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The Bar of Ireland

Submission to Oireachtas Joint Committee on Justice, Home Affairs & Migration

GENERAL SCHEME OF THE INTERNATIONAL PROTECTION BILL 2025

5 June 2025

Contents

INTRODUCTION

The Council of The Bar of Ireland is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,150 practising barristers. The Bar of Ireland is long established, and its members have acquired a reputation amongst solicitors, clients and members of the public at large as providing representation and advices of the highest professional standards. The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral bar.

The Council has prepared this submission in response to a request for submissions on the General Scheme of the International Protection Bill 2025.

EXECUTIVE SUMMARY

1. The General Scheme of the International Protection Bill 2025 ("General Scheme") proposes a fundamental reform of the current international protection system to align with the eight measures Ireland has opted into under the EU Migration and Asylum Pact ("the EU Pact"):
    1. Regulation (EU) 2021/2303 on the European Union Asylum Agency;[1]
    2. Regulation (EU) 2024/1346 Reception Conditions Directive (Recast);
    3. Regulation (EU) 2024/1347 Asylum Qualification Regulation;
    4. Regulation (EU) 2024/1348 Asylum Procedure Regulation;
    5. Regulation (EU) 2024/1350 EU Resettlement Framework Regulation;
    6. Regulation (EU) 2024/1351 Asylum and Migration Management Regulation;
    7. Regulation (EU) 2024/1358 Eurodac Regulation;
    8. Regulation (EU) 2024/1359 Crisis and Force Majeure Regulation.

2. Although Ireland cannot opt into the Schengen border measures under the Pact, the General Scheme proposes alignment (insofar as is possible) with the:
    1. Screening Regulation (Regulation (EU) 2024/1356);
    2. Return Borders Procedure Regulation (Regulation (EU) 2024/1349).

3. Whilst the Bill aims to streamline processes and align us with EU Pact legislation, which is welcome, it nevertheless raises significant concerns regarding access to legal representation, fair procedures and the protection of human or fundamental rights throughout the international protection process.

4. The introduction of strict timeframes and a restructured appeals process pose substantial logistical challenges both for international protection applicants in securing a fair process and effective remedies, and for legal practitioners in accessing and advising clients, particularly during the initial screening stage and within the accelerated and/or Border Procedures. The Scheme raises further concerns in relation to the administrative procedure at first instance, and on appeal to the Second Instance Body ("SIB") where it is crucial that

[1] Note: The State had already opted into this measure in 2023.

both stages comply with the requirements for fair procedures and natural justice in the administration of justice.

5. There are also a number of more general human rights concerns arising in respect of the Bill and certain assumptions underlying it which are dealt with at the end of the submission. Implementation of the Pact must be done in a manner that ensures international protection applicants' human rights including for example, their right to accommodation and dignified standard of living and this presents significant infrastructural and resourcing challenges which must, to a large extent, be dealt with before the Pact legislation becomes applicable in mid-2026 (the Regulation creating the EU Agency for Asylum (EUAA) and the Resettlement Framework Regulation are already in effect).

6. The first part of this submission focuses first, on procedural safeguards, second, practical implications for clients in terms of effectively accessing and instructing legal practitioners and third, the availability of effective remedies.

7. The second part of the submission, deals with the human rights issues arising in respect of the proposed screening procedure. Part three considers the border procedure, with part four outlining further human rights issues including the allocation of accommodation, restrictions on movement/detention, and the treatment of unaccompanied minors and children in general.

PART 1: PROCEDURAL CONCERNS & PRACTICAL IMPLICATIONS

DEFINITIONS & STRUCTURE

1. At the outset, the current structure of the General Scheme is difficult to navigate and cross-reference. In light of the imminent implementation date and strict timelines it introduces, a revised and more accessible format is essential, particularly in distinguishing between applicants subject to the admissibility procedure, the accelerated Border Procedure and those proceeding through the regular substantive international protection application procedure. It is noted that where such procedures will be required to be made available in a number of languages there is good reason for using clear, simple and well-defined terms. The relevant roles, responsibilities and minimum qualifications of 'legal counsellors' and 'cultural mediators' are not provided for, which is of concern given their early involvement as proposed under the General Scheme.

Applicants

2. The International Protection Act 2015 ("the 2015 Act") offers a useful model in this regard, clearly delineating between procedures. Specifically, §§43 and 72 of the 2015 Act, titled *'Accelerated appeal procedures in certain cases'*, provide structured guidance that supports both clarity and legal certainty.

3. Whilst a number of statutory instruments have been introduced following the commencement of the International Protection Act 2015 ('the 2015 Act')—including the *International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 (S.I. No. 116/2017)*, the *International Protection Act 2015 (Procedures and Periods for Appeals) (Amendment) Regulations 2022 (S.I. No. 542 of 2022)*, and the *International Protection Act 2015 (Application for International Protection Form) Regulations 2024 (S.I. No. 366 of 2024)*—the structure of the 2015 Act still provides a relatively clear framework for identifying and processing accelerated cases. Such clarity would be beneficial to all involved in the proposed new system.

4. The General Scheme lacks clarity on when a person is deemed an applicant and how this status triggers associated rights, procedural timelines and a right to remain in the State. As a result of their categorisation as an applicant the person concerned will be subject to the various categories of procedure as outlined above. By contrast, §§2, 13, and 15 of the International Protection Act 2015 clearly establish when IP applicant status is conferred.

5. Notably, **Head 2** of the General Scheme defines "Applicant" by reference to **Head 26**, which in turn cross-refers to **Heads 32 & 33**. This alone is difficult to navigate based on the current wording of each of the aforementioned Heads. However, there is no explicit interpretative provision in **Head 2** defining "accelerated Applicants" or those subject to the Border Procedure, leading to uncertainty as regards their procedural entitlements. Definitions of the categories of applicant should be clearly set out under **Head 2**, including those under the substantive procedure, Border Procedure, and clearly distinguish under **Head 2** that a person under the screening procedure is not yet an Applicant until after this preliminary process. As detailed below, the procedure for those subject to the Border Procedure is addressed throughout the General Scheme, and should be clearly consolidated under one part to avoid difficulties in implementation.

Vulnerable Applicants

6. While **Head 2** refers to applicants "*in need of special procedural guarantees*" due to vulnerability, this reference is inconsistent with the broader General Scheme and lacks clarity. It appears to contradict **Head 93**, which merely requires that "*due regard*" be had to the specific situation of vulnerable persons, without defining what procedural guarantees apply, when they arise, or how they are to be assessed. It is of further concern that the consideration of vulnerability in **Head 93** is specific to the application of Heads 88 to 92 only. **Head 48** offers only a limited reference, stating that personal interviews will be conducted by individuals "*sufficiently competent*" to consider vulnerability "*insofar as it is possible to do so*."

7. It is further uncertain what regard is had to *prima facie* vulnerability where such vulnerability may arise from the facts foundational to a claim for protection: see for example where **Head 93** cites, *inter alia, "persons who have been subjected to torture"* as an example of vulnerability. It is not clear if an Applicant will be afforded a presumption

of vulnerability on facts claimed but not yet assessed in order to access procedural protection nor is it clear how **Head 19** will determine vulnerability in a screening procedure where the facts giving rise to vulnerability require substantive assessment. The absence of concrete guarantees within the General Scheme risks procedural uncertainty, potential unfairness, and avoidable litigation if not addressed.

8. The General Scheme provides no mechanism for administrative review or appeal in respect of vulnerability determinations. Given the frequency of vulnerability issues arising in asylum claims, the absence of legal representation at the screening stage, and the impact of the blanket cessation of full vulnerability assessments under **S.I. No. 230/2018 (transposing the Reception Conditions Directive 2013/33/EU**), this omission is significant.

9. It is recommended that a review procedure be introduced, allowing applicants seven working days to request a review, with entitlement to fair procedures and legal representation. Provision should be made in this regard for the possibility of an oral hearing where the interests of justice so require. A failure to provide a review mechanism will mean that such decisions can only be challenged by way of judicial review, once again requiring litigation which could be avoided by the provision of a review mechanism.

DOCUMENTATION & INFORMATION

10. **Head 17** addresses the provision of information to applicants during the screening process. **Under Head 17(3),** such information must be delivered in a language the person understands or is reasonably supposed to understand, and shall be provided in writing, electronically, or orally.

11. In current practice, the International Protection Office ("IPO") currently issues information sheets often in English, with QR codes providing links to translated versions. Given the strict timeframes under the General Scheme and the potential for limited literacy or vulnerability among applicants, it is essential that information be provided in the person's own language, with checks in place to ensure that the information has been delivered and understood appropriately. This should be detailed to include the provision of the

information in written form (whether read by or read to the applicant concerned) and that applicants should confirm receipt and understanding by signature or mark thereon. The inclusion of oral delivery under the General Scheme is a welcome safeguard so long as it is used to confirm in the language of the applicant concerned the content of the written information provided and should not be a substitute.

12. However, additional procedural protections are necessary, as applicants may be reluctant to raise concerns at the early stage for fear of negatively impacting their claim. Ensuring clear communication from the outset is critical to safeguarding rights and the integrity of the process. It is suggested that easy-read documents and/or guides in video format are produced for young people, applicants with restricted literacy and applicants with learning difficulties.

13. The foregoing also applies for information to be provided to applicants under **Head 35**.

14. As regards the translation of documentation, it should be clearly set out that an applicant is entitled to legal aid in respect of translation of documents. **Head 35(1)(b)** refers to an applicant ensuring the translation of other documents at their own cost and similar provisions appear at **Head 60(4)(b) & (c)**. Ambiguity arises as to whether an applicant is responsible for the costs of translation under **Head 71(2)** where an appeal is before the SIB. Preventing access to legal aid for translating presents a considerable barrier to the administration of justice both for applicants and decision-makers. This is of importance given that legal advice may be provided after a first instance determination is made, with documentation being requested from an applicant's country of origin. Two-tier translation may impact applicants with low or no means. Further if the onus rests with the applicant and cannot be discharged it leads to the creation of an appeal to be decided without due consideration of all relevant matters, where the untranslated matters cannot be considered, once again inviting litigation which could be avoided by fair and consistent access to legal aid for translation services.

15. The exclusion of documents *simpliciter* under **Head 71(5)** in relation to appeals before the SIB where they have not been translated beforehand, have not been translated by the applicant, or where they have not been submitted within the 5 days or 2 week period (as applicable under **Head 67(2)**) is punitive in this regard and breaches the right to an

effective remedy. This ought to be amended to include provision for an extension of time to submit such documentation where it is reasonable to do so in the interests of justice, or based on the facts and particular circumstances arising. Further such restriction makes no accommodation for changing circumstances in the country of origin or *sur place* applications, two examples where relevant documents could not have been submitted at first instance.

LEGAL REPRESENTATION

16. The **Asylum Procedure Regulation (EU) 2024/1348** ("APR") provides, *inter alia*, at Article 15 for a right to "*legal counselling*" at first instance in international protection applications. This term is not defined in the APR and nor is the term "*legal counsellor*". There is no proposed interpretation as to what a *"legal counsellor"* would mean in the General Scheme. Conversely, the term "*legal assistance*" is defined as is the phrase "*legal representative*". Of uppermost concern are the distinctions drawn throughout the Pact as to what assistance may be sought by a person seeking protection. This is further muddied by the inclusion of cultural mediators at a later stage, which seems to further undermine access to legal advice.

17. There is a concerning lack of certainty in the General Scheme regarding what constitutes "*legal counselling*" as well as who may act as a "*legal counsellor*" in this jurisdiction and a recognition of the necessity for such services to be provided by a legal practitioner within the meaning of **section 2 of the Legal Services Regulation Act 2015 ('LSRA 2015')**. Whereas "*legal services*" and "*legal advice*" are both defined in statute and "*legal representation*" has been subject to consideration by the Superior Courts (see, for example ***O'Brien v Personal Injuries Assessment Board*** **[2008] IESC 71; [2009 SC] 3 IR 243; [2009 SC] 2 ILRM 22**), the concept of "*legal counselling*" is not one known to Irish law.

18. The provision of what would clearly amount to a form of legal advice and assistance – having regard to the activities referred to in **Article 16 APR** - by a person other than a lawyer recognised as qualified to do so under the LSRA 2015 would violate the applicant's entitlement to access effective and competent legal advice in this regard and would be inconsistent with the rule of law as recognised in this jurisdiction.

19. The General Scheme in effect creates a two-tier system of legal practitioners in the State with the secondary tier not being governed by the terms of the LSRA entailing as it would not *inter alia* provide a possibility for supervision of the activities of the secondary tier by the body entrusted in law to supervise the legal professions. There must also be serious concerns about legal professional privilege in this context. A person who purports to provide legal advice but who is not a lawyer is not bound by the rules of legal professional privilege. Such privilege is a fundamental tenet of the relationship of trust between a lawyer and client.

20. It is also difficult to reconcile this new tier with **Article 6(1)(a) and (d) of the Council of Europe Convention for the Protection of the Profession of Lawyer** signed by the State in Luxembourg (the "Luxembourg Convention") and which the Bar of Ireland understands is intended to be ratified by the State and which provides that "*Parties shall ensure that lawyers can: ..* (at **(a)**) "*offer and provide legal advice, assistance and representation, including for the purpose of defending human rights and fundamental freedoms*" and *(*at **(d)**) *"be recognised as persons who are authorised to advise, assist or represent their clients*".

21. **Article 6(4) of the Luxembourg Convention** provides that "*No restrictions shall be placed on the exercise of the rights established under paragraphs 1… of this article, other than those prescribed by law and which are necessary in a democratic society. Such restrictions can include, but are not limited to requirements to ensure the availability of legal advice, assistance and representation to all*". The establishment of a new profession of legal counsellors as persons entitled to provide legal advice and assistance in the place of legal practitioners recognised by the LSRA 2015 could clearly not be said to meet with the requirement of the Luxembourg Convention: that legal advice, assistance and representation can only be provided by a lawyer. A lawyer, according to **Article 3 of the Luxembourg Convention** means any natural person "*who is qualified and authorised, according to national law, to practise the profession of lawyer*".

22. Furthermore, there are no clearly defined requirements regarding access to the file(s) of a person seeking protection, or the ability to take up a file held by a legal counsellor and/or cultural mediator as required as a matter of natural and constitutional justice but also now by **Article 6(1)(e) of the Luxembourg Convention.** There are no clearly defined

responsibilities such as confidentiality set out in the General Scheme for either of the latter two roles proposed. This must be clarified.

23. Additionally, the objectives outlined in the preamble to the APR clearly state that free legal assistance and representation should be provided for in the appeal procedure (§16), and is specifically guaranteed at **Articles 8(2)(d), and Articles 15 through 18**, subject to a small number of exceptions. Where an applicant has sufficient resources, has submitted an abusive appeal (or one with no tangible prospect of success), where national law provides for a second level of appeal or re-hearing/review of appeal, or where an applicant is already assisted by a legal adviser, they are ineligible for free legal assistance **(Article 17(2) APR)**.

24. Apart from the rights arising under the Luxembourg Convention, the provision of legal advice and assistance by a qualified legal practitioner to an applicant vindicates the relevant person's entitlement to apply for protection status in Ireland as provided for by the Geneva Convention, Article 18 of the EU Charter on Fundamental Rights, the Common European Asylum System to date, the various legal measures constituting the EU's Pact as well as the current 2015 Act.

25. The concepts of "*duly justified*" in **Article 12(4) APR** and "*sufficient efforts*" in **Article 12(6) APR** as they relate to remote interviews should be clearly defined as they have not been sufficiently detailed in the General Scheme. Remote hearings raise concerns in terms of respect for privacy, lack of equipment, and possible risks for vulnerable applicants.

26. The table below sets out the various stages regarding access to legal practitioners, legal counsellors, and cultural mediators as currently envisaged in the General Scheme:

Category	Screening Procedure	Admissibility & Subsequent Applications	Substantive Interview	Appeals to SIB
Cultural Mediator	Appears to apply. **Head 15**	Not Provided For. **Heads 32, 33, 60**	May be Present. **Head 47 (4), 48 (7)**	Not provided for.
Legal Counselling	Right to be informed of access to legal counselling in screening information. **Head17(1)(c)**	Not Provided For. **Heads 32, 33, 60**	Unclear potential applicability **Head 47(4)(b)**	Appears to apply, clarification needed. **Heads 66-68**
Legal Assistance	Right to be informed of the possibility of obtaining self-funded legal advice. **Head 17(1)(c)**	Not Provided For. **Heads 32, 33, 60**	Unclear – potential applicability **Head 47(4)(b)**	Appears to apply; clarification required. **Heads 66-68**
Legal Representative	Not provided for.	Not Provided For. **Heads 32, 33, 60**	May be present, subject to conduct limitations **Head 47 (4)(b)**	Yes where an Applicant has a legal adviser/ representative on file. **Heads 66-69**

27. Additionally, there are significant restrictions imposed on '*legal advisers*' in conducting personal interviews under **Head 48(6)(b),(c)**:

> *"(b) The absence of the legal adviser shall not prevent the Minister from causing the interview to be conducted.*
>
> *(c) Where a legal adviser participates in the personal interview, he or she may only intervene at the end of the personal interview."*

28. This appears to conflict with the **Bar of Ireland's Code of Conduct (22nd July 2024)**, where it states at §2.6:

> *"Barristers must promote and protect fearlessly and by all proper and lawful means their client's best interests and do so without regard to their own interest or to any consequences for themselves or to any other person including fellow members of the legal profession."*

29. It also appears inconsistent with **Article 6(1)(h) of the Luxembourg Convention** which provides that Parties to the Convention shall ensure that lawyers can: "*effectively participate in all proceedings in which they are acting on behalf of their clients*".

30. In this regard, **Head 48** is an unnecessary restriction on the professional capacity of a legal practitioner, fair procedures, and an applicant's right to be heard. Equally, experience shows that it may be of significant assistance to the interviewer to have guidance and/or seek clarification from the legal practitioner present on the person's behalf throughout the conduct of an interview.

31. The General Scheme currently guarantees access to legal representation only in the context of withdrawal of international protection (**Head 77(8)** and the detention of an applicant **(Head 112(13), (14).** There are no guarantees that free legal assistance will be available to applicants in detention in the General Scheme. This should be revised and included.

32. **Head 77(8)** provides that *"...the person shall have access to legal representation in accordance with head yy (free legal assistance, representation and counselling)"*. Again

however, the current proposal is insufficient as to what exact legal representation will be provided. Given that the withdrawal of international protection is a serious and consequential matter, it is imperative that representation be afforded by a qualified legal practitioner. No lesser standard of legal assistance would ever be appropriate in such circumstances.

33. It is notable that an explicit guarantee of free legal assistance appears only in **Head 77(8)**, in the context of the withdrawal of international protection. **Head 48(6)(a)** refers to the availability of '*legal assistance'* in the context of substantive interviews. As outlined in **Head 2**, '*legal assistance'* is defined as legal aid or legal advice, within the meaning of the **Civil Legal Aid Act 1995**.

34. Crucially, no comparable provision is made for appeals to the SIB, other than the reference to legal assistance in withdrawal proceedings. It is essential that applicants have access to free legal assistance throughout both the application and appeals process. The absence of such support would significantly compromise the fairness and integrity of the procedure, and risk undermining applicants' ability to effectively advance their claims.

35. The importance of the right to be heard is underlined in ***MM v. Minister for Justice*** **(Case C-277/11)** as a fundamental principle of EU law. **Article 12(5) APR** in particular should be interpreted in a manner that ensures the right to a fair hearing is respected, with **Head 48(6)(b), (c)** modified to remove the unreasonable restrictions on legal representation. This is of particular importance given that the default position with regard to appeals is of one not involving an oral hearing **(Head 69(1)**).

36. As regards "*cultural mediators*" **Head 2** provides an ambiguous definition:

> *"…a person who may be tasked with assisting applicants at specified points in the international protection process [through the provision of information and supporting in communication with officers of the Minister, as well as other tasks as may be necessary]"*

37. The General Scheme fails to provide any clarity as to what the role of cultural mediator actually entails, and requires the cultural mediator to act in the dual capacity as a support to an applicant, without providing any guidance or rules generally as to their role, nor whether there are any elements of confidentiality arising.

38. Cultural mediators were first introduced in the State in November 2022, as reported by Journal.ie from February 2024.[2] Clarification on the role of cultural mediators was provided as follows by the Minister in reply to parliamentary question 182 on 12 July 2023,[3] namely that although cultural mediators are available at the IPO, they are distinct from interpreters:

> *"The role of the cultural mediator is to independently assist and support the Applicant in the process, and is complementary to the provision of formal legal advice. Cultural mediators support customers through the application procedure in the language of their choice. The languages they are employed to interpret at the IPO reception are: Persian; Hindu; Urdu; Pashto; Kurdish; Sorani; Farsi; Spanish; Isizulu; Afrikaans; Ndebele; Setswana; Arabic; Tigrinya; Tigre; Amharic; French; Bangla; Georgian and Somali."*

39. The foregoing, which is not confirmed in the General Scheme, indicates that cultural mediators are not appropriate to be the sole person providing information at the initial screening stage, and that legal advice by a qualified legal practitioner is required from the outset. This is of acute importance given the early role of cultural mediators and the lack of access to legal representation during the screening process, and further restrictions imposed on access to legal representation as set out above. The General Scheme should be amended to clearly define the roles, responsibilities and restrictions imposed on cultural mediators and legal counsellors, enforce reference to a code of practice, and provide for the provision of free legal advice from qualified legal practitioners from the screening procedure onwards.

[2] https://www.thejournal.ie/asylum-seeker-interpretation-cultural-mediators-6294998 Feb2024/
[3] https://www.oireachtas.ie/en/debates/question/2023-07-12/182/

TIME LIMITS FOR APPEALS

40. The current proposed timeframes for appeals are severely restrictive and will not allow for the obtaining of relevant documentation, review and possibility to take instructions within the **5 days** allowed under **Head 67(2)**. Whilst the procedures adopted under the EU Pact and General Scheme are designed to provide a more efficient processing of claims, this must be balanced and proportionate to the reality of the complexity of this area of law, ongoing and developing case law and research requirements regarding country of origin information. The timeframes currently in place under the *International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017, (S.I. No. 116/2017)* already present a significant hurdle to ensuring that the above steps can be taken by practitioners representing their clients in appealing cases before the International Protection Appeals Tribunal ("IPAT").

41. There is no reality to a fully formed appeal being provided within 5-days, alongside making representations as to why an oral hearing is required. The period in which an appeal can be made should be extended to 20 working days, with a shorter timeframe for the initial steps in processing the application. This is a matter of simple fair procedures as required by both EU and Irish law. It is also now clear from **Article 6 of the Luxembourg Convention** that as a matter of international law, the professional rights of lawyers must include a reasonable time period within which to effectively advise and provide assistance to their clients. This cannot be abrogated by excessively short time limits.

42. This concern about unnecessary expedition is further compounded by the requirement under **Head 68(2)** for certain specified applicants or persons subject to the withdrawal of international protection to specifically request that an appeal be suspensive. The Border Procedure is likely to capture a significant proportion of applicants who have arrived in the State with the assistance of human traffickers, have had their documentation confiscated during transit, or who lack any lawful means of obtaining identification documents. In the absence of guaranteed access to legal representation at each stage of the process under the General Scheme, there is a substantial risk that individuals with a well-founded fear of persecution may be unable to secure timely legal advice or effectively navigate the restrictive 5-day timeframe for lodging an appeal and articulating the grounds

upon which suspensive effect should be granted. This poses a serious risk to the fairness and integrity of the procedure, and undermines the right to an effective remedy.

ORAL HEARINGS ON APPEAL

43. It is well established in the jurisprudence relating to international protection law that credibility assessments are inherently complex and require careful, nuanced analysis.

44. The position adopted in the General Scheme regarding oral hearings at the appeal stage is highly restrictive, effectively reducing the appellate process to a paper-based review. **Head 69(1)** provides that the starting point is that the *"SIB **shall** make its decision in relation to an appeal **without** holding an oral hearing.*" [emphasis supplied]. This introduces what amounts to a presumption against oral hearings. This presumption is not included in **Article 67 APR**.

45. Certain limited exceptions to the exclusion of oral hearings are set out at **Head 69(2)**, which provides that an oral hearing may only be held in specified and limited circumstances where:

(a) the applicant or person subject to withdrawal of international protection has requested such a hearing in the notice under Head 67(4)(b);
(b) either:
    (i) the Chief Appeals Officer is satisfied the applicant was not afforded a personal interview under Head 48 or Head 77, as applicable; or
    (ii) although an interview was conducted, the document required under Head 49, or in the case of Head 77, a report or transcript, was not placed on the applicant's file in accordance with that Head; and
(c) the Chief Appeals Officer considers an oral hearing necessary to ensure a full and *ex nunc* examination of both facts and law as per Head 73(1).

46. **Head 73(1)** provides no clarity as to what constitutes a *"full and ex nunc examination of both facts and points of law"*, leaving applicants, their legal representatives, and decision-makers in a precarious and uncertain position. Crucially, there are no procedural safeguards for applicants seeking an oral hearing. The discretion to convene such a hearing

rests solely with the decision-maker, who must first obtain approval from the Chief Appeals Officer. This requirement imposes a significant and problematic constraint on the independence of decision-makers and places an undue burden on them to determine appeals without the benefit of hearing directly from the applicant *viva voce* as a default, or in the alternative where the interests of justice arise.

47. To illustrate this issue, the 2015 Act provides that appeals by applicants from designated safe countries of origin are to be determined by the International Protection Appeals Tribunal without an oral hearing, *"unless it considers it is not in the interests of justice to do so"* (§43(b)). While this provision has been the subject of significant litigation, it reflects a pragmatic approach whereby such applicants must demonstrate a basis upon which an oral hearing is necessary to further advance their claim.

48. Whilst there is no absolute right to an oral hearing for the currently limited pool of safe country applicants under the 2015 Act, it is clear that the interests of fairness and justice must be considered, and the obligation to ensure fair procedures remains paramount. In particular, the Supreme Court has consistently held that where an applicant's personal credibility is in issue on appeal, the interests of fairness and justice generally require that an oral hearing be afforded. (see ***M.M v Minister for Justice, Equality and Law Reform*** **[2018] IESC 10**, ***VJ v. Minister for Justice and Equality and Ors*****.** **[2019] IESC 75**, ***SUN v. The Refugee Applications Commissioner & Ors*** **[2013] 2 IR 555**.)

49. The preceding Refugee Act 1996 adopted a similar approach to the proposed General Scheme insofar as s.13(6) stated that any appeal with a finding made under s.13(5) would be determined without an oral hearing. The provisions of s.13(5) were:

    (a) that the applicant showed either no basis or a minimal basis for the contention that the applicant is a refugee;
    (b) that the applicant made statements or provided information in support of the application of such a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;
    (c) that the applicant, without reasonable cause failed to make an application as soon as reasonably practicable after arrival in the State;

(d) the applicant had lodged a prior application for asylum in another state party to the Geneva Convention (whether or not that application had been determined, granted or rejected;
(e) the applicant is a national of or has a right of residence in, a safe country of origin for the time being so designated by order under section 12(4)

50. The foregoing provisions resulted in extensive litigation, including ***Moyosola v Refugee Applications Commissioner & Ors*** **[2005] IEHC 218,** ***B.N.N. v Minister for Justice & Ors*** **[2009] 1 IR 719** , ***Ho v Minister for Justice and Others*** **[2013] IESC 41,** and ***MM v Minister for Justice, Equality and Law Reform & Ors,*** **Case C-277/11.** In **MM,** the CJEU held at §96:

"However, in the case of a system such as that established by the national legislation at issue in the main proceedings, a feature of which is that there are two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, it is for the national court to ensure observance, in each of those procedures, of the applicant's fundamental rights and, more particularly, of the right to be heard in the sense that the applicant must be able to make known his views before the adoption of any decision that does not grant the protection requested. In such a system, the fact that the applicant has already been duly heard when his application for refugee status was examined does not mean that that procedural requirement may be dispensed with in the procedure relating to the application for subsidiary protection."

51. To adopt the current draft of the General Scheme would contradict the well established right to an effective remedy, the aims of the APR, and result in unnecessary and likely extensive litigation, as arose in relation to the Refuge Act 1996.

52. More recent case law affirms that there is a dual obligation on applicants from safe countries to establish why an oral hearing is in the interests of justice. Additionally, IPAT must explicitly demonstrate that due regard has been given to the applicant's right to fair decision-making, particularly where credibility is in issue. In ***T.B. v IPAT*** **[2022] IEHC 275**, the High Court emphasised that IPAT must show why credibility concerns are capable of being *"justly resolved without an oral hearing*" (§92). Furthermore, in ***S.K. v IPAT &***

Anor **[2021] IEHC 781**, the High Court held in the circumstances arising in a case concerning sexual orientation, that IPAT must consider and engage with the case being made that an oral hearing is required.

53. The General Scheme contains no equivalent safeguards, representing a significant obstacle to securing an effective remedy. It places disproportionate reliance on the substantive interview and imposes a grave barrier to effective legal representation at the appellate stage. This also appears inconsistent with **Article 6(1)(h) of the Luxembourg Convention** in relation to lawyers being able to "*effectively participate in all proceedings in which they are acting on behalf of their clients*".

54. If adopted in its current form, the General Scheme would, in effect, preclude legal practitioners from providing effective representation for applicants at the appeal stage. This is a matter of serious concern, given the already limited access to qualified legal representation at earlier stages of the process. Such a restriction would undermine the well-established right to be heard before a Court or Tribunal, a fundamental principle of fair procedures in this jurisdiction.

PART 2: HUMAN RIGHTS ISSUES IN THE SCREENING PROCESS

BACKGROUND

55. The General Scheme provides that anyone who indicates that they want to apply for international protection, whether it be at an airport or port, or, having crossed the land border, at the international protection office, will be directed or transported to a designated screening centre and will be 'screened'.

56. The primary objective of screening is to identify all persons seeking international protection and to check against relevant databases to ascertain whether the persons subject to screening might pose a threat to national security, public order or public policy (see **Head 13** of the General Scheme).

57. Screening will also entail preliminary health and vulnerability checks in order to identify – (a) applicants in need of healthcare, (b) applicants with illnesses which might pose a threat to public health, and (c) applicants with special reception needs (**Head 13**).

58. "Legal counselling", as discussed in Part 1 of this submission, will be provided at the screening centre and a multi-disciplinary team will be on-site to complete a detailed screening process including:

- EuroDac fingerprint check/biometrics;
- Schengen Information System (SIS) EU-LISA law enforcement check;
- Preliminary health check;
- Preliminary vulnerability assessment;
- Special reception needs assessment;
- Garda security check;
- Family tracing (where possible and appropriate);
- Verification of identity/document check;
- Age assessment (in the case of young person presenting as unaccompanied minor).

59. **Head 23 (b)** also provides that where it is reasonably necessary for the purpose of the enforcement of the International Protection Act, or where any criminal offence is reasonably suspected, an immigration officer, an officer of the Minister, or member of An

Garda Síochána may search any person subject to screening and any luggage belonging to him or her or under his or her control with a view to ascertaining whether the person is carrying or conveying any documents (including ID documents, currency and video and audio recordings).

60. **Head 25** provides that the screening procedure will in general be terminated after 7 days, or when an application for international protection is lodged and registered if that be sooner. Applicants will be accommodated in at the designated screening centres during this time.

61. During the screening process, applicants will not be authorised to enter the State and will not have permission or leave to land in accordance with section 4 of the Immigration Act 2004 (**Head 14**). It follows, although it is not specifically stated in General Scheme, that they will not have any form of permission to remain (applicants who already have permission to remain for another reason will in general be exempted from the full screening process but may still have to complete certain parts of it and attend at a screening centre (**Head 11 (3)**).

62. An intention to apply for international protection can be withdrawn at any time during the screening process but the national implementation plan indicates that people who want to continue will lodge an application, and that application will be registered on the same day, as one process. The General Scheme is confusing in this regard referring to lodging and to registering an application as the precursor for different actions.

63. Once an application is lodged and registered, the applicant will be referred to the appropriate pathway or administrative procedure for assessment of the application (**Head 29**):

    (i) asylum border procedure in accordance with **Head 105** (3 months including appeal);
    (ii) admissibility procedure in accordance with **Head 33** (2 months);
    (iii) accelerated procedure in accordance with **Head 63** (3 months including appeal);
    (iv) standard procedure (6 months);
    (v) procedure to determine the Member State responsible for examining the application in accordance with **Head 39** (6 months).

64. With the exception of an application covered by the admissibility procedure or dealt with by the accelerated procedure, and an application that is withdrawn (**Head 74**) or implicitly withdrawn (**Head 75**), an application will be examined on its merits in accordance with **Head 62**.

65. When the 7 day period for screening comes to an end, the Minister retains the right to complete any unfinished procedures outlined in **Head 21** (ID checks), **Head 22** (security checks), and **Head 24** (completion of the screening form) for a period of 21 days from the termination of screening, outside of a screening centre. The screening section of the General Scheme does not seem to provide for an extension of the other procedures.

66. Once screening has been terminated (or where an applicant is exempted from screening in accordance with **Head 11(3) or (4)**), an applicant may remain on the territory of the State solely for the purpose of having his or her application considered, until the Minister has taken a first-instance decision on his or her application in accordance with **Head 65**, **except** in the case an application examined under the border procedure (**Head 27(4)**) or where the application is a further or subsequent application. Applicants covered by the border procedure will not have any form of leave or permission to remain.

TIME PERIODS IN THE SCREENING PROCEDURE

67. Continuation of the vulnerability assessment and other procedures into the main administrative procedures does not appear to be provided for after the 7 days (or less) spent in the screening process. It is very difficult to see how all of the above checks, including a vulnerability check, a health check, a special reception needs assessment and a security check could be completed within this time. What will happen if they are not finished, or even started during the screening process? As mentioned above, it is only ID and security checks and completion of the screening form by the competent authority which can continue on for 21 days into the substantive administrative procedure into which the applicant is transferred. The 7 day time limit, however, comes from the Screening Regulation but this is not binding and Ireland cannot opt-in to it as it is a Schengen specific measure.

68. It is notable that the General Scheme is also silent on what will happen if the deadlines are missed in the different administrative procedures following on from the screening procedure (if for example the border procedure is not finished within 3 months or the standard procedure within 6 months).

TAKING OF BIOMETRIC DATA

69. **Heads 7, 8 and 9** concern the taking of biometric data. This is mandatory for applicants once a request for biometric data is made of them by the competent authority. A failure to comply may mean that their international protection application is subsequently declared to be 'implicitly withdrawn' (**Head 75**, Article 41 Asylum Procedure Regulation). **Head 8** also allows for the use of "such force as is reasonably considered necessary" in the taking of such data under supervision by a Garda Inspector.

70. **Head 9** concerns the management of biometric data in accordance with the revised Eurodac Regulation (Regulation (EU) 2024/1358. It is particularly sparse:

> *(1) The competent authority shall arrange for the maintenance of a record of biometric data taken pursuant to head 7 (1).*
> *(2) Biometric data collected under head 7 (1) shall be retained in line with the periods established in Article 29 of the Eurodac Regulation.*
> *(3) An Garda Síochána is the designated authority for Articles 5 and 6 of the Eurodac Regulation.*

71. Specific provision has not been outlined regarding the protection of such data during the period of retention, given its highly sensitive and personal nature.

PRELIMINARY HEALTH & VULNERABILITY CHECKS

Preliminary Health Check

72. **Head 18** provides for the carrying out of a preliminary health check during the screening process. This is intended to identify applicants who require medical care as well as identifying illnesses posing a threat to public health.

73. We welcome the express provision that the medical examination shall be as non-invasive as possible but highlight the need to take account, while carrying out an assessment, past trauma and cultural norms in the country from which the applicant or applicants have come. The right of an applicant to refuse to undergo such an examination is also welcomed and is in line with constitutional right to bodily integrity. Negative inferences should not be drawn from such a refusal, given the wide range of circumstances which may have impacted upon an applicant in so choosing.

74. The General Scheme indicates that the results of the preliminary health check *"shall be made available to the applicant as soon as practicable"*. This is entirely necessary to facilitate the obtaining of appropriate legal advice at an early stage, particularly important because the preliminary health check may form part of the 'medical examination' referred to in **Head 59 (6)**, which, when conducted, will be relevant in evaluating whether the applicant has experienced past persecution or serious harm such as torture:

> *(6) The Minister, or Second Instance Body, as the case may be, may where is deemed relevant for the examination of an application, subject to the applicant's consent, request a medical examination of the applicant* ***concerning signs and symptoms that might indicate past persecution or serious harm*** *and be informed of results thereof, and shall follow the procedures set out in Article 24 of the Asylum Procedures Regulation.*
>
> *(7) The examination referred to in subhead (6) shall be undertaken only by a registered medical practitioner who shall have regard to Article 24(5) of the Asylum Procedures Regulation in undertaking that examination.*

75. If the medical information gathered during the preliminary health check is to be used for this purpose, possibly against the applicant, it would follow that it is a registered medical practitioner examining the applicants at screening stage and that they have training and expertise in this area. The Screening Regulation also provides at **Article 8 (1)**:

> *9. Member States shall designate screening authorities and ensure that the staff of those authorities who carry out the screening have the appropriate knowledge and have received the necessary training in accordance with Article 16 of Regulation (EU) 2016/399.*

10. ***Member States shall ensure that qualified medical personnel carry out the preliminary health check*** *provided for in Article 12 and that specialised personnel of the screening authorities trained for that purpose carry out the preliminary vulnerability check provided for in that Article. National child protection authorities and national authorities in charge of detecting and identifying victims of trafficking in human beings or equivalent mechanisms shall also be involved in those checks, where appropriate.*

76. It is also noted that under the General Scheme the preliminary health check may form part of the special reception needs assessment along with the vulnerability assessment which is another reason it is of considerable importance and needs to be done properly and not rushed.

Preliminary Vulnerability Check

77. The General Scheme provides that the vulnerability check provided for in **Head 19** and the health check in **Head 18** may, where appropriate, form part **or the entirety,** of the assessment of the need for special procedural guarantees provided for in **Article 25** of Regulation (EU) 2024/1346 Reception Conditions Directive (recast) (RCD) and A**rticle 20** of the Asylum Procedures Regulation (APR). However, neither **Article 25 RCD** or **Article 20 APR** refer to a 'vulnerability assessment' at all but rather an assessment of special reception needs. Then vulnerability assessment only appears in the Screening Regulation but it is separate and discrete from the special reception needs assessment referred to in the RCD and APR.

78. **Article 25 RCD** provides:

> *"In order to effectively implement Article 24, Member States shall, as early as possible after an application for international protection is made, individually assess whether the applicant has special reception needs, using oral translation where necessary.*
> *The assessment referred to in the first subparagraph of this paragraph* ***shall be initiated*** *by identifying special reception needs based on visible signs or on the*

applicants' statements or behaviour or, where applicable, statements of the parents or the representative of the applicant.

The assessment referred to in the first subparagraph of this paragraph ***shall be completed within 30 days*** *from the making of the application for international protection or, where it is integrated into the assessment referred to in Article 20 of Regulation (EU) 2024/1348, within the timeframe set out in that Regulation, and the special reception needs identified on the basis of such assessment shall be addressed. Where special reception needs become apparent at a later stage in the procedure for international protection, Member States shall assess and address those needs."*

79. **Article 24 RCD** provides guidance about who is likely to have special reception needs which seems to correspond with the concept of vulnerable persons under the previous **Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast)** of June 2013. **Article 24 RCD** requires that Member States shall take into account the *"specific situation of applicants with special reception needs"*, such as those falling into the below categories:

a) Minors
b) Unaccompanied minors
c) Persons with disabilities
d) Elderly persons
e) Pregnant women
f) LGBTI persons
g) Single parents with minor children
h) Victims of trafficking in human beings
i) Persons with serious illnesses
j) Persons with mental disorders in including PTSD
k) Persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, for example victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive.

80. This approach marks a departure from the two-step process by which the vulnerability of an individual and any special reception needs they have are assessed separately without a time limit under the **European Communities (Reception Conditions) Regulations 2018**.

81. Vulnerability is not defined in the General Scheme nor is there reference to the list of certain categories of applicants more likely to have special reception needs, which should surely be the starting point for an assessment. Indeed, **Head 19 (3)** only provides that where there are indications of special reception or procedural needs **arising from the vulnerability assessment** the applicant concerned shall receive **timely and adequate support** in adequate facilities in view of their physical and mental health.

82. However, the General Scheme fails to adequately set out or address how it is envisaged that these services will be provided, having regard to the obligations imposed on the State by the recast RCD. This is a matter of concern from a human rights perspective, given the number of applicants falling within these priority categories. More detail is required as to how it is proposed that these special services will be delivered in the different administrative procedures, and how this will be done in a timely manner and in a sensitive way, taking into account the needs of the applicants concerned. Ideally, the special reception needs would be identified before the applicant is transferred to the applicable administrative procedure and accommodation centre.

83. There is also a concern that where an applicant refuses to undergo a vulnerability check, this may impact the credibility of their application where pre-existing health conditions or torture are a feature of that application. It must be highlighted that it is precisely those individuals who will have suffered previous persecution or serious harm, possibly including torture, who may have the most difficulty in consenting to undergo a vulnerability assessment. One must have due regard to the numerous reasons for which an applicant may refuse – including but not limited to issues with the authorities in their country of origin, past trauma, injury, etc. These issues ought to be dealt with sensitively by the relevant authorities.

84. There is no ability for a full medical assessment to otherwise be arranged, whether by way of medico-legal report in line with the Istanbul Protocol arranged by a legal representative for an applicant, to be provided by a specialist medical practitioner. The mechanism for a medical report in relation to the physical or psychological health of an applicant does not

feature in the General Scheme, which is a marked departure from the statutory ability arising pursuant to **s.23 of the 2015 Act**.

85. Furthermore, there does not seem to be any form of an appeal or review of the screening decisions including the vulnerability assessment. There is an inherent possibility for error in the findings made by any decision-maker, not least given the extremely tight time limit for this stage to be carried out. Without an effective remedy, any such error could follow the applicant throughout the entire protection process.

SCREENING FORM

86. The General Scheme provides that information contained in the screening form prepared by the competent authority must be made available either by paper or in an electronic format to the person concerned, with the exception of the information relating to the consultation of certain databases for security checks. The screening form replaces the international protection questionnaire in the current system.

87. It is essential that the screening form and any information on the screening file is provided to the applicant in a prompt manner, in compliance with the State's domestic and EU obligations as regards personal data.

88. The Bar Council is aware of current difficulties encountered by members in accessing and receiving their client's files from the International Protection Office in a timely manner, and it is imperative that a similar issue does not arise in the screening context. It is anticipated that providing applicants with a copy of their screening information in an efficient manner will prove difficult within the context of the truncated timelines.

SECURITY CHECKS

89. **Heads 21 and 22** provide for the performance of identity and security checks, respectively, during the screening process. No detail is set out as to how it is proposed that these checks will be conducted (or what which type of checks they will be). Clarity is greatly needed in respect of these provisions.

90. The General Scheme ought to be amended to specifically include the nature and purpose of the checks to be carried out and to ensure that any such checks will not endanger the applicant with respect to the reason for which they left their country of origin, in line with the well-established principle that authorities in an applicant's country of origin should not be contacted.

FUNDAMENTAL RIGHTS MONITORING

91. **Article 10 (2) of the Screening Regulation** provides that each Member State *shall* provide for an independent monitoring mechanism, which shall:

(a) monitor compliance with Union and international law, including the Charter, in particular as regards access to the asylum procedure, the principle of non-refoulement, the best interest of the child and the relevant rules on detention, including relevant provisions on detention in national law, during the screening; and

(b) ensure that substantiated allegations of failure to respect fundamental rights in all relevant activities in relation to the screening are dealt with effectively and without undue delay, trigger, where necessary, investigations into such allegations and monitor the progress of such investigations

92. The General Scheme may not provide for an independent monitoring mechanism for the screening process as envisaged in the Regulation.

Independent Monitoring & Fundamental Rights

93. **Article 10 of the Screening Regulation (Regulation (EU) 2024/1356) and Article 43(4) of the Asylum Procedure Regulation (Regulation (EU) 2024/1348)** require Member States to provide for an independent mechanism to monitor compliance with fundamental rights during the screening of new arrivals and when assessing asylum claims at external borders which *shall*:

a) monitor compliance with Union and international law, including the Charter, in particular as regards access to the asylum procedure, the principle of non-refoulement, the best interest of the child and the relevant rules on detention,

including relevant provisions on detention in national law, during the screening; and

b) *ensure that substantiated allegations of failure to respect fundamental rights in all relevant activities in relation to the screening are dealt with effectively and without undue delay, trigger, where necessary, investigations into such allegations and monitor the progress of such investigations.*

Member States shall put in place adequate safeguards to guarantee the independence of the independent monitoring mechanism. National Ombudspersons and national human rights institutions, including national preventive mechanisms established under the OPCAT, shall participate in the operation of the independent monitoring mechanism and may be appointed to carry out all or part of the tasks of the independent monitoring mechanism….Insofar as one or more of those institutions, organisations or bodies are not directly involved in the independent monitoring mechanism, the independent monitoring mechanism shall establish and maintain close links with them….

The independent monitoring mechanism shall carry out its tasks on the basis of on-the-spot checks and random and unannounced checks.

Member States shall provide the independent monitoring mechanism with access to all relevant locations, including reception and detention facilities, individuals and documents, insofar as such access is necessary to allow the independent monitoring mechanism to fulfil the obligations set out in this Article.

94. **Article 43(4) of the APR** provides that the Border Procedure must include an independent monitoring mechanism that meets the same criteria as Art. 10 of the Screening Regulation:

*Without prejudice and complementary to the monitoring mechanism laid down in **Article 14 of Regulation (EU) 2021/2303**, each Member State shall provide for a monitoring of fundamental rights mechanism in relation to the border procedure that meets the criteria set out in **Article 10 of Regulation (EU) 2024/1356.***

95. The functions of the IMM are spelled out in more detail in the European Union Agency for Fundamental Rights guidance document, *Monitoring fundamental rights during screening and the asylum border procedure: A guide on national independent mechanisms* (2024). By way of summary, the Agency says of the functions of the IMM at p.4:

"When monitoring, attention should be paid to all fundamental rights guaranteed under the EU Charter of Fundamental Rights. Monitoring should look at, for example, whether people subject to these procedures are being treated with dignity, whether particular attention is being paid to people in vulnerable situations, whether children are adequately protected, whether living conditions in initial reception facilities and immigration detention centres respect fundamental rights, and whether procedural safeguards are duly respected and people have access to effective remedies. It should also look at the fundamental rights implications of implementing contingency plans."

Proposed implementation of the IMM in the General Scheme

96. In a statement on the publication of the General Scheme, the Minister for Justice outlined that it was proposed to confer the responsibility for an independent monitoring mechanism on a Chief Inspector of Asylum Border Procedures. Thus, in the note attached to the Minister's statement outlining the purpose of each of the individual Heads of Bill, in respect of **Head 15**, it was stated that this:[4]

Provides for the establishment of an independent monitoring mechanism (IMM) whose purpose will be to ensure that, during the screening process and the application of the border procedure, there is full compliance with EU and international law, including the EU Charter of Fundamental Rights, and to investigate any allegations of breaches of same. ***It is proposed that the IMM functions will be conferred on an individual Chief Inspector of Asylum Border Procedures.***

97. Accordingly, **Head 125** provides that the Chief Inspector of Asylum Border Procedures shall have the following functions:

[4] **Department of Justice, Press Release: Minister Jim O'Callaghan secures Cabinet approval for publication of the General Scheme of the International Protection Bill 2025 (29 April 2025), available at** https://www.gov.ie/en/department-of-justice/press-releases/minister-jim-ocallaghan-secures-cabinet-approval-for-publication-of-the-general-scheme-of-the-international-protection-bill-2025/

(1) The Chief Inspector shall carry out regular inspections under head 131 of all designated asylum border facilities in the State.

(2) The Chief Inspector may conduct a formal investigation under head 133 into any potential breach of fundamental rights arising out of an inspection, or where a complaint has been found to be admissible under head 132(4).

(3) The Chief Inspector shall have all such powers as are necessary or expedient for the performance of his or her functions under this head including but without prejudice to the generality of the foregoing, the following powers…

98. As appears, the functions of the Chief Inspector are primarily limited to inspections of designated asylum border facilities (which confusingly means facilities for screening and facilities for the border procedure or return border procedure) and matters arising therefrom. Designated asylum border facilities are defined as:

(a) a location designated by the Minister for the carrying out of the Screening Procedure, as defined in head 10, the Asylum Border Procedure, as defined in head 111, or the Return Border Procedure as defined under head 112, or

(b) any place whether on a land or sea frontier where a person lands in or embarks from the State and includes an airport where an Immigration Officer is deployed by the Minister;

99. The Chief Inspector is to be appointed by the Minister, on the recommendation of the Public Appointments Service following an open competition for the role (**Head 124(1) and (2)).** It is further provided that the Chief Inspector "*shall hold office on such terms and condition, including remuneration, as the Minister may determine with the consent of the Minister for Public Expenditure*". It is provided that the Chief Inspector's term of office shall not exceed 5 years, that he or she may serve a maximum of two consecutive terms, and that he or she can "*at any time be removed by the Minister from office for stated misbehaviour or if, in the Minister's opinion, he or she has become incapable through ill health of effectively performing his or her functions*." (**Head 124(4), (5) and (6).**

100. **Head 124(7)** provides that "*[s]ubject to this Act, the Chief Inspector is independent in the performance of all his or her functions.*" The Chief Inspector is to be funded by the Minister (**Head 126**).

101. **Head 128** provides for the Establishment of an Advisory Board, a body that does not appear to be explicitly envisaged by the Screening Regulation. The listed functions of the Advisory Board are to:

> *(a) consult with, guide and advise the Chief Inspector in relation to his or her strategic direction, and,*
> *(b) when requested to do so by the Chief Inspector, in accordance with subhead (3), consult with, guide and advise the Chief Inspector as so requested, in relation to the performance of his or her functions.*

102. **Head 129** provides that the Board will be comprised of a chairperson and listed number of ex officio members, namely:

> *(a) the Ombudsman;*
> *(b) the Ombudsman for Children;*
> *(c) the Chief Executive of the Child and Family Agency;*
> *(d) the Director of the Irish Human Rights and Equality Commission;*
> *(e) a person who operates as an independent National Preventive Mechanism under OPCAT;*
> *(f) the High Commissioner (UNHCR);*
> *(g) the Chief Inspector of the Health Information and Quality Authority (HIQA)*

103. It appears that the Advisory Board is the chosen vehicle to give effect to the requirement in Art. 10 of the Screening Regulation that:

> *Insofar as one or more of those institutions, organisations or bodies* [national Ombudspersons and national human rights institutions] *are not directly involved in the independent monitoring mechanism, the independent monitoring mechanism shall establish and maintain close links with them….*

104. **Head 132** of the General Scheme provides for the recording and handling of complaints and **Head 133** provides for the formal investigation of complaints, including a suite of investigative powers of search and seizure. **Head 135** provides for various offences, including for obstructing the Chief Inspector in the exercise of his functions or altering or destroying documents or records required by the Chief Inspector.

105. The principal difficulty with the role of the Chief Inspector as set out in the General Scheme is that, while the necessary powers are mostly provided for, it does not provide for the actual function or purpose of the office. That is, it does not enumerate the purposes for which the powers provided are to be utilised. While one might assume that it would be understood by reference to the purposes of the IMM outlined in Art. 10 of the Screening Regulation, it would be preferable if these functions and goals were set out explicitly in the Bill.

106. Furthermore, the fact that the powers are largely framed in the context of, and contingent on, the carrying out of physical inspections of the relevant facilities gives the impression that the functions and powers of the Chief Inspector are limited to the physical condition of those facilities. However, the Regulation makes clear that the functions of the IMM should not be so limited, and should more broadly "monitor compliance" with Union and international law, including the Charter, in particular as regards:

    1) access to the asylum procedure,
    2) the principle of non-refoulement,
    3) the best interest of the child; and
    4) the relevant rules on detention, including relevant provisions on detention in national law. (Art. 10 of the Screening Regulation).

107. While Article 10 of the Screening Regulation certainly places emphasis on the power to inspect the relevant facilities, it is clear that its remit under the Regulation is broader, and that inspection of such facilities is with a view to that broader purpose of the Independent Monitoring Mechanism, namely ensuring compliance with Union law and human rights law in the implementation of the Screening Mechanism and the Border Procedure. Accordingly, it would seem advisable that this broader purpose is reflected in the implementing legislation as well.

108. It is also possibly open to question whether the office of the Chief Inspector possesses the necessary safeguards of independence required by Art. 10 of the Screening Regulation, which requires that "*Member States shall put in place adequate safeguards to guarantee the independence of the independent monitoring mechanism*." Aside from the somewhat lukewarm proviso that "*Subject to this Act, the Chief Inspector is independent in the performance of all his or her functions",* it is not entirely clear what safeguards the General Scheme provides for in this regard or how the UN Paris Principles which regulate to the status and functioning of national institutions for the protection and promotion of fundamental rights. [5]

109. The Chief Inspector is appointed by the Minister (albeit on the advice of PAS), holds office subject to terms set by the Minister, is removable by the Minister (albeit only for stated misbehaviour or incapacity), and is funded directly by the Minister. Consideration might be given to more clear and forceful language with respect to the Chief Inspector being free of any external influence from Government/the Minister, and whether an amendment could be made to clarify the power of the Minister to set the terms and condition of the Chief Inspector's employment.

DETENTION AND RESTRICTIONS/LIMITATIONS ON MOVEMENT

110. There may also be technical difficulty with the General Scheme when it comes to freedom of movement during the screening period. **Head 16** refers to an order made under **Head 119** that applicants stay in the particular geographical area to which they are allocated during screening but **Head 119** only applies to applicants covered by **Head 29** and **Head 29** only applies to applicants who have registered an international protection application. **Head 28** indicates that registration occurs after or with the lodging of an application which happens simultaneously with registration. At this point, an applicant is finished in the screening process and **Head 119** can apply but it cannot, as drafted, apply during the screening process before an application is lodged and registered.

EU CHARTER

[5] UN High Commissioner for Human Rights Principles relating to the Status of National Institutions (The Paris Principles) | OHCHR

111. Where the State legislates in an area regulated by non-binding EU legislation such as the Screening Regulation, the EU Charter of Fundamental Rights (the Charter or EUCFR) may well not apply. It is trite law that Member States are bound by the Charter only when they are implementing Union law (Article 51.1 of the EU Charter) and in respect of screening the State will not be implementing or applying EU law as such. In ***Sibanda v The Minister for Justice and Equality and Others*** **[2024] IECA 206**, the applicant relied on the Charter to challenge eligibility for family reunification under the 2015 Act notwithstanding that the Family Reunification Directive did not apply. The Court of Appeal found at para 63:

> *"It would render the creation and exercise of a legal entitlement on the part of the State to opt out of a particular measure meaningless if the State is to be regarded as acting within the scope of EU law when adopting analogous provisions in national legislation just because they fall generally within the area of asylum and immigration."*

112. It would render the creation and exercise of a legal entitlement on the part of the State to opt out of a particular measure meaningless if the State is to be regarded as acting within the scope of EU law when adopting analogous provisions in national legislation just because they fall generally within the area of asylum and immigration.

PART THREE: ASYLUM BORDER PROCEDURE

113. The Asylum Border Procedure, a specific form of accelerated procedure in which the first instance, appeal and return/permission to remain decision will be made within 3 months, will be mandatory for applicants who are alleged to pose a security risk, applicants who presented false information or documents or withheld or destroyed ID/travel documents, and applicants from countries with an EU wide asylum application approval rate of 20% or lower (see **Head 63 (1) a iii, vi and x**).

114. The asylum border procedure may also be applied where an application is made: **(a)** at a border crossing or transit zone, **(b)** after a person has been caught crossing the border illegally, **(c)** after a person has been rescued and brought ashore, or (d) after a person has been relocated to Ireland under EU rules (**Art. 67(11) of AMMR**, as part of the burden sharing arrangement between Member States)

115. Unaccompanied minors are excluded unless they pose a security threat.

116. The General Scheme provides that vulnerable applicants with special reception needs are also excluded if they cannot be guaranteed appropriate supports (see also Article 53 APR). **Head 110 (2)(a)** provides that the border procedure shall not apply, or cease to apply where:

> *(ii) the necessary support cannot be provided to applicants with special reception needs, including minors, in accordance with, at the locations referred to in head 111;*
>
> *(iii) the necessary support cannot be provided to applicants in need of special procedural guarantees in accordance with head 31 at the locations referred to in head 111;*
>
> *(iv) there are relevant medical reasons for not applying the asylum border procedure, including mental health reasons.*

117. The General Scheme indicates that applicants covered by the asylum border procedure will have to stay/reside at designated facilities (**Head 111 (1)).** This shall not however be regarded as authorisation to enter remain or reside in the State in accordance with section 4 of the Immigration Act 2004.

118. **Head 121(1)** also provides in respect of any of the substantive administrative processes, including the asylum border procedure, that an immigration officer may require that the applicant reside only in the accommodation centre allocated to the applicant under Head 118 for one or more of the following purposes: **(a)** for reasons of national security or public order, or **(b)** to effectively prevent the applicant from absconding based on the risk of absconding undertaken under Head 120, or **(c)** to effectively prevent an applicant from absconding.

119. **Head 122** provides separately for detention in a prescribed place. It is not at all clear whether the border processing centre can be the prescribed place although traveling regularly from a detention centre such as Cloverhill Prison to the border processing centre would be very inconvenient and expensive.

120. The APR provides that Member States must have 'adequate capacity' to process a minimum number of border procedure applications. For Ireland, this is 464 applications at any given time on an inflow-outflow basis, and 1856 applications per year. In the national implementation plan the government has indicated that it plans to provide for capacity far beyond the mandatory minimum – 5455 applicants in 2026 (from July), 9809 in 2027 and in 2028 (approximately 65% of 15000 applications).[6]

121. As set out above, it is notable that the General Scheme is silent on what will happen if the deadlines are missed in the different administrative procedures (if for example the asylum border procedure is not finished within 3 months).

122. Practitioners in this area stress that legal counselling for border procedure applicants, including in group settings, should not result in a removal of free individualised legal advice at first instance stage.

RETURN BORDER PROCEDURE

123. **Head 112** provides that an applicant whose application has been rejected under the asylum border procedure in accordance with **Head 107** will (in most circumstances) be subject to

[6] National Implementation Plan May 2025.

the ‘return border procedure’ which is similar to the deportation procedure currently in operation.

124. A person subject to the return border procedure must reside in a location as designated under subhead (3) for a period of up to 12 weeks and at no point has leave or permission to remain.

125. **Head 116 (1)** provides that the return border procedure under Head 112 ceases when (a) the period referred to in Head 112(2) ends, or (b) the person subject to the procedure has been removed from the State in accordance with **Head 86**. It is not entirely clear what happens to the person then if they are not removed from the State.

TIME PERIODS

126. **Head 29** provides that first instance, appeal and return decisions under the border procedure must all be made within 3 months. Currently, these 3 stages generally take far longer than this, even in an accelerated procedure such as the one applied to applicants from countries such as Georgia or Algeria or South Africa designated as safe countries.

127. There are a number of other problems with Ireland’s existing accelerated application process for certain applicants from safe countries. Currently, practitioners say that these applicants:

- Must complete their questionnaire and disclose highly sensitive information in the International Protection Office’s public reception area without any privacy;
- Do not have access to free legal advice when completing the questionnaire or for the preliminary and/or even the substantive interview due to the accelerated time frame;
- Experience problems with translation and interpretation at the preliminary and substantive interview
- Cannot get vulnerability assessments within the accelerated timeframe (or at all) and, as a result,
- Are not being assessed for or provided with special reception conditions.

LEGAL COUNSELLING AND CULTURAL MEDIATION

128. The difficulties with legal counselling and cultural mediation during any of the administrative procedures are outlined in Part 1 of this submission. Practitioners in this area stress that legal counselling for border procedure applicants, including in group settings, should not result in a removal of free individualised legal advice at first instance stage.

RESTRICTIONS ON MOVEMENT AND DETENTION

129. Restrictions to be imposed upon the movement of international protection applicants and the possibility of their detention are provided for in the General Scheme at a number of different stages.

130. As explained above, there is an obligation upon applicants to reside at the screening centre accommodation and the General Scheme provides for an order that an applicant remain in the geographical area allocated at **Head 16** during the screening process (this provision may not be operable for reasons discussed earlier).

131. **Head 12** also provides for the arrest and detention of a person for the purpose of their transfer to a screening centre. **Head 12** provides that:

> *(4) A person arrested under subhead (1) may be detained only until such time (being as soon as is practicable) as he or she is transferred to the Screening Centre but, in any event, may not be detained for a period or periods exceeding 2 days in aggregate.*
>
> *(5) Notwithstanding subhead (4), where a person is detained for the purposes of screening in accordance with head 12, his or her detention shall continue until such a time as screening is completed or further detention is ordered in accordance with head 122.*

132. With respect, provisions involving detention need to be clearer and more precise than this. Is it detention for 2 days or 7 days, which is the entirety of the screening process.

133. As explained above, there is an obligation upon applicants to reside at the screening centre accommodation remain and the General Scheme does provide for an order that they remain in the geographical area allocated at **Head 16** (this provision may not be operable for reasons discussed earlier in the remaining in the area in which he or she has been allocated).

134. **Head 115** provides for detention under the 'Border Procedure'. This seems to mean the asylum border procedure and the return border procedure although, once again, this is not entirely clear. It could also apply to the 'border' screening procedure. The inconsistent use of the prefix 'border' throughout the General Scheme is extremely confusing.

135. In any event, **Head 115 (1)** provides that detention *"...may be imposed only as a measure of last resort if it proves necessary on the basis of an individual assessment of the person's case and if other less coercive measures under head yy (alternatives to detention) cannot be applied effectively."* However, no such alternatives are yet outlined under the General Scheme. We encourage an evaluation of available alternatives to detention of international protection applicants where at all possible, and reiterate the importance of the right to liberty. Detention in a prescribed place should always be considered a measure of last resort. Alternatives to detention need to be considered and should be listed in the Bill.

136. It is also respectfully submitted that clear timeframes for the permitted period of detention are necessary (as under **Head 122**), and deprivation of liberty should not be as a matter of course. Alternative measures must be utilised, and detention must remain a last resort.

137. **Head 118** provides that an applicant may be allocated an accommodation centre at which the material reception conditions shall be made available to them. An applicant may also choose to reside elsewhere in the State, unless **Heads 121 and 122** apply to them. Confusingly, **Head 118** does not seem to be disapplied in respect of the asylum border procedure where applicants have no choice but to reside at the border procedure accommodation facility.

138. **Head 119** allows for the allocation by the Minister of a particular geographical area within which an applicant must reside and to which they will be restricted. They may move freely for the duration of the procedure for international protection in this area. **Head 119(3)** further provides that an applicant may be granted permission to temporarily leave the

geographical area *"where the Minister is satisfied that it is necessary to do so for duly justified urgent and serious family reasons, or necessary medical treatment which is not available within the geographical area."*

139. A number of concerns arise regarding this feature of the General Scheme. First, it is not clear how large or small an area to which an applicant is confined. Following from this, and due to the fact that accommodation centres have not yet been designated or published, the location of these centres is unknown, as is the provision of services in a given area. These are relevant factors to consider in whether it is reasonable to restrict an applicant's movements within particular boundaries. There will undoubtedly be concern from the public at large in certain areas as to the capacity for services such as education and healthcare in the local community.

140. Another concern arises regarding the notification requirement to move outside the geographical area, and the threshold of "duly justified urgent and serious family reasons, or necessary medical treatment which is not available within the geographical area". There is a need for a system to be put in place by the Minister for ensuring these requests are dealt with in a timely manner, particularly if it concerns access to healthcare by an applicant. Questions also arise about how restriction to a particular geographical area could possibly be policed without electronic tagging, ankle bracelets or the like.

141. A number of further concerns arise when one turns to **Head 120**, which sets out provisions relating to an applicant's deemed risk of absconding (in turn, relevant to whether their movement may be restricted pursuant to **Head 121(1)(b)**).

142. In particular, this head makes reference to whether an applicant has used false documents, as well as whether they have previously failed to comply with the law of the State, or of another state, relating to the entry or presence of foreign nationals.

143. **Head 120 (7)** provides that for the purposes of considering whether the ground specified in subhead (2)(a) applies to an applicant, the immigration officer or, as the case may be, member of An Garda Síochána may take consideration of whether – (a) the applicant has not made reasonable efforts to establish his or her identity, or (b) the applicant has without reasonable excuse destroyed his or her identity or travel document, or (c) the applicant is or has been, without reasonable excuse, in possession of a forged, altered or substituted

identity document, or (d) the immigration officer or, as the case may be, the member of the Garda Síochána is not satisfied as to the applicant's identity or nationality.

144. It must be noted that for many international protection applicants, there is simply no legal pathway for them to enter the State, as it is in practice not possible to obtain a visa. Many can only leave their country of origin, where they fear persecution or serious harm, and come to Ireland or another Member State by travelling on false documents. They may have an entirely legitimate basis for fleeing their country and indeed later be recognised as a refugee, but nonetheless may be subject to detention on the basis of a deemed risk of absconding due to their use of such documents. This is a concerning aspect of the General Scheme, and it is observed that any deprivation of liberty and/or restriction of movement on the basis of a supposed risk of absconding ought only to be imposed after a thorough and considered approach is taken to all relevant facts and circumstances, including the above-mentioned example of the circumstances under which a refugee may flee their country of origin.

145. **Head 121** (Restrictions on Freedom of Movement) appears to apply, potentially, to all of the different administrative procedures. It provides that: (1) An immigration officer may require that the applicant reside only in the accommodation centre allocated to the applicant under Head 118 for one or more of the following purposes: *"(a) for reasons of national security or public order, or (b) to effectively prevent the applicant from absconding…"*

146. Once again, the issue of ID or travel documents being lost or destroyed, or false documents being used, arises in respect of **Head 121(1)(b)** above. It is important to recall in this context that **Article 31 of the Geneva Convention** (Refugees unlawfully in the country of refuge) provides that

> *"1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*

2. *The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country."*

147. Where residing at an accommodation centre, an applicant may be required to verify that they have remained at that centre, such as by reporting either in-person to an immigration officer, or by electronic means. We would observe that any such requirements ought to be no more onerous than necessary. Electronic tags should only be the exception rather than the rule.

148. **Head 121** also provides that decisions made to restrict an applicant to residence in an accommodation centre, or to comply with reporting requirements, be subject to review. However, the General Scheme lacks any detail as to the mechanism by which these reviews will be carried out, or what body will be responsible for determining them. As part of the right to an effective remedy, and given that this head concerns deprivation of liberty of applicants, the review mechanism should be set out clearly within the Scheme.

149. **Head 122** specifically concerns the detention of applicants. An arrest of an applicant may occur, inter alia, if it is necessary:

- to enable determination or verification of the applicant's identity or nationality;
- to enable determination of the elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular where there is a risk of absconding as assessed under Head 120;
- to ensure compliance with legal obligations imposed on the applicant through an individual decision in accordance with Head 121(1) in cases where the applicant has not complied with such obligations and there continues to be a risk of absconding as assessed under Head 120; …
- when protection of national security or public order so requires.

150. With respect to the conditions of detention, and particularly for those with special reception needs, it is essential that these applicants are adequately accommodated and have the necessary services made available to them while being detained. It is noted in this respect

that **Head 122** provides for the Minister to make Regulations providing for the treatment of persons detained thereunder.

151. It is also important to acknowledge too that detention can mean only a restriction on freedom of movement. Indeed, the RDC itself provides at **Article 2**:

> *'detention' means the confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement.*

152. It is at least arguable that a requirement that a person resides in a particular accommodation centre and cannot leave it, or can only move around within a very limited geographical area, could amount to 'detention'. This would be little different from an open prison.

153. In ***Inbar Aviezer v Minister for Health***[7], a COVID quarantine case, Ms, Aviezer had been taken to a hotel which was being used as a 'designated facility' to accommodate air travellers to Ireland who were subject to the quarantine regime instituted by the Health Amendment Act 2021 but complained that she was being unlawfully detained. The rooms of the hotel 'guests' were not locked and they could move, yet members of the Gardaí and the army were stationed outside the hotel. Any resident who attempted to leave was liable to be detained elsewhere. The Minister for Health conceded that the hotel arrangement did constitute detention. The concession was consistent with the common law understanding of detention as either present actual immediate detention or the means of enforcing it and with decisions such as ***State (Rogers) v Galvin***[8] where a suspect receiving treatment in an open hospital ward - but liable to be seized if he attempted to escape - was regarded as detained and with the decision of MacMenamin J in the ***Child and Family Agency v McG and JC***[9], that children *'placed under the complete supervision and control of the CFA [and] not … free to leave the custody of the persons in whose care they were placed*' were being 'detained' for the purpose of Article 40.4.2°.

[7] Referred to in Costello "The great constitutional remedy of the right to liberty: a survey of Article 40.4.2" (2024) 8(1) Irish Judicial Studies Journal 83.
[8] [1983] IR 249.
[9] [2017] IESC 9.

PART 4: FURTHER HUMAN RIGHTS CONCERNS UNDER THE GENERAL SCHEME

CHILDREN AND UNACCOMPANIED MINORS

154. The General Scheme includes some positive provisions concerning minors, such as protections around the processing of their information and exemption from the Border Procedure subject to the exceptions under **Head 63(3)(a)**, as per Article 42 of the APR. **Head 20** outlines valuable supports and guarantees for minors.

155. There is ambiguity between **Head 50** and **Head 19**. **Head 50** provides: *"that the Minister shall give a minor the opportunity of a personal interview … unless it not in the best interest of the child determined by the assessment under head 19"*. The wording of **Head 19** does not however specify the circumstances or criteria under which it may be deemed contrary to the child's best interests to conduct such an interview. Moreover, it remains unclear whether and to what extent the views of the minor's parents and/or legal representatives may be taken into account in that determination.

156. **Head 19(3)** refers in general terms to the provision of *"timely and adequate support in adequate facilities in view of their physical and mental health",* and states that such support for minors will be provided by *"personnel trained and qualified to deal with minors, and in co-operation with the Child and Family Agency"*. This language is imprecise and does not delineate the scope, nature or standard of such support. The lack of clarity may create substantial practical difficulties for legal representatives in obtaining informed instructions from minors and in advising parent clients on the applicable decision-making criteria, despite the involvement of the Child and Family Agency. The undefined nature of the "support" provided by the Child and Family Agency further complicates the ability to assess compliance with child-centered procedural safeguards.

157. **Head 140** is the definition section for Part 16 of the General Scheme which relates to unaccompanied Minors. It defines a "representative" as a natural person appointed to assist, represent, and act on behalf of an unaccompanied minor in procedures provided for in this Act.

158. While **Head 140** states that *"the representative must have the necessary skills and expertise, including expertise in the specific needs and treatment of minors"* there is no express reference to the necessity for skills and expertise in relation to international protection and/or immigration law.[10] This is all the more important in the light of **Head 141(10)** which sets out an extensive list of the responsibilities of the representative at various stages throughout the international protection procedure.[11]

159. **Head 141(11) and (12)** set out certain criteria regarding eligibility/qualification for appointment as a representative, but there is no express reference to the requirement for skills and expertise and in relation to international protection and/or immigration law. Furthermore, **Head 141(12)(c)** states that representatives shall "have the resources" without specifying who is to provide the resources and what such resources may extend to, for example, the procurement of independent expert legal advice where necessary.

160. **Head 140** also states that the representative will be responsible for safeguarding the best interests and general well-being of the minor, exercising legal capacity where necessary, and ensuring that the minor can benefit from their rights and fulfil their obligations under the relevant provisions. However, it should be noted that the provision as drafted does not make clear the basis on which the representative will exercise legal capacity. Concerns have long been expressed as to the divergence in practice in this regard with some unaccompanied minors being the subject of care proceedings under Part IV of the Child Care Act 1991,[12] while others are dealt with under either the voluntary care procedure

[10] See generally Martin, Christie, Horgan and O'Riordan "'Often they fall through the cracks: separated children in Ireland and the role of guardians" (2011) 20 Child Abuse Review 361.

[11] Including for example subhead (d) providing the unaccompanied minor with relevant information in relation to the procedures provided for in this Act, in particular the information specified in Head 35, subhead (e) assisting the unaccompanied minor in understanding the relevant information in relation to the procedures provided for in this Act, in particular the information specified in Head 35; (g) assisting with the registration and lodging of the application, or registering and lodging the application on behalf of the unaccompanied minor in accordance with Head 28; subhead (h) assisting the unaccompanied minor with the preparation of, and presence at, the personal interview to include informing the unaccompanied minor about the purpose and possible consequences of the personal interview and about how to prepare for that interview; subhead (i) providing the unaccompanied minor with the relevant information and assisting the unaccompanied minor in relation to the procedures provided for in the Eurodac Regulation and Head 7; subhead (j) providing the unaccompanied minor with the relevant information and assist the unaccompanied minor in relation to the procedures provided for in the Asylum and Migration Management Regulation.

[12] That is, interim care orders pursuant to section 17 of the 1991 Act or care orders pursuant to section 18 of the 1991 Act.

provided in section 4 of the 1991 Act or section 5 which deals with the provision of accommodation to homeless children. This divergence in practice has been the subject of sustained criticism[13] and the opportunity should be taken in this Bill to clarify the mechanism through which representatives will exercise legal capacity on behalf of unaccompanied minors in order to bring the existing divergence to an end.

161. **Head 140** also defines "representative organisation" as *"an organisation designated by the Child and Family Agency to appoint representatives under Head 141(2)"*. However, this appears to be an error as **Head 141(2)** refers to the Child and Family Agency designating itself as a representative organisation. The reference should perhaps instead be to **Head 141(1)** which states that *"The Child and Family Agency may designate one or more organisations to be representative organisations".* No criteria are set out to guide the designation of such organisations; this should be addressed in order to ensure that clear criteria are set out in the legislation to guide the exercise of this function in order to ensure the best interests of unaccompanied minors are safeguarded.

162. Finally, in **Head 140** "'unaccompanied minor" is defined as *"a minor who arrives in the State unaccompanied by an adult responsible for him or her, and for as long as that minor is not effectively taken into the care of such an adult, including a minor who is left unaccompanied after he or she has entered the State."* This definition does not address the concept of *"an adult responsible for him or her"* or who may effectively take such a child into their care; concerns have been expressed in the context of the existing legal framework at the potential for children who have been trafficked for the purposes of exploitation to be deemed to be in the company of an adult responsible for them even when there is no legal basis for that role/relationship.[14]

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[13] See e.g. Ní Raghallaigh and Thornton, "Vulnerable childhood, vulnerable adulthood: Direct provision as aftercare for aged-out separated children seeking asylum in Ireland" (2017) 37(3) Critical social policy 386-404.

[14] See e.g. McDonagh "Assessing the Refugee Appeals Tribunal" (2005) 10(2) Bar Review 43 where she noted *"I believe all "Separated Children" should continue to have an independent person to safeguard their interests in the asylum process. The practice of treating some of these separated children as so-called "accompanied minors" is fraught with child protection difficulties. This member has come across cases where "accompanied minors" have been placed with most unsatisfactory persons as guardians. While the Health Board might have had no initial concerns in placing these children with such persons, it has become clear during the determination of the asylum claims of these minors that these persons were not suitable…. No system can prevent the tragic trafficking of children. However, releasing "Separated Children" to adults who claim them and allowing such adults to process their claims without any further involvement on the part of the State would appear to be a most*

163. **Head 140** should be amended to clarify the categories of persons who are legally entitled to take responsibility for an unaccompanied minor to address such concerns. Overall, **Head 140** lacks clarity regarding the qualifications and expertise required of a "representative" assigned to assist unaccompanied minors. The General Scheme should specify minimum standards, including mandatory training in international protection law and familiarity with relevant country of origin information. Additionally, it provides no detail on the conduct of age assessments, the minor's entitlement to legal representation, or the availability of an appeal or review where a finding is made that a person is over 18 as referred to in Head 141(14).

164. **Head 141** deals with the appointment of representatives and provisional representatives.

165. **Head 141(3)** provides that *"where it appears to an officer of the Minister that a person seeking to make an application for international protection, has not attained the age of 18 years and is not accompanied by an adult who is taking responsibility for the care and protection of the person, the officer shall, as soon as practicable, notify the Child and Family Agency and, where separate, a representative organisation."*

166. **Head 141(6)** provides that after the Child and Family Agency has received a notification under subhead (3) or subhead (4), *"it shall be presumed that the person concerned is a child and the Child Care Acts 1991 to 2024, the Child and Family Agency Act 2013 and other enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply accordingly."* There are longstanding concerns regarding the procedures governing age assessment of unaccompanied minors in the international protection process,[15] including whether the ultimate responsibility for conducting any such assessment (or appeal against an initial assessment/re-assessment) rests with the Minister in the context of the international protection process, or with the Child and Family Agency with its statutory functions including the identification of children who are not receiving adequate care and attention.

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unsafe procedure to adopt in relation to the protection of vulnerable children. UNHCR Guidelines exist in part to prevent child trafficking. There is no legal obligation on the State to follow these Guidelines but having regard to their purpose, it appears imperative that they should be followed. Furthermore, the constitutional rights of such children to fair procedures in the determination of their case cannot be vindicated without having an unequivocally independent advocate to act on their behalf."

[15] See e.g. Arnold and Castillo Goncalves "The International Protection Act 2015 and age assessment" (2016) 34(7) Irish Law Times 94.

167. **Head 141(3)** should be amended to make clear which body is charged with the responsibility for conducting an age assessment, the procedures which apply to such assessment and the criteria to be employed in such assessment; these principles should at minimum comply with the judgment of the High Court in ***Moke v Refugee Applications Commissioner.***[16]

168. **Head 141(7)** provides that "*the Child and Family Agency may provide child care services to an unaccompanied minor the subject of a notification under subhead (3) or (4) whether or not the minor is in the care of the Agency pursuant to an order of a court under the Child Care Acts 1991 to 2024*." Reference is made to the submission above in relation to **Head 140** as to the necessity to ensure that there is no divergence in practice on a national level as to the manner in which child care services are provided to unaccompanied minors in the State.

169. Given the particular vulnerability of unaccompanied minors and the significant consequences of an erroneous age determination, it is essential that the General Scheme establish a clear and transparent framework for age assessments and their review. This is necessary to ensure legal practitioners can provide accurate advice and that the Child and Family Agency and relevant representatives can operate within a defined and lawful process, thereby reducing the risk of litigation to resolve these issues).

ACCOMMODATION & MATERIAL RECEPTION CONDITIONS

170. The problems in respect of accommodating and even feeding international protection applicants in recent years are well documented. The failure of the government to provide even the most basic accommodation to international protection applicants has been the subject of several High Court decisions in 2023 and 2024. The Court has repeatedly found that the EU law in respect of reception conditions had been breached to such an extent that

[16] [2005] IEHC 317. It is noted that it appears that age assessment will be further addressed in a specific head on this issue, but the text of this Head is not included in the Heads of Bill as published and it is therefore not possible to make detailed submissions in respect of same.

there had been a breach of the homeless applicants' fundamental rights under Article 1 (human dignity) of the EU Charter (EUCFR) [17]

171. The question of whether the applicants affected might have an entitlement to 'Francovich' damages for breach of EU law was before the CJEU recently on foot of a reference from the Irish High Court (Ferriter J). A final decision of the Court is awaited but the Advocate General in her opinion in the cases, which was issued in April, rejected the government's argument that damages should not be available because the breach was not 'sufficiently serious' and/or was caused by force majeure, being the arrival of a large number of Ukrainian refugees offered temporary protection and/or the sudden jump in the number of applications post-Covid.[18]

172. The Advocate General also highlighted that the treatment of these applicants by the government may represent a breach of Article 4 of Charter as well as Article 1 i.e. that it amounted to deliberate infliction of inhuman and degrading treatment, which is particularly serious matter.

173. It is therefore somewhat surprising that the General Scheme is almost silent on the obligations on the government to provide suitable accommodation and other material reception conditions to international protection applicants and also that there is no mechanism provided for within the General Scheme for applicants to complain if they are not provided with accommodation (or other material reception conditions). The role of the Inspector of Asylum Border Procedures under Part 15 of the General Scheme appears to be limited to inspections of facilities (etc.) and not to order the government to provide accommodation or other material reception conditions.

174. **Head 6(e)** of the General Scheme indicates that S.I. 230/2018 European Communities (Reception Conditions) Regulations 2018 (which transposes the Reception Conditions Directive 2013/33/EU) and governs the provision of reception conditions to international protection applicants in the State, will be revoked. The RDC provides at Article 2:

[17] See e.g. *SY v Minister for Children* [2023] IEHC 187, *IKA v Minister for Children* [2023] IEHC 283, *SA v Minister for Children; RJ v Minister for Children* [2023] IEHC 717; *Irish Human Rights and Equality Commission v Minister for Children* [2024] IEHC 493.

[18] Case C-97/24 *SA v Minister for Children; RJ v Minister for Children* ECLI:EU:C:2025:269.

(*7) 'material reception conditions' means the reception conditions that include housing, food, clothing and personal hygiene products provided in kind, as financial allowances, in vouchers, or as a combination thereof, as well as a daily expenses allowance;*

(8) 'daily expenses allowance' means an allowance provided to applicants periodically to enable them to enjoy a minimum degree of autonomy in their daily life, provided as a monetary amount, in vouchers, in kind, or as a combination thereof provided that such an allowance includes a monetary amount;

(9) 'detention' means the confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

175. And at Article 19:

(1) Member States shall ensure that material reception conditions are available to applicants from the moment they make their application for international protection in accordance with Article 26 of Regulation (EU) 2024/1348.

(2) Member States shall ensure that material reception conditions and health care received in accordance with Article 22 provide an adequate standard of living for applicants, which guarantees their subsistence, protects their physical and mental health and respects their rights under the Charter. Member States shall ensure that the adequate standard of living referred to in the first subparagraph is met in the specific situation of applicants with special reception needs as well as in relation to the situation of persons who are in detention.

(3) Member States may make the provision of all or some of the material reception conditions subject to the condition that applicants do not have sufficient means to have an adequate standard of living as referred to in paragraph 2.

176. These details do not however appear in the General Scheme. There is no provision for vouchers or money to allow international protection applicants to pay themselves for accommodation or food if the State is unable to meet its obligations to provide for the material reception conditions itself. There is no reference to an adequate standard of living or a definition of what material reception conditions are.

177. It may be the intention to transpose the RCD in full via a Statutory Instrument again but the General Scheme does purport to transpose it as it is a key element of the Pact.

178. It is also worth noting that the ambitious time scales involved for processing applications, and particularly accelerated procedures, mean that most applicants will not be permitted to work and to fund accommodation in this way. Even the 'standard process', examined on the merits, should take no longer than 6 months (including the appeal) which is currently the point at which applicants can start working.

179. It is reasonable to assume that the vast majority of applicants will not have the means to pay a rent and are going to require accommodation whichever process they are in.

180. It is also reasonable to assume, looking at recent trends, that there will be an average between 10.000 and 18,000 international protection applications a year for the foreseeable future (with occasional surges). This is certainly the approach taken in the national implementation plan where the baseline for data modelling purposed is taken to be 15,000 applications per year on average.

181. Ireland's 'solidarity' contribution pursuant to the AMMR, which is not dealt with in any detail in the General Scheme but should be given its importance as the counterbalance to other parts of the Pact, is currently set at 648 relocations per annum (i.e. Ireland would take in an extra 648 international protection applicants a year directly from Greece and other EU entry points). While we can pay €12.96 million per annum (€20000 per applicant not taken) to a solidarity fund instead, the national implementation plan indicates that we should also plan to accommodate these applicants and process their applications here.

182. In the circumstances, it is respectfully submitted that the references in the General Scheme to various accommodation centres simply being 'designated' as screening centres or border procedure centres need to be developed upon. Designation needs to be conclusive. There is an urgent need to begin the designation process immediately and if it involves building new centres or repurposing existing facilities such as larger hotels or institutions that this be commenced straight away. Otherwise, there is no realistic prospect that large scale 'border' facilities will be ready by June 2026.

183. The centres will probably have to be different for the different processes too, one type for the screening process, which will need a medical centre for health screening and

vulnerability assessments as well as offices and meeting rooms for 'legal counsellors' and cultural mediators, and a different type for the people in border procedure with offices, interview room and catering facilities on site. There may also have to be a secure detention facility available rather than sending significant numbers of applicants to prisons which are already overcrowded. Facilities for people who are vulnerable and have special reception needs – disabled people or the victims of torture or human trafficking for example – also have to be provided.

184. Given the problems that have arisen in respect of some IPAS accommodation and, in particular, tented accommodation as noted inter alia by HIQA (it is noteworthy that a 2024 report published by the HIQA concluded that tented accommodation offered to international protection applicants by its nature constituted a breach of their human rights and did not meet the standards required for Direct Provision[19]) it would be better to lay out the basic requirements for border accommodation centres, the requirements for designation as such, and what constitutes material reception conditions in the primary legislation and, if possible, for the designation process for these new 'border' accommodation and processing centres to be commenced in advance of June 2026.

185. An overriding requirement for the legislation is that it ensures appropriate reception conditions for all applicants in accordance with the recast Reception Conditions Directive and to properly transpose that Directive.

[19] Pgs. 7, 9, 16 and 17 of 2024 HIQA report. https://www.hiqa.ie/system/files?file=inspectionreports/Final%20Inspection%20Report_Knockalisheen%20Accommodation%20Centre_MON-IPAS-1006.pdf

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