



Children's Law Centre

Written submission to the Northern Ireland Assembly Committee for
Justice in relation to the Justice Bill (NIA Bill 07/22-27)

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Introduction

The Children's Law Centre (CLC) is an independent charitable organisation in Northern Ireland (NI) which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

Founded upon the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), CLC leads for NI NGOs in co-ordinating the submission of evidence to the Committee on the Rights of the Child (CRC) to support and inform its periodic monitoring and reporting work on the UK's compliance with children's rights standards.

Since establishment in 1997, CLC has provided free legal advice and information as well as strategic legal representation on a growing and increasingly complex range of issues affecting children. As a multi-disciplinary organisation, we offer training and research on children's rights, we make submissions on law, policy and practice affecting children and we provide a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children, young people, their parents and carers as well as a Live Chat service for young people. Our work is underpinned by a youth advisory panel, Youth@CLC.

Our model of practice is very different to that provided by solicitors and legal practitioners working in private practice. Our expert legal advice, information and representation service is child-accessible and jurisdictionally unique in that regard. The service is free and accessible to children who contact us directly for legal advice and support. Our policy and advocacy work is informed by analysis of our casework, children's lived experiences as communicated to us through Youth@CLC, research and legal analysis.

While we work on behalf of all children in NI, our focus is on vindicating the rights and unmet legal needs of the most marginalised and disadvantaged groups of children in society including but not limited to, children with severe and complex health and mental health needs, special educational needs and disabilities, social and emotional or additional learning support needs and children in or at risk of contact with the criminal justice system.

The structure of this submission

CLC welcomes the opportunity to provide written evidence to the Committee for Justice (the Committee) in relation to the Justice Bill (the Bill) in advance of attending the Committee's meeting on Thursday 27th March 2025.

This written submission should be read as an initial assessment by CLC of the Bill as introduced, focusing on Part 2 relating to bail, remand and custody arrangements for children.

It is our intention to provide further written material to the Committee in relation to the other Parts of the Bill as introduced, until then, members may find the following CLC policy documents of relevance:

- Children’s Law Centre response to Department of Justice Consultation on Proposals to Amend Legislation Governing the Retention of DNA and Fingerprints in NI¹
- Children’s Law Centre response to Department of Justice Consultation on Proposals on the Use of Live Links for Police Detention / Interviews²

As we have not yet examined the amendments shared with the Committee by the Department which are expected to be introduced at Consideration Stage, we have not provided comments on those amendments in this submission but may provide additional written evidence in relation to them at a later date for the Committee’s consideration.

This submission begins with high-level reflections regarding children’s rights standards, as they relate to justice issues. We then consider a number of issues we recommend can and should be addressed by additional amendments to the Bill before providing specific comments on the contents of Part 2 of the Bill.

Children’s rights

In forming our view on the contents of the Bill we draw upon the standards set out in the United Nations Convention on the Rights of the Child (UNCRC)³ which the UK government ratified in 1991 and is regarded and accepted as the authoritative description of the minimum basic human rights standards every child is entitled to and should expect to enjoy; as well as the General Comments (GCs)⁴, Statements and Concluding Observations and Recommendations⁵ of the United Nations Committee on the Rights of the Child⁶.

It is worth noting that while the UNCRC and associated provisions have not been incorporated into domestic legislation in this jurisdiction, they are recognised by our Courts as an authoritative interpretative tool when considering domestic legislation. In that context

¹ Children’s Law Centre response to DoJ consultation on proposals to amend the legislation governing the retention of DNA and fingerprints in NI. August 2020. Accessible at:

<https://childrenslawcentre.org.uk/?mdocs-file=2590>

² Children’s Law Centre response to DoJ consultation on proposals on the use of live links for police detention / interviews. June 2020. Accessible at: <https://childrenslawcentre.org.uk/?mdocs-file=2258>

³ The United Nations Convention on the Rights of the Child (1989). Accessible at:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

⁴ United Nations Committee on the Rights of the Child. General Comments database. Accessible at:

<https://www.ohchr.org/en/treaty-bodies/crc/general-comments>

⁵ The Concluding Observations and Recommendations of the United Nations Committee on the Rights of the Child to the UK can be accessed as follows:

- (i) 1995 CRC/C/15/Add.34:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2F15%2FAdd.34&Lang=en
- (ii) 2002 CRC/C/15/Add.118:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2F15%2FAdd.188&Lang=en
- (iii) 2008 CRC/C/GBR/CO/4:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F4&Lang=en
- (iv) 2016 CRC/C/GBR/CO/5:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F5&Lang=en
- (v) 2022 CRC/C/GBR/CO/6-7:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F6-7&Lang=en

CLC commends, for careful consideration by the Justice Committee, the CRC's Concluding Observations and Recommendations to the UK which have been issued following each periodic examination of the UK by the CRC since 1995. Many of these Concluding Observations and Recommendations relate to aspects of youth justice and are jurisdictionally specific.

Alongside this we also draw upon the European Convention on Human rights (ECHR)⁷, given domestic effect by the Human Rights Act 1998 (HRA)⁸ as well as a range of other relevant children's human rights standards, such as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty⁹ and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)¹⁰.

While the stated purpose of Part 2 of the Bill as reflected in the Explanatory and Financial Memorandum (EFM) is, "...to enhance compliance with Article 37 of the United Nations Convention on the Rights of the Child (UNCRC)..."¹¹ it is important to note that the rights of children as set out in the UNCRC are interdependent and indivisible and so Article 37, whilst of crucial significance in its own right must be read, understood and applied in the context of the Convention as a whole.

Article 37 sets out that:

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other*

⁷ The European Convention on Human Rights. Accessible at: <https://www.echr.coe.int/european-convention-on-human-rights>

⁸ The Human Rights Act 1998. Accessible at: <https://www.legislation.gov.uk/ukpga/1998/42/contents>

⁹ The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990). Accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-protection-juveniles-deprived-their-liberty>

¹⁰ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985). Accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

¹¹ See Paragraph 53, Page 7 of the Justice Bill (Bill 07/22-27). Accessible at: <https://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/mandate-2022-2027/justice-bill/justice-bill---efm---as-introduced---fpv.pdf>

competent, independent and impartial authority, and to a prompt decision on any such action.

However, of equal importance in considering the contents of the Bill is Article 40, which states that:

1. *States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*
2. *To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:*
 - (a) *No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;*
 - (b) *Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*
 - (i) *To be presumed innocent until proven guilty according to law;*
 - (ii) *To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;*
 - (iii) *To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;*
 - (iv) *Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;*
 - (v) *If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;*
 - (vi) *To have the free assistance of an interpreter if the child cannot understand or speak the language used;*
 - (vii) *To have his or her privacy fully respected at all stages of the proceedings.*
3. *States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:*
 - (a) *The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;*
 - (b) *Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*

4. *A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.*

Further, while the Department has set out that enhanced compliance with Article 37 is the stated purpose of Part 2 of the Bill, we feel it is important to make clear that the Bill in its totality should be analysed through the lens of children's rights standards and to reiterate that the standards set out by the UNCRC are minimum standards that can and should be surpassed.

In that context, as the Committee's scrutiny of the Bill continues we would like to draw particular attention to the general principles of the UNCRC which should underpin how the Convention is interpreted and applied in practice. These general principles set out that all children and young people:

- Have the right to enjoy their rights without discrimination and to be protected from all forms of discrimination (Article 2, UNCRC)
- Have the right to have their best interests as the primary consideration in all actions and decisions in relation to them (Article 3, UNCRC)
- Have the right to life and to the highest possible level of survival and development (Article 6, UNCRC)
- Have the right to express their views freely and have those views taken seriously and given due weight, in matters affecting them (Article 12, UNCRC)

In addition, the Committee will find a number of the CRC's General Comments of use in considering the practical application of the standards of the Convention in the context of the contents of the Justice Bill, including but not limited to:

- General Comment Number 14 on the rights of the child to have his or her best interests taken as a primary consideration¹²;
- General Comment 24 on children's rights in the child justice system¹³; and

We strongly recommend that the Committee consider the guidance of the CRC contained within General Comment Number 24 in its deliberations, read alongside the Convention itself. In particular, we would like to draw the Committee's attention to the General Comment's introduction, in which it is stated that:

2. Children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach.

¹² CRC/C/GC/14. United Nations Committee on the Rights of the Child. General Comment No. 14 (2023). Accessible at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F14&Lang=en

¹³ CRC/C/GC/24. United Nations Committee on the Rights of the Child. General Comment No. 24 (2019). Accessible at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGC%2F24&Lang=en

Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.

3. The Committee acknowledges that preservation of public safety is a legitimate aim of the justice system, including the child justice system. However, States parties should serve this aim subject to their obligations to respect and implement the principles of child justice as enshrined in the Convention on the Rights of the Child. As the Convention clearly states in article 40, every child alleged as, accused of or recognized as having infringed criminal law should always be treated in a manner consistent with the promotion of the child's sense of dignity and worth. Evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of systems in line with these principles.

Finally, in providing fuller context and understanding to the Committee in how the youth justice system has developed in this jurisdiction in recent decades we encourage members to consider the recommendations of the *Review of Youth Justice*¹⁴ which reported in 2011 as well as *Tracing the Review*¹⁵, a report jointly commissioned by the Children's Law Centre, Include Youth, NIACRO and VOYPIC which was published in 2021 to examine developments in youth justice in Northern Ireland from 2011 – 2021.

¹⁴ A Review of the Youth Justice System in Northern Ireland. 2011. Accessible at: [13710 DOJ report.indd](#).

¹⁵ Tracing the Review: Developments in Youth Justice 2011 – 2021. May 2021. Accessible at: <https://childrenslawcentre.org.uk/decade-of-delay-on-key-youth-justice-recommendations/>

Necessary amendments for MLAs to consider

The Committee will be well aware of the wide-ranging nature of the contents of the Bill. While we recognise that it is a complex piece of draft legislation with a number of important provisions, CLC believes that further amendments on a limited number of additional policy areas which do not currently feature in the Bill are critical to delivering long overdue and much needed reform.

In particular, we wish to highlight two areas of law and policy where the evidence for change is overwhelming and too many opportunities to deliver such change have not been taken: raising the age of criminal responsibility; and repealing the defence of reasonable chastisement.

The Age of Criminal Responsibility

The Children's Law Centre strongly advocates for the urgent reform of Northern Ireland's laws to raise the minimum age of criminal responsibility (MACR) from 10 to 16 years. The current threshold is one of the lowest in the world and fails to align with international human rights standards. Extensive research highlights that criminalising young children is harmful, ineffective, and disproportionately affects vulnerable groups. Below we have set out a summary of a number of key reasons¹⁶ why raising the age is necessary to ensure compliance with international obligations, to protect children's rights and to adopt a more effective approach to youth justice. We believe the Justice Bill provides the most appropriate vehicle through which to deliver this change in the law and to give statutory effect to what is current practice within the youth justice system in NI.

i. International Human Rights Standards

The United Nations Convention on the Rights of the Child (UNCRC) has repeatedly criticised the UK's low MACR, urging states to establish an age of at least 14 years and commending those setting it at 15 or 16 years. The UN Committee on the Rights of the Child has stated that the UK's approach is not compatible with its obligations under international law. Furthermore, General Comment No. 24 (2019) stresses that adolescent brain development continues into the mid-20s, reinforcing the need to avoid criminalising young children.

It is also relevant to highlight that in the specific context of Northern Ireland, Professor Yanghee Lee, the then Chair of the UN Committee on the Rights of the Child speaking at the Children's Law Centre's Annual Lecture in 2008 stated that:

"It can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.

*In order to persuade State parties to seriously consider raising the age of criminal responsibility to an age that would be considered as not being too drastic of a change, 12 was decided as the absolute minimum age by the Committee. What was important was to have countries that still had MACR set at 7 and 8 years to effectively reset the age in a rather speedy manner. **It must not be forgotten that***

¹⁶ The key reasons set out in the following paragraphs have been drawn from the following document and the associated sources referenced with it: Raising the Age of Criminal Responsibility, Joint Briefing Paper (November 2022). Published by the Children's Law Centre, Include Youth, NIACRO and VOYPIC. Accessible at: <https://childrenslawcentre.org.uk/?mdocs-file=6033>

the Committee also emphasized raising the age even further. Furthermore, it was the general understanding of the Committee that industrialized, democratic societies would go even further as to raising it to even a higher age, such as 14 or 16”.¹⁷ (Our emphasis).

As recently as November 2023, Bragi Gudbrandsson, the then (and still current) Vice-Chair of the Committee on the Rights of the Child said, in delivering the Children’s Law Centre’s Annual Lecture that:

“The repeated recommendation of the Committee is for Northern Ireland to raise the minimum age of criminal responsibility. It is the view of the Committee that the current age of 10 is unacceptable. This is said in light of our knowledge today on the complex needs of children’s and young people’s mental, emotional, physical or social well being as well as on children’s brain development.

...

*We know that the Human Rights Institutions, Civil Society including children’s and youth organisations in NI supports the rise of the minimum age to 16 and the Committee wholeheartedly supports this position.”*¹⁸

ii. Scientific Evidence on Child Development

Neuroscience research has demonstrated that children under 16 years old lack the cognitive maturity to fully understand legal proceedings, consequences of actions, and impulse control. The frontal lobe, responsible for decision-making and risk assessment, is still developing during adolescence. Studies show that criminalisation worsens outcomes for young people, increasing the likelihood of further offending rather than rehabilitation.

iii. Disproportionate Impact on Vulnerable Children

Children who come into contact with the criminal justice system are often among the most vulnerable. Over 34% of children in custody in Northern Ireland are care-experienced. Additionally, children from socio-economically disadvantaged backgrounds and those with mental health issues, learning disabilities, or histories of abuse and neglect are disproportionately represented. Instead of criminalising these children, early intervention, support services, and diversionary approaches should be prioritised.

iv. Inconsistencies with Other Legal Age Limits

The age of criminal responsibility is starkly inconsistent with other legal protections and limits for children in Northern Ireland. A child under 16 cannot leave school, vote, sit on a jury, or purchase alcohol or tobacco. Yet, at age 10, they can be held criminally responsible for actions they may not fully comprehend.

v. Criminalisation Does More Harm Than Good

¹⁷ Children’s Law Centre Annual Lecture 2008: *The Convention on the Rights of the Child – from Geneva to Northern Ireland, bringing children’s rights home*. Professor Yanghee Lee. Accessible at: <https://childrenslawcentre.org.uk/?mdocs-file=5365>

¹⁸ Children’s Law Centre Annual Lecture 2023. *Children’s Rights Change Children’s Lives: Implementing the UN Convention on the Rights of the Child*. Bragi Gudbrandsson. Accessible at: <https://childrenslawcentre.org.uk/?mdocs-file=6890>

Evidence demonstrates that criminalising children does not reduce crime but instead:

- Stigmatises and alienates young people, leading to repeat offending;
- Creates barriers to education, employment, and rehabilitation;
- Leads to long-term negative consequences, such as acquiring a criminal record, reducing life opportunities. Data from the Department of Justice shows that reoffending rates for young people who receive a custodial sentence are 80% within a year, proving that punitive approaches are ineffective.

vi. A More Effective Approach: Rehabilitation and Support

Countries with higher ages of criminal responsibility adopt welfare-based approaches that focus on education, family support, and mental health interventions rather than criminal punishment. Research from Scotland and other jurisdictions shows that diversionary programs lead to lower reoffending rates and better long-term outcomes. The Committee should consider how the Children's Service Co-operation Act can be fully utilised to enable this approach, in the best interests of children and young people.

vii. Growing momentum for change

The calls to raise the age of criminal responsibility in Northern Ireland have been growing consistently for many years from human rights organisations, legal and academic experts, those in the voluntary and community sector who are directly engaged with young people and by children and young people themselves. The Department of Justice's public consultation on the issue in 2022 has also clearly demonstrated a broad consensus that at 10 years old, our current MACR is too young.

Equal Protection

While most forms of physical punishment have been prohibited across the UK, NI law continues to permit its use by parents and caregivers under the defence of 'reasonable punishment', as provided by the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006. Therefore, at present, the legal defence of 'reasonable punishment' allows parents and caregivers to use physical punishment, creating a situation where children have less legal protection from violence than anybody else in Northern Ireland despite being among our most vulnerable members of society.

It is also important to be clear that a robust body of evidence exists demonstrating that physical punishment does not lead to any positive behavioural outcomes and in places where reform has already taken place it has been linked to a reduction in the use of physical punishment and a shift towards positive, non-violent parenting approach.

A change in the law would not create a new criminal offence, it would simply remove a legal defence which has been retained to date. Removing that legal defence should be accompanied by increased support for parents and carers to develop a greater understanding and awareness of non-violent forms of discipline.

CLC believes that the Justice Bill presents a timely opportunity to repeal the legal defence of 'reasonable punishment'. To do so would see Northern Ireland finally adhering to the standards of the UNCRC and acting upon the repeated recommendations of the CRC and an ever-increasing coalition calling for change to protect children from all forms of violence and to explicitly remove the 'reasonable punishment' defence.

Commentary on Part 2 of the Bill

Introduction

As outlined in the opening introduction to this submission, we will now provide comments on the contents of Part 2 of the Bill, relating to bail, remand and custody arrangements for children.

In what follows we have provided commentary on almost every clause of this Part of the Bill to support the Committee's considerations and necessary scrutiny work. Alongside these specific comments on individual clauses we also ask the Committee to consider two overarching recommendations:

1. An overarching provision to protect the best interests of the child

Having considered the wide-ranging nature of the Bill, CLC strongly recommends that the Committee consider an additional Clause be added to the beginning of the Bill which is consistent with the provision of the Justice (Northern Ireland) Act 2002, amended by the Justice Act (Northern Ireland) 2015 to set out that all persons and bodies exercising functions in relation to the youth justice system must have the best interests of the child as a primary consideration in all matters relating to a child. This new clause would apply to all parts of the Bill, not just Part 2.

2. The importance of language: children, not juveniles

CLC believes it is important that in all instances where the term *juvenile* is used in the Bill that it be replaced with *child*. In some provisions of the Bill the term *child* is used, in others the term *juvenile* is used. Our view is that the term *juvenile* carries a stigma associated with delinquency and wrongdoing whereas the term *child* is humanising and reflective of the actual legal status of an under 18, as well as the protections they are entitled to. Using the language of *child* is therefore consistent with the rehabilitative, rather than punitive, approach to youth justice that is the prevailing policy approach of the Department of Justice.

Where we have used the term *juvenile* in what follows it is simply to reflect the actual text of the Bill as introduced.

Comments on Clauses

Clause 4 – Duties of custody officer after charge

CLC support the general intention of Clause 4, however we recommend the Committee consider the following:

- That Clause 4, (e) (i) be amended to include, 'vulnerabilities' so that it reads:

the juvenile's age, maturity, needs and vulnerabilities

- Whether the Department has set out the definition of 'needs' (at Clause 4, (e) (i)) and if so, whether that definition is consistent with that of a *child in need* as outlined in the Children (Northern Ireland) Order 1995.

- That, when considering the capacity of the child (4, (e) (ii)) it is essential that all practicable help and support is given to the child to enable them to understand the process and any conditions which are being imposed on them through bail. This should be reinforced in the codes of practice for the Act to ensure consistency with the Mental Capacity Act and best practice.

Clause 5 – Police bail after arrest

CLC does not believe that the Department’s stated policy objective of strengthening the presumption of bail for children and young people has been achieved in the draft legislation contained within Clause 5 of the Bill and that the language of the Clause should state clearly that a child to whom it applies **must** be released on bail and that the presumption of bail is also a presumption of bail without conditions attached.

We would also welcome clarity in relation to the Department’s motivation and evidence base for the proposed new ground (at (2) (d)) for attaching conditions to police bail where a child “*may be required to comply, before release on bail...to secure that he does not cause a serious threat to public order.*” In this same Clause (at (3) (d)) and again in Clause 6 (new Articles 10F and 10G) references are made to the child’s release causing a serious threat to public order. The inference, through difference in language and without adequate detail in the EFM, is that a child may not achieve bail or have conditions attached to bail as a result of the behaviour or actions of others. We strongly encourage the Committee to explore this issue in further detail and to seek clarification from the Department in relation to the rationale for these provisions as well as to explore how a serious threat to public order is defined and by who, in this context.

Further, at Paragraph (5), sub-paragraph (2) we recommend that the Committee considers the following in relation to the considerations set out which a custody officer must have regard to when deciding whether to impose bail conditions:

- *(b) the character, antecedents, associations and community ties of the juvenile*

CLC are concerned by the extremely subjective nature of this consideration and by the significant scope for discretion to be given to custody officers, particularly in relation to considerations in which a child has limited, if any agency. We are particularly concerned that this consideration may permit custody officers to refuse bail on the basis of perceptions of the community in which the child lives or their relationship to family members. We encourage the Committee to give careful consideration as to whether it is reasonable and proportionate for this consideration to be applied to a child.

- *(c) the juvenile’s record as respect the fulfilment of the juvenile’s obligations under previous grants of bail*

CLC are concerned about the potential for differential adverse impact on particular groups of young people by this consideration, e.g. care experienced children. We too are unclear how this consideration may be applied to a child’s compliance with bail conditions which may have been set prior to any commencement of new provisions in this draft Bill (i.e. if, for example, previous bail conditions were set without consideration to the age, maturity and needs of a child which would be required if this Bill becomes law, would a

custody officer be compelled to consider whether previous bail conditions were reasonable and proportionate)? The Committee may wish to explore how the retrospective implications of this provision and the need to include an additional safeguard which requires considerations of whether previous bail conditions were reasonable.

- *(d) the strength of the evidence of the juvenile's having committed the offence*

CLC are unclear as to the rationale for the inclusion of this consideration. At the point of decision relevant to this Clause, the child will already have been arrested and charged, a determination has therefore already been made by the PSNI regarding the evidence and therefore should not have a bearing on decisions related to bail conditions. Further determinations on the strength of the evidence of the young person having committed the offence is a matter for the courts.

- *(e) the juvenile's age, maturity and needs*

As with Clause 4, we recommend this consideration be amended to include 'vulnerabilities' so that it reads as follows:

the juvenile's age, maturity, needs and vulnerabilities

- *(f) the juvenile's capacity to understand and comply with any condition of bail*

We reiterate (as stated at Clause 4) that when considering the capacity of the child it is essential that all practicable help and support is given to the child to enable them to understand the process and any conditions which are being imposed on them through bail. This should be reinforced in the codes of practice for the Act to ensure consistency with the Mental Capacity Act and best practice.

Clause 6 – Court Bail

CLC welcomes the clear presumption of bail that is established by this Clause. As recommended in relation to Clause 5, we suggest the presumption of bail established here should also include a presumption of bail without conditions attached. While we welcome the strength of the presumption of bail in the text of Clause 6, we are however unclear about the purpose of Paragraphs (3) – (5) of new Article 10E (*Right to bail*) and are concerned about the potential consequences of elements of it. The EFM is of limited utility in setting out what these new provisions are seeking to achieve and we are particularly concerned about the provisions of Paragraph (4) (b) – (d) in relation to what should be treated as a conviction and therefore remove the presumption of bail for some children without a clear rationale. We recommend the Committee consider the following:

- *(b) a finding that the child is not guilty by reason of insanity*

That In order for a person to be found not guilty by reason of insanity it is necessary for a court to conclude that the act has in fact been committed but that the defendant at the time was "insane" and therefore lacked the appropriate criminal intent to commit the crime. Such a finding could result in

the making of a hospital order or other measures being put in place in relation to mental health. This presents a number of issues in relation to children. Northern Ireland does not have a secure forensic mental health unit for a child with a hospital order to be admitted to. This issue was raised by CLC in previous evidence sessions to the NI Assembly dating back to the evidence gathering by the Ad Hoc Committee on the Mental Capacity Act (NI) 2016 which has justice provisions, which have yet to be enacted, but which the services for children do not exist. The finding of a child being not guilty by reason of insanity is a rare occurrence and so the Committee may wish to explore the Department's understanding of how often it currently happens and the process which is followed at the moment in light of the concerns raised above.

- *(c) a finding that the child is unfit to be tried and that the child did the act or made the omission charged*

In order to find that a child is unfit to be tried there must be a finding of the court that the act has been carried out by the child but at the time of the hearing they are unfit to proceed with the process. This could result in a number of different disposal options for the court, including a hospital order. As Northern Ireland does not have a secure forensic mental health unit for children, which has been raised by CLC and others in the past, this limits the disposal options for the court and so we recommend the Committee explore the outworking this provision and the potential implications for the vulnerable children it would impact upon.

- *(d) a conviction of an offence for which an order is made discharging the child absolutely or conditionally*

If a child receives a disposal of absolute discharge then the court process is over. It is difficult to understand under what circumstances bail would have to be considered for the child once the case is complete. Similarly, in the case of a conditional discharge the child has had their case disposed of with no penalty under the condition that they do not re-offend for a period of time. Again, it is unclear why, since the case is concluded, that the child would require bail.

In relation to new Article 10F (*Power to refuse bail*) we would welcome clarity, as indicated at Clause 5, regarding the concerns we have raised regarding the introduction of considerations in relation to public order in the context of the release of a child. We also recommend that the necessary combination of conditions to be met are further clarified (i.e. are the conditions those set out in paragraph (2) and (3) (a) – (d) collectively or are they those set out in paragraph (2) and (3) (a) or (b) or (c) or (d)).

The considerations in relation to provisions regarding public order are also relevant to new Article 10G (*Conditions of bail*).

We welcome the provisions included in Clause 6, new Article 10G which require bail conditions to be proportionate.

New Article 10H establishes what the Court must have regard to when deciding whether to refuse bail, impose bail conditions or vary or remove bail conditions. As outlined above at Clause 5 we have substantial concerns regarding a number of these considerations (10H (2) (b) – (d)) and also suggest that 10H (2) (e) and (f) be amended in line with our stated recommendations at Clauses 4 and 5 above.

CLC supports the provisions outlined in new Article 10I. We recommend that Paragraph (2) (c) is amended so that the child and their legal representative automatically receive a copy of the bail decision, rather than having to request it.

Clause 7 - Arrest for absconding or breaking conditions of bail

While this Clause as drafted relates solely to the circumstances in which a constable has the power to arrest a child for breaching bail conditions but decides not to, CLC recommends, notwithstanding the existing recording and reporting requirements on officers following an arrest, that this Clause be amended to provide a proactive duty on officers to make a similar record of the decision when an arrest is made for breach of bail conditions. This record should clearly outline the reasons why the officer has chosen to carry out an arrest.

Clause 8 - Considerations relevant to bail: accommodation

The issue of appropriate accommodation for children who are trying to perfect bail has been a long-standing feature of CLC's casework. CLC has been working on this issue for over 20 years and it is important to be absolutely clear that there is a statutory responsibility upon Health and Social Care Trusts under the *Children (Northern Ireland) Order 1995* to provide accommodation for children who are granted bail but who have no accommodation to go to.

This statutory obligation has been clarified through multiple legal challenges to the High Court, which have concluded that once a child has been granted bail and has no suitable or appropriate accommodation to go to then there is a statutory obligation upon Health and Social Care Trusts to accommodate that child.

This has presented a number of challenges through our casework. There are a limited number of appropriate accommodation options available for children who require a bail address. This has resulted in a number of young people being placed in inappropriate accommodation which is unregulated and there have been some poor outcomes for those children as a result.

Importantly, CLC are aware from our casework of a consistent number of children who are in the Juvenile Justice Centre with bail being granted subject to an address being provided where the Health and Social Care Trust have taken a prolonged period of time, and in some cases required interventions from CLC and solicitors in private practice, to provide the accommodation to perfect bail. This has resulted in children remaining in the Juvenile Justice Centre for periods of time in excess of that which they would have received if they had been sentenced for the offence. This is clearly unacceptable and a significant breach of the rights of these children.

*The Regional Good Practice Guidance on Meeting the Accommodation Needs of Homeless 16-21 Year Olds*¹⁹ has clear guidance and sets out the law and processes in detail for the

¹⁹ The Regional Good Practice Guidance has been issued as an Appendix to this submission.

provision of bail addresses for children who cannot return home for whatever reason. CLC believes that the Bill provides an opportunity for the Committee to put in place a statutory system for the provision of accommodation for children who require a bail address, based upon the standards of the guidance referenced above.

The Guidance has a specific requirement for the court to be updated by the relevant Health Trust as to their progress in providing bail accommodation by the attendance of Trust personnel at court. The Committee should consider making this obligation part of the Bill. This is not creating a new duty upon the Trusts but instead is strengthening a protection for children requiring bail and this would assist the court in making its bail decisions.

In addition to this recommendation, in order to ensure Clause 8 actually delivers on the need to ensure a child's accommodation needs are not a factor in denying bail, we strongly recommend that the word, 'solely' is removed from the Clause on both occasions in which it is used.

Further, CLC query the inclusion (in Clause 8 (2)) of the courts consideration of the child's accommodation needs at all in respect of the decision of a court to refuse to release a child on bail under new Article 10F when consideration of a child's accommodation needs have not been explicitly included as a consideration in new Article 10F (Clause 6 of the Bill). This is also the case in relation police bail (Clause 8 (1)) where no reference to the consideration of a child's accommodation needs have been explicitly included earlier at Clauses 4 and 5.

Clauses 9 – 11, 13, 16 and 17

CLC welcomes the provisions set out in Clauses 9, 10, 11, 13, 16 and 17 which would provide legislative underpinning for the separation of children and adults in custodial settings on sentencing, remand and detention. While these proposed changes are welcome and, to our knowledge, reflect current practice, CLC would take this opportunity to highlight to need to ensure the same standard is replicated in police custody settings. We recommend the Committee explore whether the Department has considered legislative change to ensure the separation of children and adults in all custodial settings – including policy custody – and if not, to bring forward amendments to achieve this.

Specifically, in relation to Clause 13 (*Place of detention following remand in custody*) we are challenged by the inclusion of new Article 10J, Paragraph (4) which seems to indicate that the Article will not apply where a court considers it appropriate to remand a child to customs detention under section 152 of the Criminal Justice Act 1988. Our understanding is that this legislation does not apply where a charge is brought against anyone under the age of 17 and so it is not clear to us why those aged 17 would be excluded from the safeguards of new Article 10J as a result. The EFM provides no detail to aid our understanding in relation to this and so the Committee make wish to seek further explanation from the Department.

Clause 12 – Youth custody and supervision orders

It is CLC's understanding that the proposed new Youth Custody and Supervision Orders would replace the existing Juvenile Justice Centre orders as well as the currently uncommenced custody care orders and apply only to children aged 14 or above.

In that context we recommend the Committee explore the breadth of disposals available to the court for all children to ensure adequate options exist which are non-custodial in nature,

complying with children's rights standards that custody should be a measure of last resort and for the shortest appropriate period of time as well as giving primary consideration the best interests of the child.

CLC agree that it is a positive development that the courts are not readily using custody as a sentencing option for young children, but we are also clear that this cannot and should not be seen as an alternative to raising the minimum age of criminal responsibility. Even with the proposals contained within Clause 12 that the new orders will only apply to children aged 14 and above, Northern Ireland will still have an unacceptable and extremely low age of criminal responsibility which clearly breaches children's rights standards.

In addition, as noted in CLC's response to the Department's public consultation on proposals for new custodial arrangements for children in 2022²⁰, we are clear that children's rights standards do not allow for a minimum sentence duration as it is contradictory to Article 37(b) of the UNCRC, which provides that detention and imprisonment should only be used as a measure of last resort and for the shortest appropriate period of time. Imposing a minimum sentence duration in all cases removes the ability of the court to decide the shortest appropriate period of time a child should be custody.

Further, this principle should be applied to how the new order is divided/split, meaning that the period of supervision in the community should be permitted to be of longer duration than the period held in custody rather than the even split structure that is proposed in the Bill.

Clause 14 – Remand in custody exceeding three months

CLC welcomes the provisions contained with Clause 14 of the Bill. In order to ensure the meaningful application of the intention of this Clause, CLC recommends that new Article 10K, Paragraph (2) (b) be removed and replaced with a new Paragraph (3) which states:

(3) The court must ensure the extent to which the total period for which the child is remanded in custody must not exceed the likely period of any custodial sentence.

With existing Paragraph (3) renumbered (becoming Paragraph (4)).

We also recommend, in relation to existing Paragraph (3) that the standard contained in Clause 6 (*Record of decisions concerning bail*), new Article 10I Paragraph (2) – (3) be replicated here to ensure that language used by the court to remand a child for a further period is appropriate to the age, maturity and understanding of the child and should be provided automatically to them and their legal representative.

Clause 15 – Consideration of time spent on remand in custody

CLC welcomes the provisions contained with Clause 15 of the Bill that require the court to consider any period for which a child has already spent remanded in custody for an offence in the context of the court deciding whether to impose a sentence following a finding of guilt. In order to ensure the meaningful application of the intention of this Clause, CLC recommends that it be amended to require the court not only to consider any such period but to also explicitly take any such period into account in the sentencing decision.

²⁰ Children's Law Centre response to Department of Justice consultation on Proposals on new custodial arrangements for children. August 2022. Accessible at: <https://childrenslawcentre.org.uk/?mdocs-file=5914>

Clause 18 – Minor and consequential amendments

CLC has no comment to provide in relation to Clause 18.

Clause 19 – Transitional provisions and savings: custody of children

CLC has no comment to provide in relation to Clause 19.

Conclusion

CLC is grateful for the opportunity to provide evidence to the Northern Ireland Assembly Committee for Justice in relation to the Justice Bill. While this submission has focused largely on Part 2 of the Bill relating to bail, remand and custody arrangements for children it is our intention to provide further written evidence to the Committee on the additional aspects of the Bill's contents. We hope the Committee finds our evidence constructive and useful and we remain willing to engage on an ongoing basis to support the Committee's scrutiny of the Bill.

**MEETING THE ACCOMMODATION AND
SUPPORT NEEDS OF 16 – 21 YEAR OLDS**

REGIONAL GOOD PRACTICE GUIDANCE

**AGREED BY THE NORTHERN IRELAND
HOUSING EXECUTIVE AND THE HEALTH &
SOCIAL CARE TRUSTS**

DECEMBER 2014

REVISED VERSION

Northern Ireland
Housing Executive

HSC Health and Social Care
in Northern Ireland

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- 1.0 INTRODUCTION**

- 1.1 The Guidance 2014 is a revised version of the original guidance issued in 2009 and takes account of the impact and learning in the R (G) v London Borough of Southwark 2009 landmark case in England and the judicial review case in Northern Ireland, JR66 2012. These judgments reinforced the primacy of the Children (NI) Order 1995 over housing legislation in the exercise of Trusts duties to undertake an assessment and establish duties owed to a homeless young person aged 16 / 17 under Article 21 of the Order.
- 1.2 The Guidance aims to detail how the Health and Social Care Trusts (Trusts) and the Northern Ireland Housing Executive (Housing Executive) will work together in a co-ordinated way to ensure that vulnerable young people aged 16-21 receive a joined up service and that their housing and support needs are assessed and responded to appropriately.
- 1.3 The Housing Executive and Trusts work within legislative frameworks that establish their roles and responsibilities towards vulnerable young people. This Guidance defines respective roles and responsibilities and aims to ensure that young people receive appropriate and timely services and support.
- 1.4 The Guidance is underpinned by a commitment by both agencies to promote equality of opportunity, uphold the human rights of young people and ensure that actions and decision making are taken in the best interests of the young person. The Guidance will therefore be duly tested and examined through Equality and Human Rights screening exercise.
- 1.5 Assessment and intervention by Trusts and the Housing Executive will seek in the first instance to prevent homelessness among young people and where the possibility of homelessness is an emerging concern the emphasis will be on a planned approach to avoid a crisis of homelessness. This will include supporting young people to stay with or be reunified with family where this is safe and appropriate given that it is in the best interests of most young people to live with their families. Where it is not safe to do so, alternative arrangements will be explored in the first instance with responsible adults in their wider family and friends' network.
- 1.6 The assessment process will maintain a family focus and seek to resolve issues that give cause to homelessness through family engagement, mediation, family group conferences and partnership working. Where reunification is achieved family support will be provided as necessary to address issues affecting the young person's welfare and / or the sustainability of living at home.
- 1.7 Where a decision to accommodate is made based on the outcome of a statutory assessment the "accommodated" young person will receive the same provisions as Looked After children and continued support will be

provided in line with Children Order 1995 and Children (Leaving Care) Act 2002 duties as applicable.

- 1.8 Appendix 11 provides information on the application of this Guidance to young people aged 16 / 17 who are exiting Woodlands and in housing need.
- 1.9 The fact that a young person may be reluctant to engage with the assessment process is not in itself a basis for assuming that the young person has rejected any Family and Childcare intervention to provide them with accommodation. Lack of co-operation is no reason for the Trust not to attempt to carry out its duties under the Children Order 1995. In these circumstances, the assessment will need to involve careful recording of how the Trust has attempted to engage with the young person to assess their needs in order to determine and provide appropriate services. Ultimately, however, it is not possible to force services on young people who persistently continue to refuse them.

2.0 AIM OF THE GOOD PRACTICE GUIDANCE

The Guidance recognises the shared responsibilities of the Housing Executive and Trusts to children and young people who are 'in need', 'vulnerable' due to homelessness, and/or entitled to support under the Children (NI) Order 1995 and the Children (Leaving Care) Act (NI) 2002, and guides agencies on working collaboratively to appropriately and effectively respond to this group of young people, irrespective of which agency is initially approached for help.

The primary aims of the Guidance are to:

- Outline the respective responsibilities of the Housing Executive and Trusts when working with specific groups of young people where there are shared responsibilities in relation to housing and support needs and to actively work together in the best interests of the young person;
- Establish a system to assist both agencies in carrying out their respective responsibilities to meet assessed needs; and
- Develop an effective system which provides clarity as to the respective responsibilities of both agencies thereby ensuring relevant information is shared between them.

The principles underpinning the Guidance will inform the development of effective working protocols and practices locally.

3.0 CATEGORIES OF YOUNG PEOPLE

The groups of young people specifically included in this Guidance are outlined below along with the relevant legislative responsibilities.

Young people aged 16 – 17 years:

- a) **Housing (NI) Order 1988** provides for applicants who are homeless or who are threatened with homelessness to be assessed in line with the provisions of the Order to determine what duty if any is owed by the Housing Executive. This duty extends to include 16 and 17 year olds who present as homeless.
- b) **Article 18 of the Children (NI) Order 1995** gives Trusts a general duty to safeguard and promote the welfare of children in need and specifies criteria to assist Trusts to determine if a child is “in need”.
- c) **Article 21 (1) of the Children (NI) Order 1995** places a duty on Trusts to provide accommodation for any child in need within its area who appears to the authority to require accommodation as a result of:
 - I. there being no person who has parental responsibility for him;
 - II. his being lost or having been abandoned; or
 - III. the person who has been caring for him being prevented from providing him with suitable accommodation or care.
- d) **Article 21(3) of the Children (NI) Order 1995** places a duty on Trusts to provide accommodation for any child in need within its area who has reached the age of 16 and whose welfare the authority considers is likely to be seriously prejudiced if it does not provide him with accommodation.
- e) **Article 34C(8) of the Children (Leaving Care) Act 2002** requires Trusts to safeguard and promote the welfare of relevant young people by providing and maintaining them in suitable accommodation where it is deemed necessary.

Young people aged 18 – 21 years:

- a) **Housing (NI) Order 1988** provides for applicants, including 18 – 21 year olds, who are homeless or who are threatened with homelessness to be assessed in line with the provisions of the Order to determine what duty if any is owed to him by the Housing Executive.
- b) **Children (Leaving Care) Act (NI) 2002** requires that Trusts provide vacation accommodation for qualifying and former relevant young people who are engaged in education.

4.0 THE LEGISLATIVE FRAMEWORK

4.1 Housing Executive:

Housing (NI) Order 1988 (Appendix 1)

Under the 1988 Order the Housing Executive has a statutory responsibility for responding to homelessness.

Housing (NI) Order 2003 (Appendix 2)

The 2003 Order introduced the requirement to assess eligibility for homelessness assistance in Northern Ireland.

4.2 HSC Trusts:

Children (NI) Order 1995 (Appendix 3)

Article 18 gives Trusts a general duty to safeguard and promote the welfare of children in need.

Article 18(1) makes it:

“...the general duty of every authority to safeguard and promote the welfare of children within its area who are in need;

...by providing a range and level of personal social services appropriate to those children’s needs”.

The definition of ‘in need’ is contained in **Article 17** of the Order outlining that a child is deemed to be ‘in need’ if:

- a) He is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services;
- b) His health or development is likely to be significantly impaired, or further impaired, without the provision of such services; or
- c) He is disabled

Article 21(1) places a duty on every authority to:

provide accommodation for any child in need within its area who appears to the authority to require accommodation as a result of:

- (a) there being no person who has parental responsibility for him;
- (b) his being lost or having been abandoned; or
- (c) the person who has been caring for him being prevented from providing him with suitable accommodation or care.

Article 21(3) places a duty on the Trust to:

“provide accommodation for any child in need within its area who has reached the age of 16 and whose welfare the authority considers is likely to be seriously prejudiced if it does not provide him with accommodation.”

Article 21(6) states that before providing accommodation, the authority has a duty to ascertain the child's wishes and give due consideration to them.

Article 21(5) states:-

An authority may provide accommodation for any person who has reached the age of 16 but is under 21 in any home provided under Part VII which takes children who have reached the age of 16 if the authority considers that to do so would safeguard or promote his welfare.

Children (Leaving Care) Act (NI) 2002 (Appendix 4)

The Act places a duty on Trusts for certain groups of young people who are or have been looked after: eligible, relevant, qualifying and former relevant. (Appendix 8: Glossary of Terms). If any of these young people become homeless they will be eligible for assistance under Children (Leaving Care) Act (NI) 2002. To discharge this duty Trusts will, as necessary, liaise with the Housing Executive.

5.0 OPERATION OF THE LEGISLATION

5.1 The aim of the Guidance is to promote collaborative working across the two lead agencies. This will ensure that young people 'in need', 'vulnerable' due to homelessness and/or with a care background, receive responsive and appropriate interventions which best meet their assessed needs. This will be achieved by:

- An assessment of the needs of young people to be undertaken by Trusts in accordance with the regional UNOCINI assessment framework (Understanding the Needs of Children In Northern Ireland) and in line with the relevant Articles of the Children (NI) Order 1995. The children's legislation presumes that a homeless young person aged 16 / 17 is a child in need and by virtue of no place to live becomes a looked after child under the criteria of Article 21. The assessment must therefore demonstrate how this entitlement is met; or where it is not met, clearly demonstrate why a young person in these circumstances is not a looked after child under Article 21. Appendix 9 sets out the criteria to be used in the assessment to make this determination.
- Only where the assessment process concludes that the young person is not a looked after young person will an assessment be undertaken by the Housing Executive to determine whether a young person is considered statutorily homeless under the terms of the Housing (NI) Order 1988.

6.0 UNDERPINNING PRINCIPLES

6.1 **The underpinning principles are:**

- The young person has the right to assessment in relation to support and accommodation needs under the Children (NI) Order 1995,

Children (Leaving Care) Act (NI) 2002 (where applicable) and the Housing (NI) Order 1988

- Engagement and assessment will seek in the first instance to maintain the young person in the family home where it is safe to do so and / or to resolve issues giving rise to a young person being outside of the family home and in housing crisis. This process will fully address needs and risks, inform planning including how best family support and / or housing needs can be met and lead to action to meet the young person's current and future need, on an inter-agency basis, where appropriate
- The assessment process will assist in communicating the needs of young people across a range of relevant agencies
- Assessment and intervention will reflect and incorporate all aspects of good practice with regard to safeguarding and protecting young people
- Interventions will be timely particularly in circumstances where a young person is homeless or may become homeless
- Interventions will seek to uphold the rights of young people and promote equality of opportunity for all young people who present as homeless and seek assistance
- The best interests of the young person are at the centre of any decisions affecting them, giving due regard to their views
- Information about young people will be managed and shared in the context of protocols governing data sharing, protection and security.

7.0 CONFIDENTIALITY, DISCLOSURE AND INFORMATION SHARING

- 7.1 In order to assist young people speedily and appropriately and to help avoid the duplication of work, the Housing Executive and the Trusts, in working with young people, including those leaving care will need to share information about individuals. In doing this, agencies will be mindful of their legal responsibilities regarding the exchange of any

information or referrals. Only information that is necessary for planning and delivery of effective services to the young person will be shared. Young people will be assured that the information they provide will be treated in confidence.

- 7.2 In most instances, consent to share information will be sought from the young person or parent(s) or person(s) with parental responsibility (Appendix 5). In this regard the client consent form contained in Appendix 6 must be used by the agency referring the young person to ensure that they are fully informed and consenting to sharing of personal information including the summary section of the outcome of the UNOCINI assessment. The referring agency should maintain a copy of the completed consent form on file. In circumstances where NOT sharing information may place the young person at risk or likelihood of significant harm, information (including with other agencies) will be shared without consent; as required by Co-operating to Safeguard Children (DHSSPS, May 2003) and in line with the revised HSC Code of Practice on Protecting the Confidentiality of Service Users 2012.

8.0 YOUNG PERSONS SEEKING ACCOMMODATION: AGREED PROCEDURES

- 8.1 This Guidance sets out agreed arrangements for determining the appropriate intervention by the Housing Executive and Trusts in relation to the following categories and circumstances of young people:
- 16 – 17 year olds seeking emergency accommodation
 - 16 – 17 year olds with a care background
 - 18 – 21 year olds seeking emergency accommodation
 - 18 – 21 year olds with a care background
 - 16 – 21 year olds approaching the Housing Executive seeking accommodation on a non-emergency basis
- 8.2 The response by both the Housing Executive and Trusts (including the Regional Out of Hours / Emergency Duty Service – delivered by HSC Trusts / Social Services) will be determined by the need, age and category of the young person seeking accommodation.

8.3 16 – 17 year old seeking emergency accommodation:

Where a 16 – 17 year old presents in an emergency to the Housing Executive the following procedure should apply:

8.3.1 Preliminary Intervention by NIHE Officer:

In the first instance, establish whether the young person is a child, and whether deemed to be Relevant or Eligible under the Children (Leaving Care) Act 2002. NIHE Officer liaises directly with relevant Trust's 16 Plus Service to establish the young person's status.

Where a young person is deemed relevant or eligible, the following applies:

- i. Liaise with 16 Plus staff to:
 - Determine whether young person's previous accommodation remains available
 - Establish whether there is any risk to the young person returning there
- ii. Where the young person can be safely returned to previous accommodation 16 Plus staff along with relevant others support the young person's return
- iii. Where it is deemed unsuitable for the young person to return 16 Plus staff will liaise with NIHE and relevant others to secure suitable alternative accommodation. On occasions and due to presenting needs, risks and vulnerabilities and the potential significant risk posed to others it may not be appropriate to place a young person in an existing jointly commissioned supported accommodation arrangement. In such circumstances, a Trust / 16 Plus Service may seek advice and support from the NIHE to create a bespoke / peripatetic supported living arrangement to meet the young person's needs.

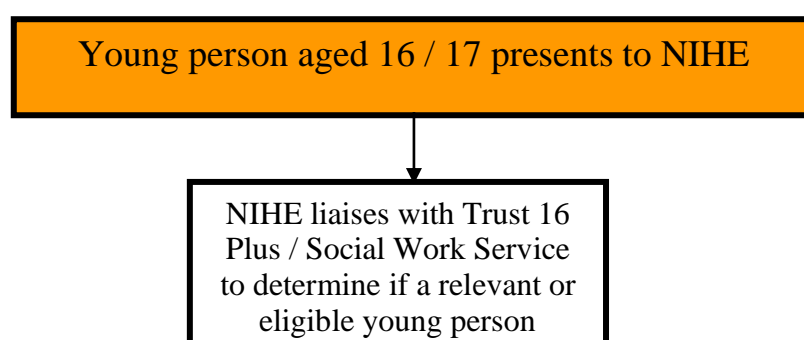
Where it is established that the young person is not a relevant or eligible young person, the following applies:

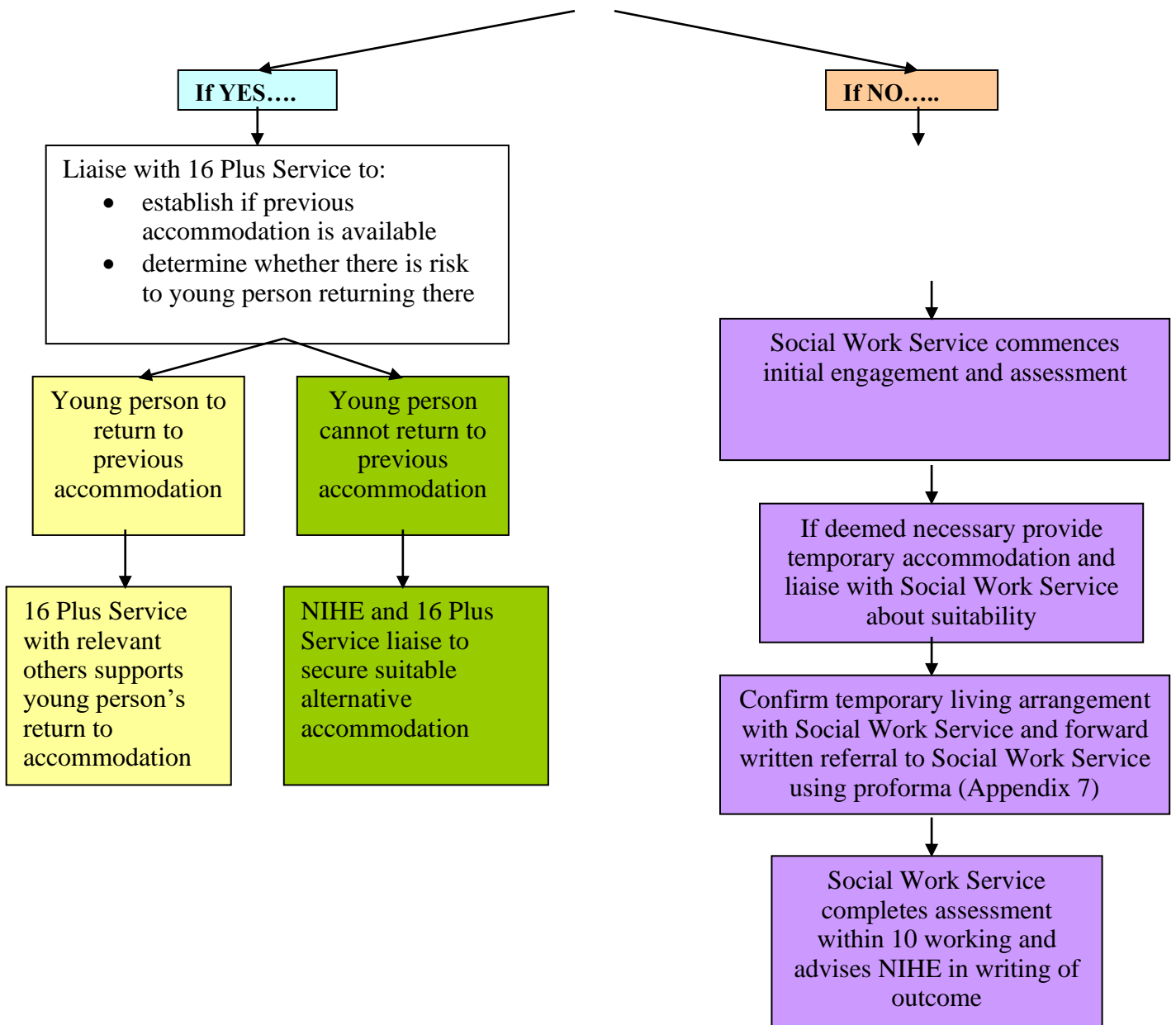
- i. Establish which Trust area the child is presenting
- ii. Make an immediate referral to the Social Work Service in the Trust area in which the young person is presenting
- iii. Social Work Service will establish whether the young person is already known to a social work team within the Trust and will progress an initial assessment in line with UNOCINI requirements and alongside the relevant social work team, if applicable
- iv. Where the young person is known to another Trust, the Social Work Service in the Trust area in which the young person presents will provide an immediate response and agree with the responsible Trust who is best placed to undertake the assessment.
- v. Where the case is an open case to another Trust or has had involvement by another Trust within the previous three months the young person may transfer to the originating Trust post the initial UNOCINI assessment process. This will be determined on a case by case basis and in the young person's best interests.
- vi. The assessment process will involve the young person's family and seek in the first instance to facilitate the young person's safe return to family. The assessment process will determine whether any duty is owed to the young person under Article 21 of the Children Order giving due regard to the areas outlined in Appendix 9.

- vii. Pending completion of the assessment and where it is not deemed appropriate for the young person to immediately return to family, to the previous address or to reside with extended family / friends the Trust and NIHE will work in partnership to provide suitable temporary accommodation.
- viii. In all instances and on completion of the UNOCINI assessment the Social Work Service must advise the NIHE of the outcome of the assessment. This should be undertaken by forwarding the summary section of the UNOCINI assessment with confirmation of outcome in terms of the legal status and intervention pathway where applicable.

(Reference Figure 1 for summary of processes)

Figure 1





Where a 16 – 17 year old presents in an emergency to the HSC Trust's Social Work Service the following procedure should apply:

8.3.2 Preliminary Intervention by Trust Social Work Service:

In the first instance, establish whether the young person is deemed Relevant or Eligible under the Children (Leaving Care) Act 2002. This will require liaison with the relevant Trust's 16 Plus Service.

Where the young person is deemed a Relevant or Eligible young person the following applies:

- i. Liaise with 16 Plus staff who will:
 - determine whether the young person's previous accommodation remains available
 - establish whether there is any risk to the young person returning there
- ii. Where the young person can be safely returned to previous accommodation 16 Plus staff will, along with relevant others, support the young person's return
- iii. Where it is deemed unsuitable for the young person to return, 16 Plus staff will liaise with the NIHE and relevant others to secure suitable alternative accommodation.

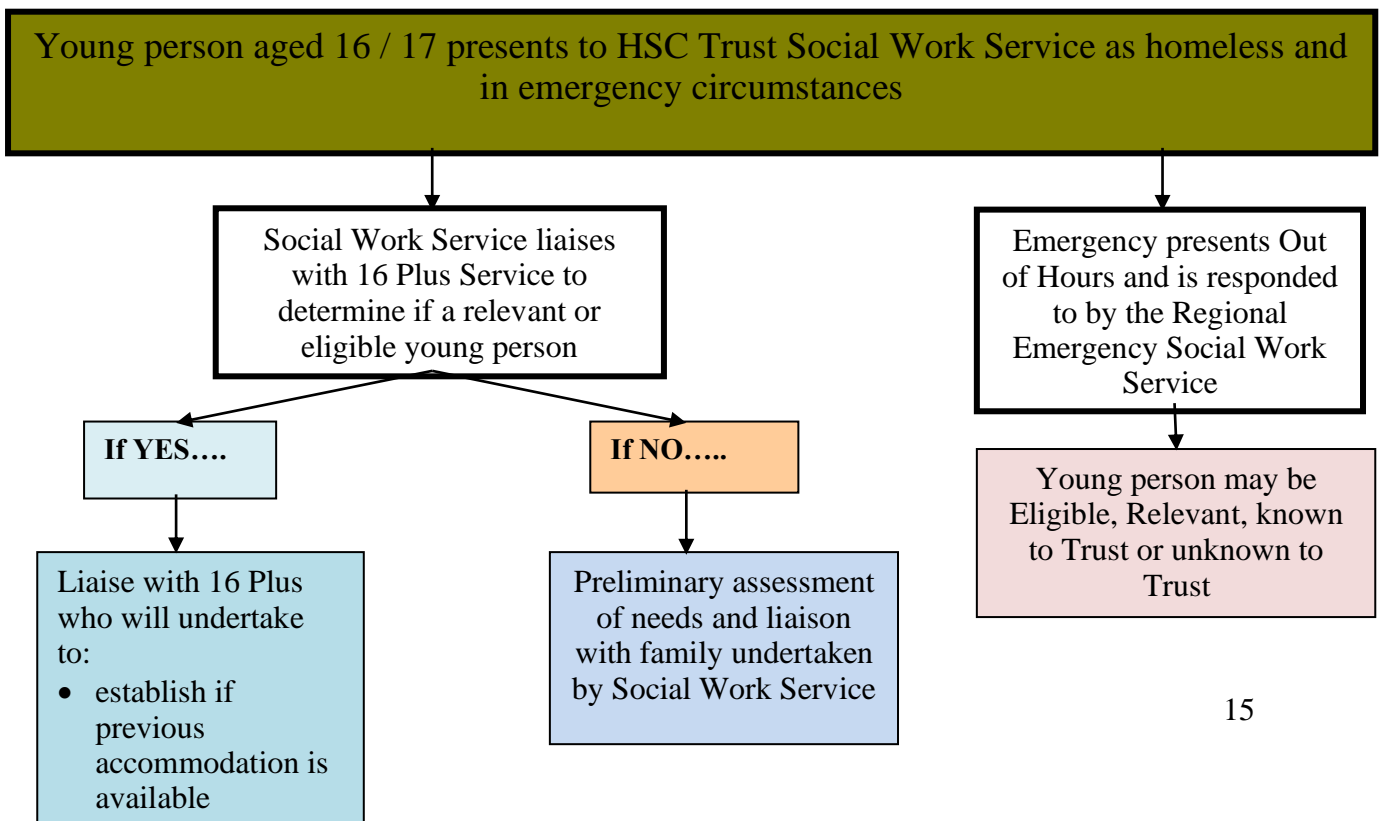
Where it is established that the young person is not a relevant or eligible young person, the following applies:

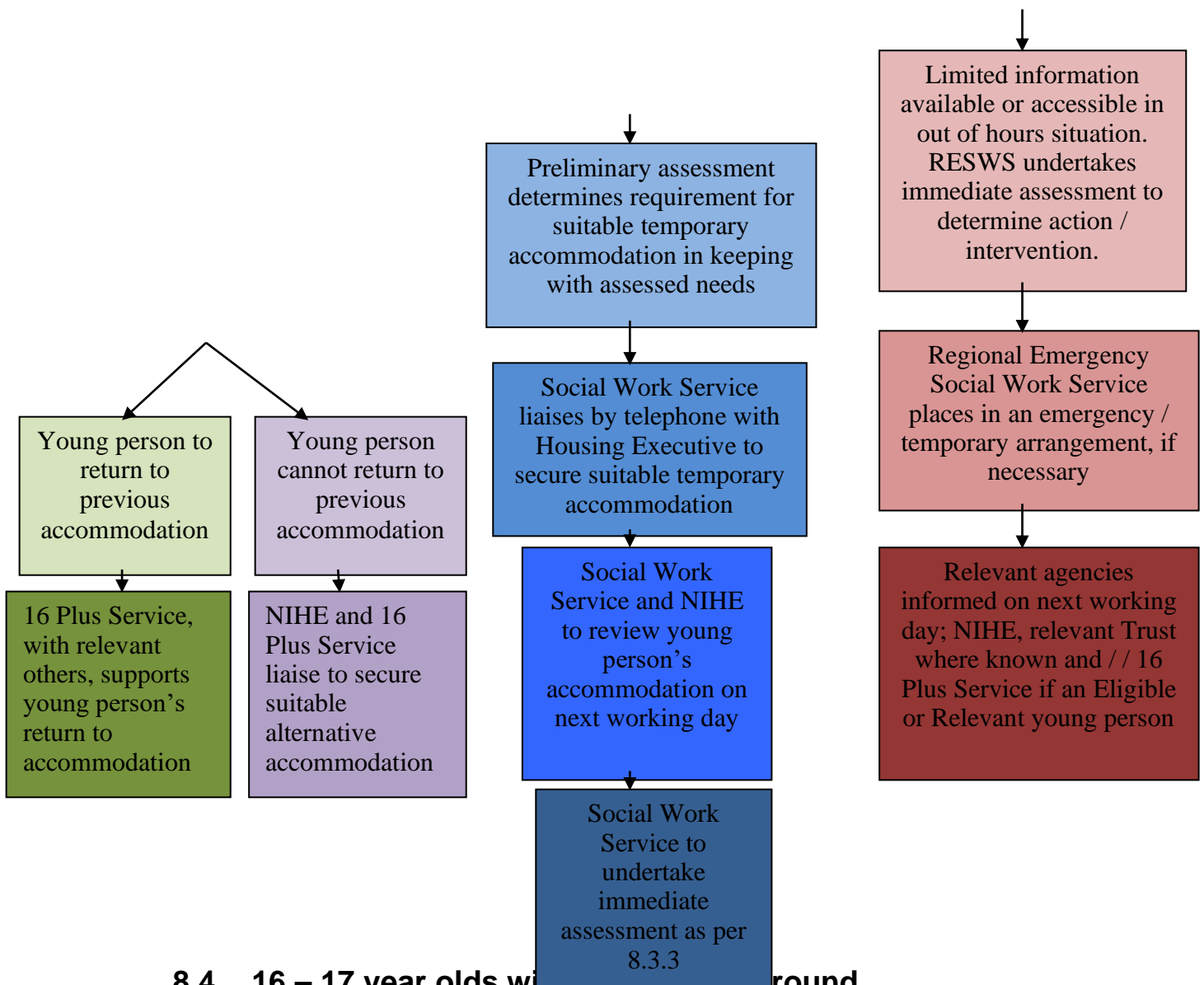
- i. Social Work Service to undertake preliminary assessment of needs including possible return to family, need for alternative living arrangement or provision of emergency accommodation
 - ii. Where it is established that an immediate return to the family home is not possible Social Work Service will, with the young person and family, explore possible options from within wider family and friend's network
 - iii. Where temporary accommodation is required and the preliminary assessment indicates that the young person can be accommodated safely on an emergency basis in accommodation arranged by the NIHE the Social Work Service will liaise with the relevant District Housing Executive Office to find appropriate temporary accommodation
 - iv. In determining the need for temporary emergency accommodation this will be arranged on the basis of a telephone call by the Social Work Service to the relevant District Housing Executive Office. This arrangement will be reviewed on the next working day by both agencies
 - v. Immediately confirm temporary accommodation arrangements using the standard pro-forma and confirm start of the assessment process (Appendix 7)
- 8.3.3 The confirmation of arrangements will trigger an assessment by the Trust's Social Work Team using the UNOCINI assessment framework with particular reference to criteria specified in Appendix 9. Where the assessment determines that a duty is owed to the young person under Article 21 of the Children Order consideration will be given to the most appropriate placement options available for the young person, giving due regard to his / her wishes and views. Placement options will include a care placement, within a kinship arrangement, non kinship foster care, residential care, supported lodgings, young adults supported accommodation. As a Looked After / accommodated young person, he / she will be entitled to the same provisions as other Looked After children as prescribed by the Children Order 1995 and associated Regulations and Guidance. If the young person subsequently becomes an eligible young person, he / she will qualify for entitlements

as set out in the Children (Leaving Care) Act 2002. In circumstances where the Trust's 16 Plus Service confirm that the young person is deemed Relevant or Eligible under the Children (Leaving Care) Act 2002, the Housing Executive will agree continuation of temporary accommodation, where applicable, on the basis that the relevant Trust assumes financial responsibility, in line with agreed arrangements. Where the assessment determines "accommodated" arrangements under Article 21 and the young person continues to reside in a non care placement in NIHE based accommodation, the HSC Trust must assume financial responsibility.

- 8.3.4 Where a young person is not deemed Relevant or Eligible and is placed in temporary accommodation pending completion of assessments as at 8.3.3 financial responsibility for the payment of accommodation costs rests with the NIHE under the terms of the Housing (NI) Order 1988. The outcome of the assessment at 8.3.3 will determine the duties owed by the respective agencies and which agency holds financial responsibility for any associated accommodation costs in the longer term.
- 8.3.5 In circumstances where a 16 – 17 year old presents as homeless to the Regional Emergency Social Work Service a placement will be arranged by the Trust where deemed appropriate in line with current out of hours arrangements and will notify the relevant Housing Executive Office on the next working day where the young person is residing in temporary NIHE accommodation. As per 8.3.4 the NIHE will have financial responsibility for accommodation costs pending the outcome of the agreed assessment process and associated timescale. Where the young person presenting as homeless in these circumstances is an Eligible or Relevant young person the same action will apply in terms of arranging a placement, if necessary. However the Regional Emergency Social Work Service will notify the relevant 16 Plus Social Work Team on the next working day.
- 8.3.6 In such instances the Trust's Social Work Service will undertake an initial assessment to determine needs and appropriate interventions in keeping with agreed timescales.
(Reference Figure 2 for summary of processes)
- 8.3.7 In all instances and on completion of the UNOCINI assessment the Social Work Service must advise the NIHE of the outcome of the assessment. This should be undertaken by forwarding the summary section of the UNOCINI assessment with confirmation of outcome in terms of the legal status and intervention pathway as applicable.

Figure 2





8.4 16 – 17 year olds with a care background

For young people who are looked after by Trusts, the Trust has a responsibility to carry out a Needs Assessment at the age of 16 years with a view to determining what advice, assistance and support should be provided while the young person makes the transition from care. The Assessment, which informs the Pathway Plan, considers the young person's needs under a range of issues that includes their support and accommodation needs. The Housing Executive should be involved as appropriate in both the development and review of the Pathway Plan.

Young people aged 16-17 years who remain looked after (eligible) or who have ceased to be looked after (relevant) continue to be the financial responsibility of Trusts in terms of accommodation costs. Where a young person is placed in a Trust funded bedspace in a Young Adults Supported Accommodation Project costs are already met by the Trust. Where an alternative arrangement is used that is already funded e.g. through a block grant by NIHE, financial systems need to

be in place at a local level to ensure that appropriate costs are invoiced and paid for by the responsible Trusts.

Trusts should have a close working relationship with their local Housing Executive colleagues and it is recommended that each Agency has a named contact person in place with lead responsibility for local application, implementation and monitoring of this Good Practice Guidance and to act as key contact point to address any emerging issues in a timely manner.

Relevant young 16 – 17 year olds who return to the care of their parents cease to be relevant after 6 months where it is established that the return home is successful. The young person, in these circumstances, becomes a “qualifying” young person. In the event that the home relationship breaks down and the young person is under 18, he / she will revert to his / her “relevant” status. In such an instance the Trust will be responsible for any financial costs associated with his / her accommodation.

8.4 18 -21 year olds seeking emergency accommodation

Where an 18 – 21 year old presents in an emergency to the Housing Executive the following procedure should apply:

- 8.4.1 In the first instance, establish whether the young person is deemed a qualifying or former relevant young person under the Children (Leaving Care) Act 2002. NIHE Officer liaises directly with relevant Trust’s 16 Plus Service to establish the young person’s status.

Where a young person is deemed as qualifying or former relevant the following applies:

- i. Liaise with 16 Plus staff to:
 - Determine whether young person’s previous accommodation remains available
 - Establish whether there is any risk to the young person returning there

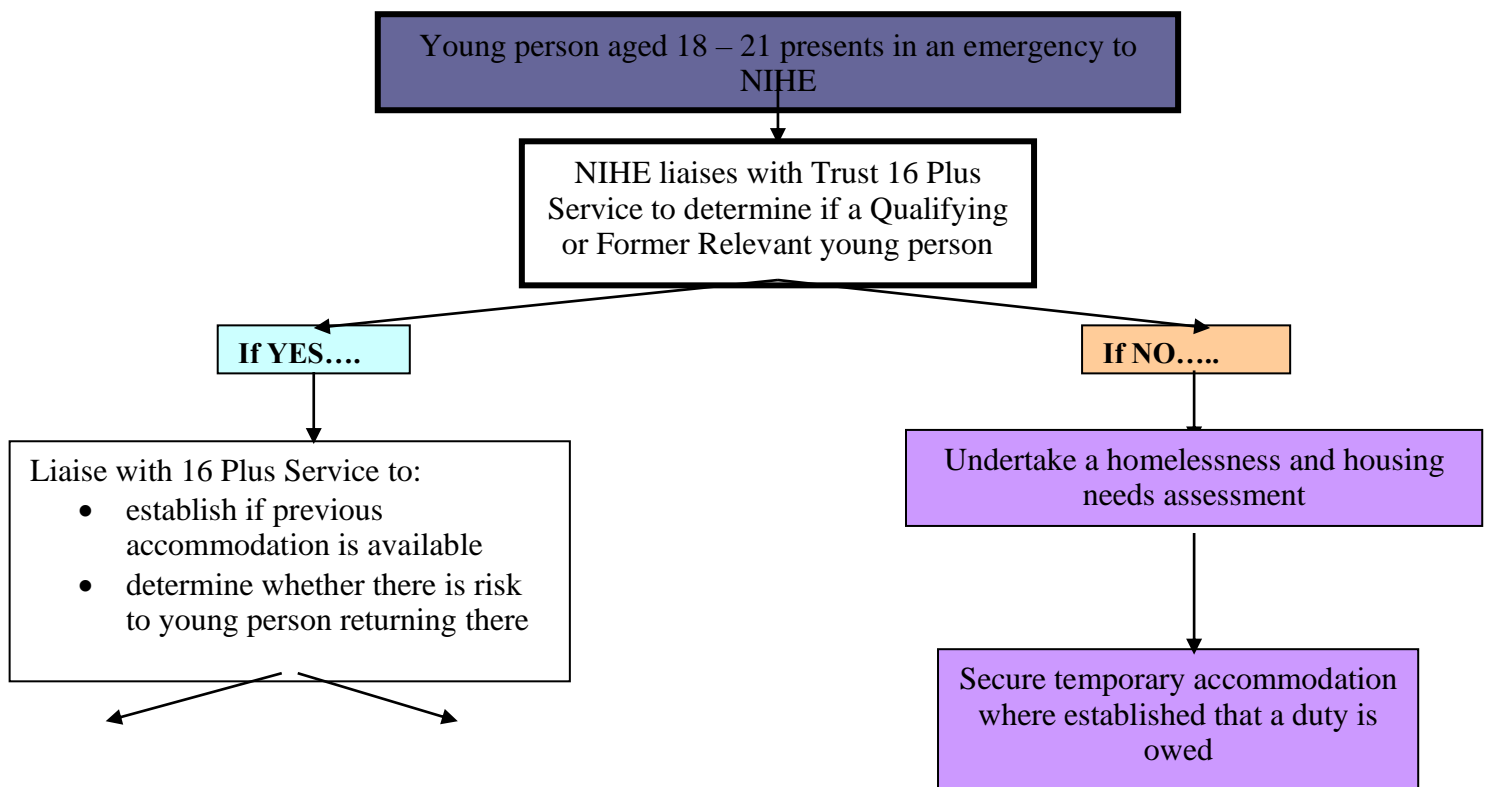
- ii. Where the young person can be safely returned to previous accommodation 16 Plus staff will, along with relevant others, support the young person's return
- iii. Where it is deemed unsuitable for the young person to return 16 Plus staff will liaise with NIHE and relevant others to secure suitable alternative accommodation where it is deemed that a duty is owed under the provision of the Housing (NI) Order 1988
- iv. 16 Plus Service will co-operate with the Housing Executive in providing information considered relevant to its assessment

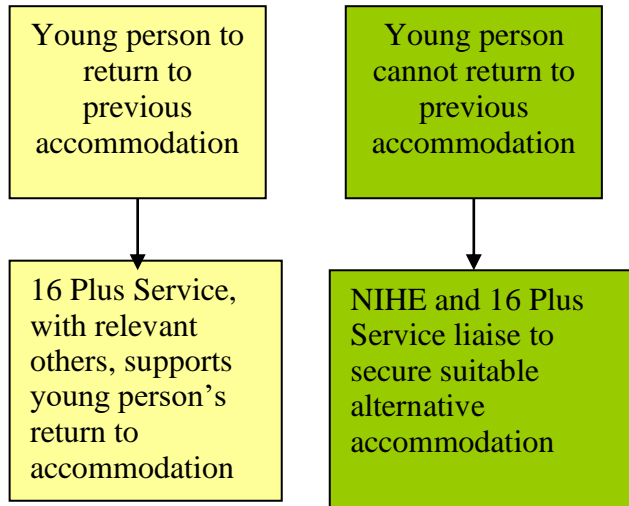
Where a young person aged 18 – 21 years is not deemed as qualifying or former relevant, the following applies:

- i. Undertake a homelessness and housing needs assessment
- ii. Secure temporary accommodation in circumstances where it appears that a duty is owed under the provision of the Housing (NI) Order 1988

(Reference Figure 3 for summary of processes)

Figure 3





Where an 18 – 21 year old presents in an emergency to the HSC Trust's Social Work Service the following procedure should apply:

8.4.2 In the first instance, establish whether the young person is deemed Qualifying or Former Relevant. This will require liaison with the relevant Trust's 16 Plus Service.

Where the young person is deemed Qualifying or Former Relevant the following applies:

- i. Liaise with 16 Plus staff who will:
 - a. determine whether the young person's previous accommodation remains available
 - b. establish whether there is any risk to the young person returning there
- ii. Where the young person can be safely returned to previous accommodation 16 Plus staff will, along with relevant others, support the young person's return
- iii. Where it is deemed unsuitable for the young person to return and in keeping with the young person's assessed needs / Pathway Plan, 16

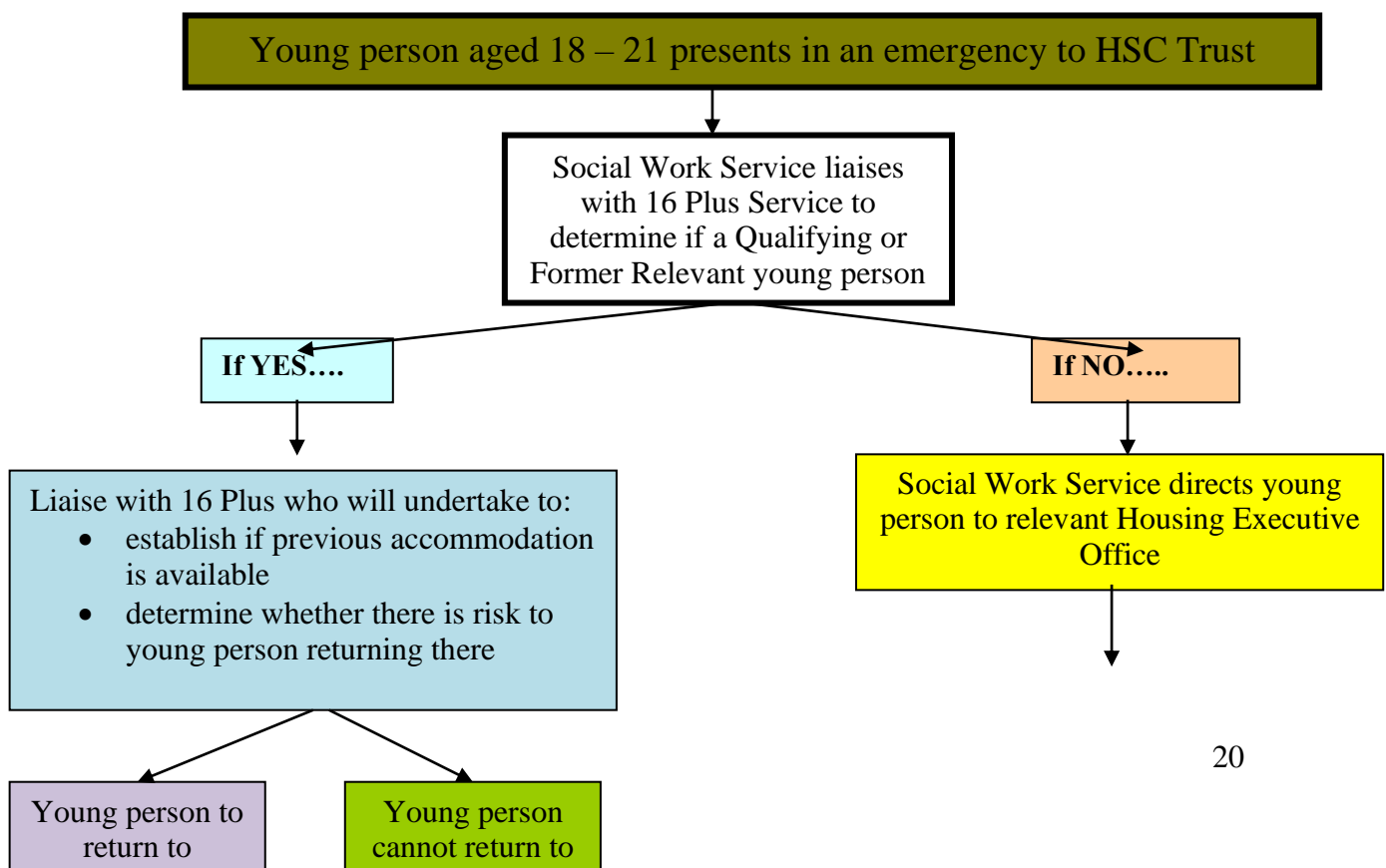
Plus staff will approach the Housing Executive to secure appropriate temporary accommodation. Former relevant and qualifying young people have a right of access to benefits, accommodation and support costs in their own right. There may be situations, however, where due to the young person's income or their involvement in full time education, either no benefit or reduced benefit is payable. In these cases any shortfalls for accommodation costs are the responsibility of the Trust in keeping with Articles 34D and 35B of the Children (Leaving Care) Act 2002.

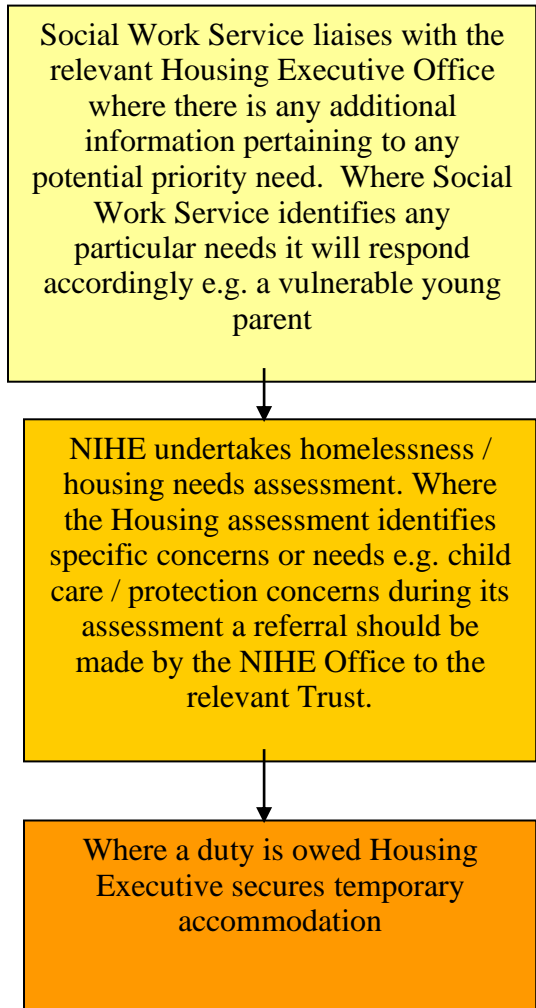
Where the young person is not deemed to be Qualifying or Former Relevant, the following applies:

- i. Social Work Service will direct the young person to the relevant Housing Executive Office
- ii. Social Work Service will liaise with the relevant Housing Executive Office where there is any relevant information pertaining to any potential priority need. Any additional support needs e.g. where a young person is a parent will be assessed and responded to by the relevant agency.
- iii. NIHE will undertake a homelessness and housing needs assessment
- iv. NIHE will secure temporary accommodation in circumstances where it appears that a duty is owed under the provision of the Housing (NI) Order 1988

(Reference Figure 4 for summary of processes)

Figure 4





8.5 18 – 21 year old with a Pathway Plan

Young people who have been in care and who are regarded as ‘former relevant’ (18-21 years) under the Children (Leaving Care) Act (NI) 2002 will be subject to appropriate Pathway Planning arrangements. The designated social worker from the Trust’s 16 Plus Service is responsible for co-ordinating the Pathway Plan and will maintain contact with the relevant Housing Executive staff to ensure appropriate access to support and accommodation as the young person moves to independent and permanent accommodation.

The young person has a right of access to benefits and accommodation and support costs in his/her own right without reference to the responsible Trust.

For ‘former relevant’ and qualifying young people in further/higher education living away from their community of origin, HSC Trusts have a duty to provide vacation accommodation or the funds to secure it. The Trust may seek the support of the Housing Executive to identify and access suitable vacation accommodation.

8.6 16 – 21 year olds approaching the Housing Executive seeking accommodation on a non-emergency basis

8.6.1 In almost all instances a 16-21 year old seeking accommodation from the Housing Executive on a non-emergency basis will do so via a housing application form. In such instances the Housing Executive will:

- Undertake a housing needs assessment
- Where it is established that the young person is aged 16 / 17 and known to Social Services a referral should be made to the relevant Trust's Gateway Service and Gateway Service will refer the matter to the relevant service within the Trust.

9.0 CONSIDERATIONS, MONITORING AND REVIEW

9.1 This Guidance is primarily aimed at ensuring joint working between Trusts and the Housing Executive in meeting the housing and support needs of young people who are homeless or are at risk of homelessness. The Guidance includes arrangements for jointly responding to needs up to 21 years of age. In responding to the needs of young adults it is important that due consideration is given by both agencies to their continuing needs and potential or actual vulnerability and continued requirement to access adult services.

9.2 Where young adults aged 18 – 21 present as vulnerable and are assessed to have continued need for support both agencies should have regard to the regional Safeguarding Vulnerable Adults Policy and Procedures 2006.

9.3 In situations where a 16 – 21 year old presents to the NIHE and is undertaking carer responsibilities that are beyond his / her capabilities and therefore impact on his / her vulnerability and ability to cope the NIHE should refer directly to the Trust's Social Work Service where the young carer is aged 16 / 17. For those over 18 and depending on the specific "caring" responsibilities identified a referral may be forwarded to the Trust's Adult Programmes of Care, NIHE Floating Support Services or advice and signposting may be sought in first instance by contacting the Trust's Social Work Service.

9.4 In instances where a young person is dissatisfied with the service received or the outcome of the assessment / decision making process, he / she should be advised and supported to address his / her complaint through the respective agency's complaints / appeals procedure.

9.5 Where inter-agency disputes arise in relation to case management, responsibilities, roles etc arrangements should be in place at a local Trust / Housing Executive level to ensure that mechanisms are in place for the resolution of such disputes.

- 9.6 Trusts and NIHE will share responsibility for monitoring application and impact of the Guidance. This will be supported by the Regional Reference Group whose remit will include ensuring that arrangements are in place to monitor the effectiveness of the Guidance against its stated aims and objectives.
- 9.7 Review of the Guidance document itself will take place annually and any subsequent amendments will be informed by the findings and outcomes of the monitoring arrangements, learning emanating from operational practice and any policy or legislative changes. Review of or amendments to the Guidance will be undertaken jointly by NIHE and Trusts.

10.0 ENDORSEMENT

The Guidance is endorsed by the Directors for Children and Families Services in each of the Health and Social Care Trusts and by the Acting Chief Executive of the Housing Executive.

The Guidance comes into immediate effect as of the date of formal issue.

APPENDICES

1. Summary of Housing (NI) Order 1988
2. Summary of Housing (NI) Order 2003
3. Summary of Children (NI) Order 1995
4. Summary of Children (Leaving Care) Act (NI) 2002
5. Definition of Parental Responsibility
6. Consent to Share Information
7. Inter Agency Referral Form

8. Glossary of Terms

9. Assessing the Duty to Accommodate under Article 21

10. Named Leads HSC Trusts and NIHE

11. Exit Pathways for Young People Aged 16/17 in Woodlands who are at risk of / face homelessness on discharge

APPENDIX 1

Housing (NI) Order 1988 (as amended by the Housing (NI) Order 2003)

The Housing (NI) Order 1988, imposed on the Housing Executive, statutory responsibility for responding to homelessness. Applicants who are homeless or threatened with homelessness are assessed in line with the provisions of the Order to determine what duty, if any, is owed to him by the Housing Executive. The Extent of the Housing Executive's duty is dependent on a number of "tests":-

Homelessness / threatened with homelessness

A person is homeless if he has no accommodation available for his occupation in the United Kingdom or elsewhere

A person shall be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which it is reasonable for that person to reside with him –

- (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or
- (b) has an expressed or implied licence to occupy, or
- (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

Regard may be had in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in Northern Ireland.

A person is also homeless if he has accommodation but –

- (a) he cannot secure entry to it, or
- (b) it is probable that occupation of it will lead to violence from some other person residing in it or to threats of violence from some other person residing in it and likely to carry out the threats, or
- (c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted to place it and to reside in it.

A person is threatened with homelessness if it is likely that he will become homeless within 28 days from the day on which he gives written notice to the Executive that he is threatened with homelessness.

Meaning of accommodation available for occupation

For the purposes of this Part accommodation shall be regarded as available for a person's occupation only if it is available for occupation both by him and by any other person who might reasonably be expected to reside with him; and references to securing accommodation for a person's occupation shall be construed accordingly.

Priority need for accommodation

The following have a priority need for accommodation –

- A pregnant woman or a person with whom a pregnant woman resides or might reasonably be expected to reside;
- A person with whom dependent children reside or might reasonably be expected to reside;
- A person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
- A person who is homeless or threatened with homelessness as a result of an emergency such as a flood, fire or other disaster;
- A person without dependent children who satisfies the Executive that he has been subject to violence and is at risk of violent pursuit or, if he returns home, is at risk of further violence;
- A young person who satisfies the Executive that he is at risk of sexual or financial exploitation.

Becoming homeless intentionally

A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation, whether in Northern Ireland or elsewhere, which is available for his occupation and which it would have been reasonable for him to continue to occupy.

A person becomes threatened with homelessness intentionally if he deliberately does or fails to do anything the likely result of which is that he will be forced to leave accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

An act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate

A person shall be treated as becoming homeless, or as becoming threatened with homelessness intentionally, if –

- (a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would be reasonable for him to continue to occupy, and
- (b) the purpose of the arrangement is to enable him to become entitled to assistance under this part and there is no other good reason why he is homeless

APPENDIX 2

Housing (NI) Order 2003

The Housing (NI) Order 2003, introduced changes to the definition of homelessness and to the provisions regarding becoming homeless intentionally, and introduced the additional requirement on the Housing Executive to assess an applicant's eligibility for housing assistance.

Eligibility for housing assistance

A person is not eligible for assistance:-

- (a) If he is a person from abroad, who is subject to immigration control within the meaning of Section 119 of the Immigration and Asylum Act 1999, unless re-qualified by the regulations made by the Secretary of State
- (b) Other persons – not subject to immigration control within the meaning of the 1999 Act – who are prescribed by regulations as ineligible.
- (c) If he or a member of his household, has been guilty of unacceptable behaviour serious enough to make him unsuitable to be a tenant of the Executive; and, in the circumstances at the time his application is considered, he is unsuitable to be a tenant of the Executive by reason of that behaviour

The Children (NI) Order 1995

Article 18(1) makes it:

“...the general duty of every authority to safeguard and promote the welfare of children within its area who are in need;

...by providing a range and level of personal social services appropriate to those children’s needs”.

Article 17 states:

“For the purposes of this Part a child shall be taken to be in need if:

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- (c) he is disabled.

Article 21(1) places a duty on every authority to:

provide accommodation for any child in need within its area who appears to the authority to require accommodation as a result of:

- (d) there being no person who has parental responsibility for him;
- (e) his being lost or having been abandoned; or
- (f) the person who has been caring for him being prevented from providing him with suitable accommodation or care.

Article 21(3) places a duty on the Trust to:

“provide accommodation for any child in need within its area who has reached the age of 16 and whose welfare the authority considers is likely to be seriously prejudiced if it does not provide him with accommodation.”

Article 21(6) states that before providing accommodation, the authority has a duty to ascertain the child’s wishes and give due consideration to them.

Article 21(5) states:-

An authority may provide accommodation for any person who has reached the age of 16 but is under 21 in any home provided under Part VII which takes children who have reached the age of 16 if the authority considers that to do so would safeguard or promote his welfare.

Article 46 refers to co-operation between authorities and other bodies and states:

- (1) Where it appears to an authority that anybody mentioned in paragraph (3) could, by taking any specified action, help in the exercise of any of the authority's functions under this Part, the authority may request the help of that body, specifying the action.
- (2) A body whose help is so requested shall comply with the request if it is compatible with that body's own statutory or other duties and obligations and does not unduly prejudice the discharge of any of its functions.
- (3) The bodies are:
 - (a) any Board;
 - (b) any Education and Library Board;
 - (c) any Health and Social Services Trust or special agency;
 - (d) any District Council;
 - (e) the Northern Ireland Housing Executive; and
 - (f) such other persons as the Department may direct for the purpose of this Article.

APPENDIX 4

Children (Leaving Care) Act (NI) 2002

Relevant Children:

Article 34C (8). The responsible authority shall safeguard and promote the child's welfare and, unless the authority is satisfied that his welfare does not require it, support him by:

- (a) maintaining him;
- (b) providing him with or maintaining him in suitable accommodation; and
- (c) providing support of such other description as may be prescribed.

Article 34C (10) "suitable accommodation" means:

- (a) which so far as is reasonably practicable is suitable for the child in the light of his needs, including his health needs and any needs arising from any disability;
- (b) in respect of which the responsible authority has satisfied itself as to the character and suitability of the landlord or other provider; and
- (c) in respect of which the responsible authority has so far as reasonably practicable taken into account the child's:
 - wishes and feelings; and
 - educational, training or employment needs.

APPENDIX 5

Definition of Parental Responsibility

A person may hold parental responsibility for a child if they are:

- The mother of a child.
- A father who was / is married to the mother of a child.
- Any other person who has been granted parental responsibility by way of a Court Order, including Adoption Order / Residence Order and Parental Responsibility Order.
- A father who is named on the Birth Certificate of a child but who was not / is not married to the mother of that child.

APPENDIX 6

CONSENT TO SHARE INFORMATION

The Northern Ireland Housing Executive and Social Services Trust believe that all matters relating to children and families should be treated as confidential, as far as possible.

In order to give you the best service we can, it may be necessary for us to talk with other organisations, or for them to provide you with services or support. This might include Social Services, the Housing Executive, Doctor, Health Visitor etc. If this is the case we will need to tell them relevant details about you if you are to get an appropriate assessment and service.

We will give only the necessary information to necessary people, but it is important that you understand we may have to do this.

Please sign below to say that you understand this will happen, and to give your permission under these circumstances.

Name: _____

Address: _____

Signature: _____ **(Young person)**

Signature: _____ **(NIHE / Trust representative)**

(Parental consent may be required if there are concerns about the young person's capacity to give informed consent)

APPENDIX 7

REGIONAL GOOD PRACTICE GUIDANCE AGREED BY THE NORTHERN
IRELAND HOUSING EXECUTIVE AND THE HEALTH & SOCIAL
SERVICES TRUSTS

Inter-agency REFERRAL FORM

APPLICANT details	
Name	
Address	
Date of Birth	
Contact number / address	
Date of contact	
Office initially contacted	NIHE / SOCIAL SERVICES* *delete as appropriate
AGENCY details	
NIHE Office address & telephone number	
Name of case worker	
Social Services Office address & telephone number	
Name of case worker	
TEMPORARY ACCOMMODATION details	
Address	
Provider	Name Contact number
OTHER RELEVANT INFORMATION INCLUDING PRESENTING NEEDS / RISKS, CIRCUMSTANCES OF PRESENTING IN HOUSING NEED. Identification of Risks should include any current or historical information relating to: self-harm, mental health, criminal behavior, child sexual exploitation, drugs/alcohol misuse, absconding history etc,	

APPENDIX 8

Glossary of Terms

A Looked After Child

Any reference to a child who is looked after by an authority is a reference to a child who is:

- (a) in the care of the authority; or
- (b) provided with accommodation by the authority.

(Article 25 (1) Children (NI) Order 1995)

“Accommodation” means accommodation which is provided for a continuous period of more than 24 hours

(Article 25 (2) Children (NI) Order 1995)

An Eligible Child

- (a) is aged 16 or 17; and
- (b) has been looked after by an authority for a prescribed period [13 weeks], or periods amounting in all to a prescribed period [13 weeks], which began after he reached a prescribed age [14 years] and ended after he reached the age of 16.

(Art 34A Children (NI) Order 1995)

A Relevant Child

- (a) is not being looked after by an authority;
- (b) was, before last ceasing to be looked after, an eligible child for the purposes of Article 34A Children (NI) Order 1995; and
- (c) is aged 16 or 17.

(Article 34B Children (NI) Order 1995)

Former Relevant Child

- (a) a person who has been a relevant child for the purposes of Article 34B (Children (Northern Ireland) Order 1995) (and would be one if he were under 18), and in relation to whom that authority was the last responsible authority; and
- (b) a person who was being looked after by that authority when he attained the age of 18, and immediately before ceasing to be looked after was an eligible child

(Article 34D Children (NI) Order 1995)

Qualifying Young Person: means a person who—

(a) is under 21; and

(b) at any time after reaching the age of 16 but while still a child was, but is no longer, looked after, accommodated or fostered.

(Art 35 Children (NI) Order 1995)

Assessing the duty to accommodate a child under Article 21, Children (NI) Order 1995

The following criteria, derived from Baroness Hale’s interpretation of Section 20, Children Act 1989 (equivalent of Article 21 Children (NI) Order 1995) in the R (G) v London Borough of Southwark 2009 case must be applied as part of the overall assessment of a young person aged 16 / 17 who presents as homeless to determine whether a duty to accommodate under Article 21 of the Children (NI) Order 1995 applies.

1. Is the applicant a child?
2. Is the applicant a ‘child in need’ as defined by Article 17 of the Children (Northern Ireland) Order 1995?
3. Is the child within the Trust’s area?
4. Does the child appear to the Trust to require accommodation?
5. Is that need as a result of: (a) there being no person who has parental responsibility for the child: or (b) the child’s being lost or having been abandoned: or (c) the person who has been caring for the child being prevented from providing the child with suitable accommodation or care?
6. What are the child’s wishes and feelings regarding the provision of accommodation for them?
7. What consideration (having regard to the child’s age and understanding) is duly to be given to those wishes and feelings?

APPENDIX 10

Trust Areas	HSC Trust	NIHE
██████	████████████████████ ████████████████████	████████████████████ ██

	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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APPENDIX 11

**Exit Pathways for Young People Aged 16/17 in Woodlands
Juvenile Justice Centre who are at risk of / face homelessness
on discharge**



March 2014

The paper sets out agreed working and interface arrangements between practitioners and staff within Social Services, Youth Justice Agency (Woodlands, Bail information and Support and Youth Justice Services) and NIHE to assist with **exit planning of young people aged 16/17 from Woodlands who are at risk of or face homelessness on discharge or who remain on remand until appropriate accommodation is secured.**

The document must be read in conjunction with the **Regional Good Practice Guidance between NIHE and HSC Trusts on Meeting the Accommodation Needs of Care Leavers aged 16-21 and Young Homeless aged 16/17 (2014).**

This Regional Guidance provides an overarching framework which sets out the regionally agreed working arrangements between Social Services and NIHE where young people aged 16/17 present as homeless to either agency. It articulates the statutory requirement on Social Services to undertake an assessment of need under Article 18 of the Children Order 1995 in respect of any young person aged 16/17 who is at risk of homelessness or who is homeless and to determine entitlement under Article 21 of the Children Order.

The Regional Guidance also makes explicit the role and responsibilities of NIHE who will progress an assessment of housing need depending on the outcome of the UNOCINI assessment. The Guidance reflects a commitment to work alongside Social Services in identifying and accessing suitable temporary or medium / longer term accommodation to meet assessed needs. **It is established that, irrespective of bail conditions pertaining to a young person who is homeless, the young person has an entitlement to be considered under the homelessness legislation to determine whether a homelessness duty is owed. Therefore the same process should be adopted for those young people who may require bail conditions to allow them to remain in the community and where accommodation may be an issue.**

Working arrangements between the named agencies should be inclusive of the **Youth Justice Agency, including the Bail Information Scheme and the Bail Support Scheme.** The Bail Information Scheme in particular is targeted at early and timely engagement with young people and is aimed at contributing to a reduction in the number of young people that are remanded under PACE or remanded in custody for reasons that could be addressed with fuller information or by the provision of appropriate services.

It is evident from practice and experience that there is a cohort of young people aged 16/17 in Woodlands Juvenile Justice Centre (JJC) who requires accommodation as part of discharge planning; not all of these young people are known to the NIHE or Social Services. It is therefore necessary to establish explicit referral and response pathways that will ensure that their needs are appropriately assessed and met.

There are particular challenges associated with those young people aged 16 / 17 residing in JJC, for example,

- discharge planning is significantly affected by the status under which the young person resides in JJC i.e. subject to a Determinate Sentence or on remand;
- sourcing suitable accommodation to coincide with a discharge date can be constrained by availability; the limited notice associated with release for those on remand; and bail conditions attached to release arrangements can further restrict accommodation options.

Where a clear discharge date is already known the processes set out in this document can be effected in a timely and planned manner. Where a young person is remanded in JJC and release is subject to suitable accommodation being secured and associated bail conditions being applied there is frequently little time or opportunity to proactively plan.

This paper aims to make explicit the application of the Regional Good Practice Guidance to those young people aged 16/17 in JJC where accommodation issues and the risk of homelessness are the presenting needs, irrespective of custodial status. In effect, it sets out interface working arrangements that must be adopted by JJC staff, Social Services and NIHE and builds on existing roles, responsibilities and the planning mechanisms of these respective agencies.

The assessment of needs / risks underpins the application of this Guidance. It is imperative that account is taken within the assessment process of the nature / seriousness of any offence and the implications that this may have for identification of future accommodation arrangements and for ensuring that appropriate safeguards are incorporated into the placement plan.

Appendix 2 provides details of Named Leads in NIHE Office and HSC Trusts with responsibility for overseeing and monitoring implementation of the agreed working arrangements between Social Services and NIHE. In the event of difficulties arising in the application of the Guidance on Exit Planning contact should be made directly with the most appropriate named person to resolve any issues presenting in a timely manner and at a local level in the first instance.

The cohort of young people who are the target group of this paper fall into three categories, namely:

- i. Looked After young people and care leavers aged 16 / 17
- ii. Children in Need with current Social Services involvement
- iii. Young people who are unknown to Social Services

The paper sets out the agreed working arrangements to be applied in respect of each of these categories of young people.

i. **Looked After Young People and Care Leavers aged 16/17***

Young people who fall into the above category will already be known to Social Services; will have a named social worker and a current needs assessment; and care/pathway planning and review processes will be in place. The named

social worker has primary responsibility for overall case management which includes ongoing liaison with Woodlands staff in planning for discharge.

**Appendix 1 defines this category of young people*

Planned Exit:

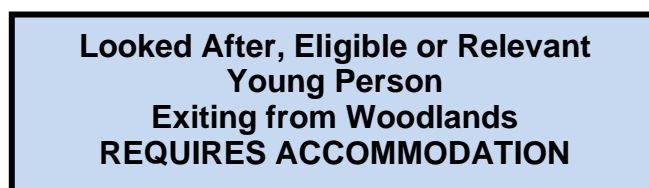
Where a discharge date is known i.e. those on a Determinate Sentence, the social worker should, in a timely and proactive manner, identify how the accommodation needs will best be met, who is responsible and associated timescales. These arrangements should be set out in the young person's pathway plan.

Unplanned Exit:

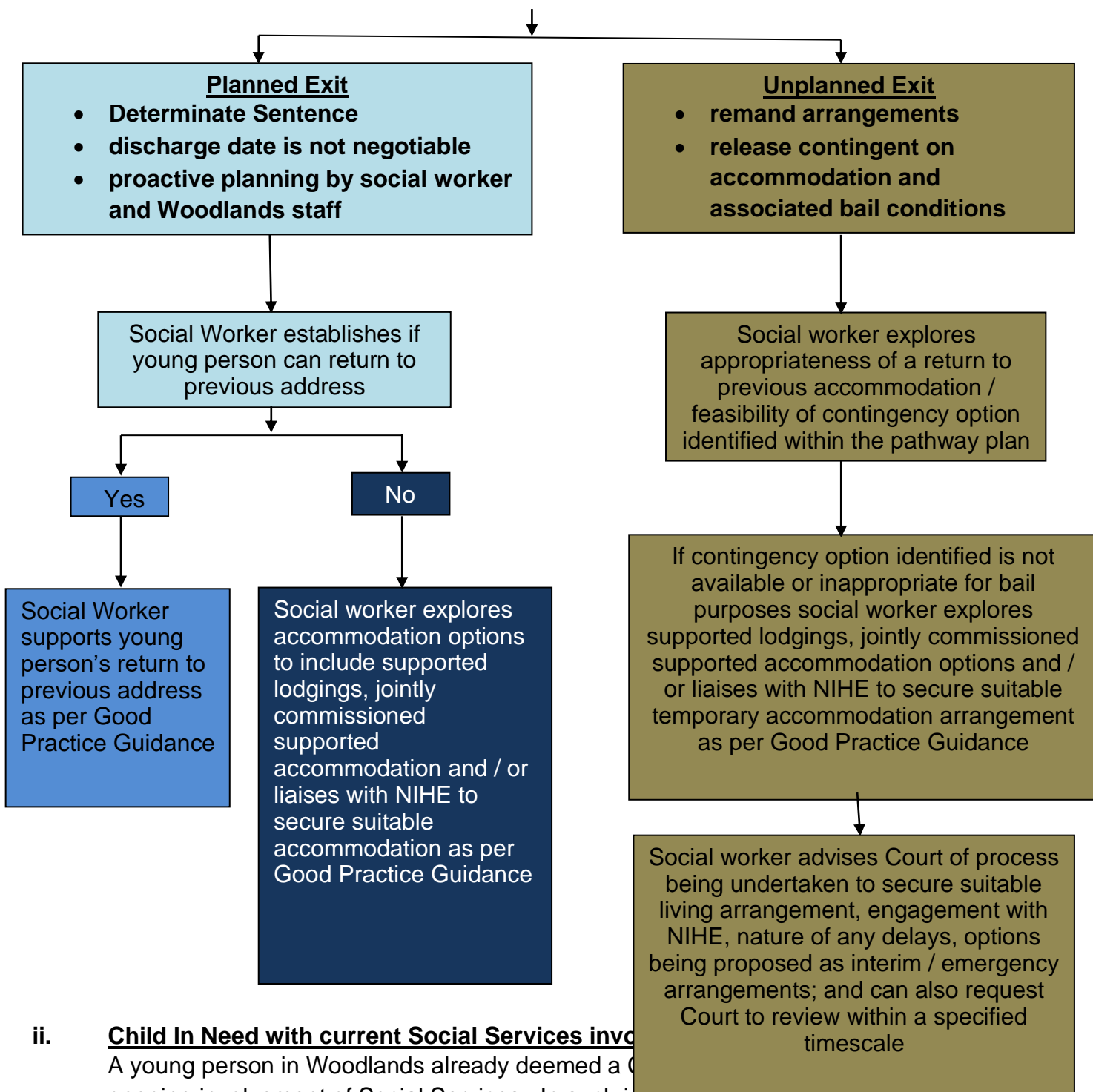
Where remand arrangements apply and there is a likelihood of an unplanned discharge, the social worker should ensure that contingency accommodation arrangements are addressed in the pathway planning process to pre-empt this eventuality. The named social worker has lead responsibility for a) establishing whether the young person can return to his / her previous accommodation; b) for exploring and identifying a suitable accommodation option and will undertake this task, as appropriate, in liaison with the relevant NIHE District Office. The named social worker should inform the Court in writing of the process being undertaken and progressed to secure suitable accommodation. A social worker should be in attendance at court proceedings in line with the *Regional Guidance for Residential Care and Field Social Work Staff on Supporting Looked After Children who are Arrested / Questioned by Police or appear in Court on Criminal Matters 2011*.

The process as described is set out in Table 1 below.

Table 1



Named social worker liaises with Woodlands staff throughout the process. The named social worker is either a Looked After Team social worker or in the case of a care leaver aged 16/17 a 16 Plus social worker (Reference Appendix 2 for contact details of respective teams in each Trust area)



ii. Child In Need with current Social Services involvement

A young person in Woodlands already deemed a Child in Need with ongoing involvement of Social Services. In such instances, child care concerns have already been identified, an initial UNOCINI assessment has been completed and a determination made that a Family Support Pathway is in place. The nature of intervention is agreed through a case planning and review process which is coordinated and managed by a named social worker usually from Family Intervention / Family Support or by a dedicated homeless social worker. *(The latter are available in some, not all, Trust areas).*

Planned Exit:

Where a discharge date is known i.e. those on a Determinate Sentence, and a return to immediate / extended family / to previous address is not available or appropriate and the young person faces homelessness on discharge, the named social worker should undertake a further assessment to determine whether Article 21 duties apply. Where the assessment deems that a Looked After / Accommodated child status is applicable, consideration will be given to the appropriateness of accommodation needs being met in a residential children's home, kinship care placement, a foster care placement, supported lodgings or young adults jointly commissioned supported accommodation projects. In certain circumstances the social worker may liaise with the NIHE to explore alternative suitable accommodation options*. The care planning process should, in a timely and proactive manner, make explicit the agreed accommodation arrangement, who is responsible and associated timescales. Where Article 21 duties do not apply (*refer to Appendix 9 of the Regional Good Practice Guidance between NIHE and HSC Trusts on Meeting the Accommodation Needs of Vulnerable Young People for assessment criteria*) the social worker will liaise with NIHE District Office staff as appropriate and in keeping with the arrangements set out in the regional Good Practice Guidance. In such instances and where threatened with homelessness applies, NIHE will commence a homelessness assessment at least 30 days prior to homelessness occurring.

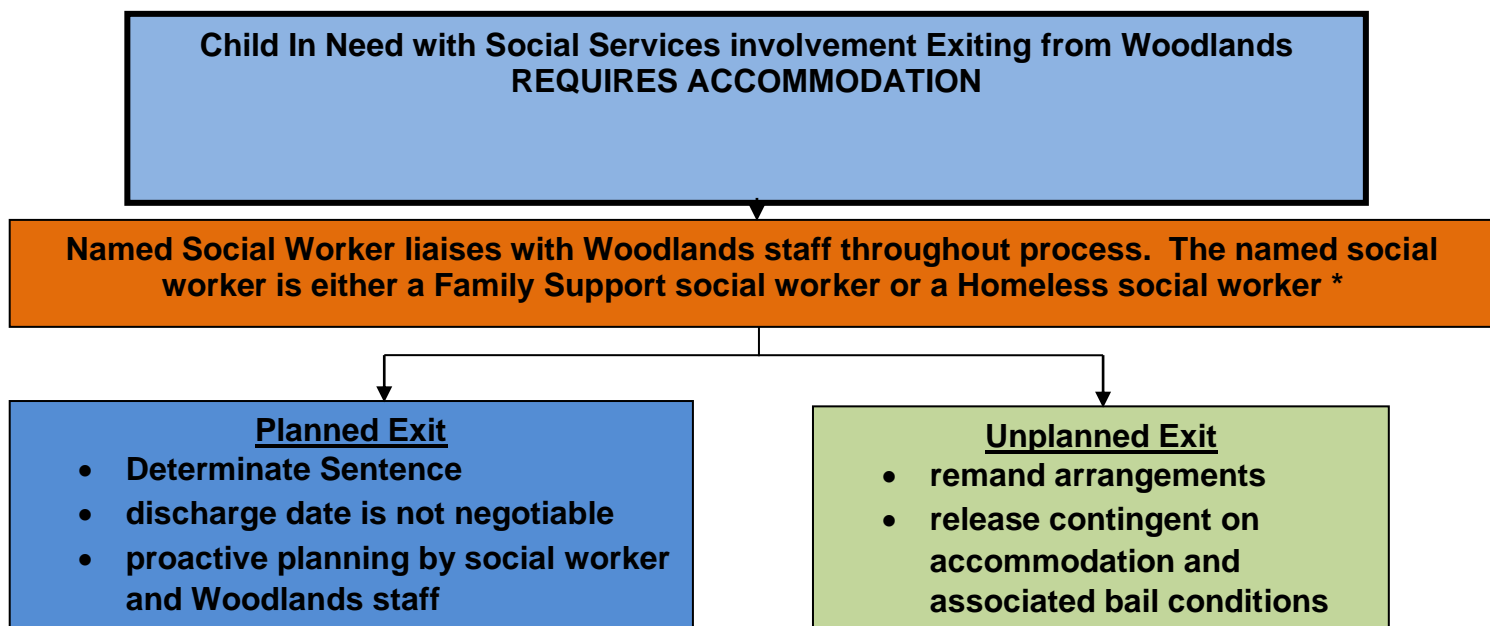
****Where a Looked After / Accommodated young person is placed in a living arrangement that is not a mainstream care placement, Trusts must complete an Unregulated Notification Report and submit to the HSCB.***

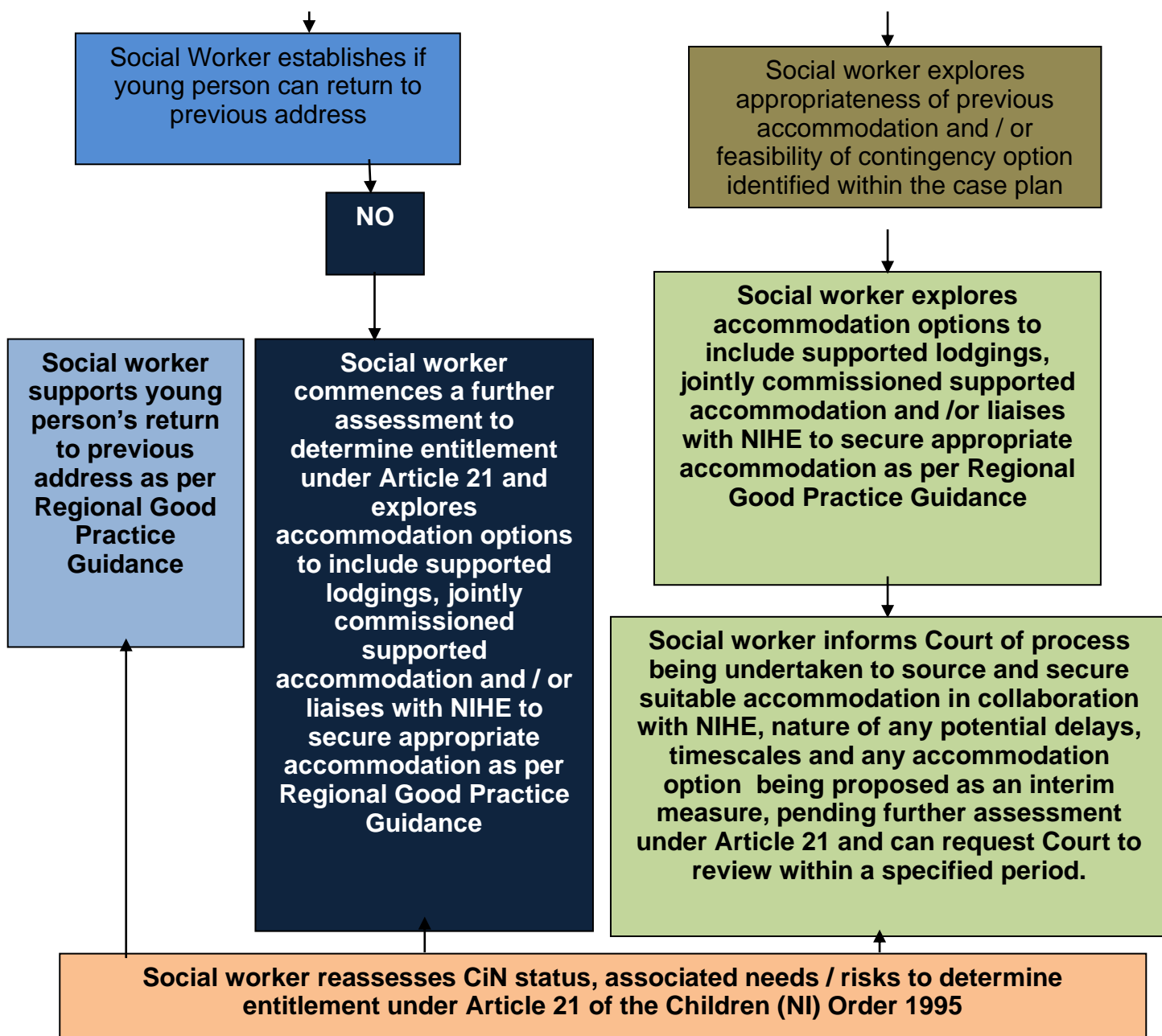
Unplanned Exit:

Where remand arrangements apply and there is a likelihood of an unplanned discharge, case planning should incorporate contingency arrangements to pre-empt this eventuality. The named social worker has lead responsibility for exploring and identifying an immediate suitable accommodation option and will undertake this task, where appropriate, in liaison with the relevant NIHE District Office as per arrangements set out in the Regional Good Practice Guidance. The social worker must reassess the child in need status given the young person's homelessness status to determine entitlement under Article 21 of the Children (NI) Order 1995.

Given the unplanned nature of discharge arrangements in these circumstances and the constraints that may be encountered in securing an appropriate accommodation arrangement, the social worker should inform the Court of the process being followed and progressed to address immediate accommodation needs and action being taken to reassess needs under Article 21. Table 2 sets out the process to be followed.

Table 2





**Reference Appendix 2 for Contact Details of relevant Teams in each Trust*

- resident in JJC on a Determinate Sentence / on remand
- do not have Social Services involvement
- where JJC staff have identified, through internal assessment and planning mechanisms, that the young person does not have accommodation to move to on discharge and will be at risk of homelessness

Planned Exit:

In those circumstances where a discharge date is known in advance and where JJC staff have assessed that a referral to Social Services is appropriate, a timely UNOCINI referral should be made by JJC staff to the appropriate Trust / Gateway Team using the UNOCINI Initial Referral documentation. Referral should be made at the earliest opportunity and in most cases no later than four weeks prior to the release date. (There will however be some cases where the date of discharge from custody will be more immediate due to time accredited for periods served on remand). Identification of the appropriate Trust / Gateway Team should be determined by:

- The young person's address prior to placement in JJC;
- The Gateway Team structure in each Trust area. Appendix 2 provides contact details of the Gateway Teams and access points in each Trust area
- A referral to the Gateway Team will trigger a UNOCINI assessment to be completed within 10 working days by a named social worker. The purpose of the assessment, as set out in the regional Guidance, is to assess needs and risks and determine entitlement under Article 21 of the Children (NI) Order 1995.

Where the assessment deems that a Looked After / Accommodated child status is applicable, consideration will be given to the appropriateness of accommodation needs being met in a residential children's home, kinship care placement or a foster care placement. Alternatively other suitable accommodation options including supported lodgings or jointly commissioned young adults supported accommodation projects will be examined and / or liaison will take place with NIHE District Office staff, where appropriate, to explore and identify other temporary suitable options*. Where Article 21 duties are assessed as not applying, NIHE will provide temporary accommodation and commence a homeless assessment. In such instances and where threatened with homelessness applies NIHE will commence a homelessness assessment at least 30 days prior to homelessness occurring. Table 3 provides an overview of the process.

****Where a Looked After / Accommodated young person is placed in a living arrangement that is not a mainstream care placement, Trusts must complete an Unregulated Notification Report and submit to the HSCB.***

Unplanned Exit

Where a discharge date is unplanned, accommodation needs are immediate and JJC staff have determined that a referral to Social Services is appropriate a UNOCINI referral should be completed by JJC staff and forwarded to the appropriate Trust / Gateway Team. The referral from JJC should incorporate all available information relating to assessed needs, risks

and young person's ability, wishes and feelings. Identification of the appropriate Trust / Gateway Team should be determined by:

- The young person's address prior to placement in JJC;
- The Gateway Team structure in each Trust area. Appendix 2 provides contact details of the Gateway Teams and access points in each Trust area. *(Trusts with the exception of the Northern Trust have a single point of entry through a central Gateway Team; the Northern Trust currently has three locality based points of entry).*

A referral to the Gateway Team will trigger a UNOCINI assessment to be completed within 10 working days by a named social worker. The purpose of the assessment, as set out in the regional Guidance, is to assess needs and risks and entitlement under Article 21 of the Children (NI) Order 1995.

To address the immediate accommodation need the named social worker will liaise with NIHE District Office to explore and identify a suitable accommodation option to be used.

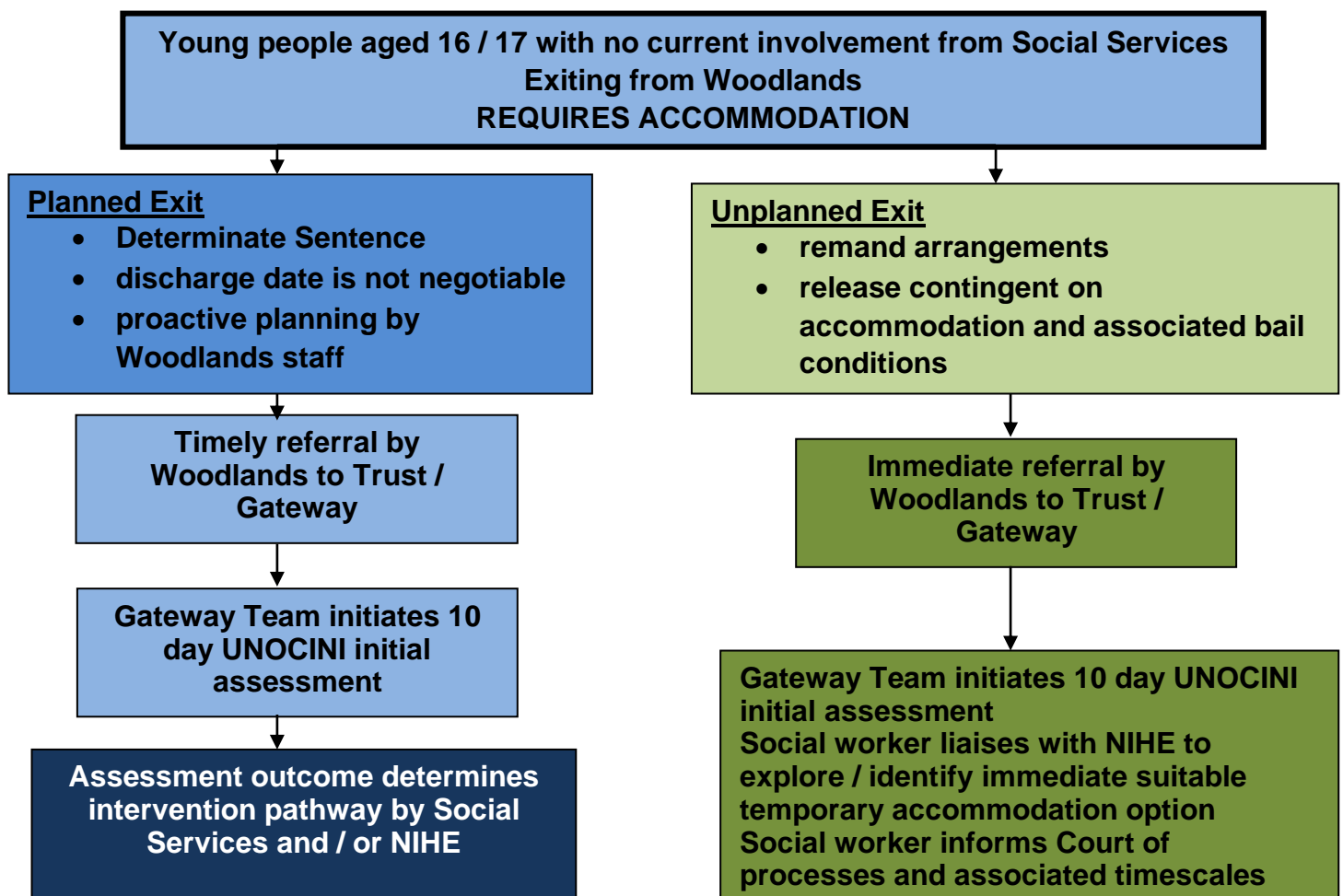
The named social worker should inform the Court of the ongoing process of assessment (identified needs and risks), actions being taken to identify suitable accommodation and expected timescales. Consideration should also be given to requesting that the Court incorporate a review date into any discharge / bail arrangements agreed in these circumstances.

Where the assessment deems that a Looked After / Accommodated child status is applicable, consideration will be given to the appropriateness of young person's temporary accommodation and whether needs would be best met in a residential children's home, kinship care placement or a foster care placement, supported lodgings or jointly commissioned young adults supported accommodation projects or in liaison with the NIHE District Office staff other accommodation is secured as suitable*. Where the outcome of the assessment determines that Article 21 duties are not applicable, the NIHE will continue to provide temporary accommodation and will commence a homelessness assessment. Trust involvement may continue based on Article 18 duties and on the outcome of the UNOCINI assessment.

Table 3 provides an overview of the process.

****Where a Looked After / Accommodated young person is placed in a living arrangement that is not a mainstream care placement, Trusts must complete an Unregulated Notification Report and submit to the HSCB.***

Table 3



Appendix 1

Definition of Looked After Young People and Care Leavers aged 16/17

This category of young people can be any of the following:

- **A Looked After Child** – has been in care for less than 13 weeks.
- **An Eligible Child** – has been in care for more than 13 weeks and has qualified for continuing support from Social Services/16 Plus Teams until aged 21.
- **A Relevant Child** – had previously been an 'Eligible' child, is now no longer Looked After and qualifies for continuing support from Social Services/16 Plus Teams until aged 21.

Appendix 2

H SCT Contact Details: Gateway, Regional Emergency Social Work Service, Family Intervention/Support Teams and 16 + Services

HSC Trusts Gateway and Regional Emergency Social Work Service Contact Details:

Western HSC Trust Gateway	Tel: 028 71 341 090
Belfast HSC Trust Gateway	Tel: 028 9050 7000
South-Eastern HSC Trust Gateway	Tel: 0300 1000 300
Northern HSC Trust Gateway	Tel: 0300 123 4333
Southern HSC Trust Gateway	Tel: 0800 783 7745
Regional Emergency Social Work Service (RESWS) – Out of Hours <ul style="list-style-type: none">• 5pm to 9am weekdays• 24 hours at weekends and bank holidays.	Tel: 028 95 04999

HSC Trust Family Intervention/Support Teams