking stock of the approaches adopted by the devolved administrations. There is a pressing need in England and Wales to increase the pace and make a definitive decision on the implementation of section 48 to not only ensure compliance with the EU framework – as mentioned by the most recent GRETA report and other concerned organisations but to also ensure continuity and coherence.135

Ultimately, as it stands the Modern Slavery Act 2015 provides the statutory powers to fulfil the obligations of the EU Trafficking Directive in relation to the protection of child trafficking victims. However, with the creation of the early adopter sites it would appear that the possibility of a national rollout will not be addressed until 2019. It becomes apparent that, in this area at least, it is not that the Modern Slavery does not do enough. Rather the non-implementation of a guardianship system for child trafficking victims, in practice, jeopardises not only the fulfilment of the obliga- tions of EU Trafficking Directive but also prevents the full and effective implementation of the provisions in the Modern Slavery Act 2015. This is, however, a trend which can be translated across the EU member states as evidenced in GRETA’s 6th General Report. The report highlighted that following the in the round of monitoring reports published to date a number of shortcomings

1. H. Crawley and R.K.S. Kohli, ‘She endures with me: An evaluation of the Scottish Guardianship Service Pilot’, 2012; Refugee Council and The Children’s Society, ‘Still at Risk – A Review of Support for Trafficked Children’ (2013).

exist across the EU. While most States party to the Directive have made provision for the appoint- ment of ICTA, ‘the procedure is cumbersome, there are delays in the guardians’ appointment and the guardians often cannot be seen as being independent and acting in the best interest of the child’.136 This ultimately prevents the full implementation of not only the Modern Slavery Act 2015 but also the EU Trafficking Directive which advocates a victim centred approach which places the best interests of the child at the forefront leaving an increasing number of already vulnerable children.

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1. COE Greta, 6th report on GRETA’s activities, covering the period from 1 January to 31 December 2016 (2016) 51.