CHILDREN'S RIGHTS ALLIANCE

Uniting Voices For Children

Submission to the Joint Oireachtas Committee on Justice, Home Affairs and Migration on the General Scheme of the International Protection Bill 2025

June 2025



Founded in 1995, the Children's Rights Alliance unites over 160 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies, and services.

A.S.S.C Accompaniment Support Services for Children
Alcohol Action Ireland
Amber Women's Refuge
Amnesty International Ireland
An Cosán
Anew
Anne Sullivan Foundation
Aoibhneas
Archways
AslAm
Association of Occupational Therapists of Ireland (AOTI)
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Barnardos
Barretstown
Bedford Row Family Project
BeLonG To Youth Services
Bodywhys
Bray and North Wicklow Area Partnership
Breaking Through CLG
CARI Foundation
Catholic Guides of Ireland
Childhood Development Initiative
Children in Hospital Ireland
Children's Books Ireland
Children's Grief Centre
ChildVision
Citywise Education
Clarecare
Community Connect Support CLG
COPE Galway
Cork Life Centre
Cork Migrant Centre
Crann Centre
Crosscare
CyberSafeKids
Cycle Against Suicide
Dalkey School Project National School
Daughters of Charity Child and Family Service
Dental Health Foundation of Ireland
Department of Occupational Science and Occupational Therapy, UCC
Disability Federation of Ireland
Doras
Down Syndrome Ireland
Dublin Rape Crisis Centre
Dyslexia Association of Ireland
Dyspraxia/DCD Ireland
Early Childhood Ireland
Early Learning Initiative (National College of Ireland)
Educate Together
Empowerment Plus
EPIC
Extern Ireland
FASD Ireland
FamiliBase
Féach
Focus Ireland
Foróige
Gaeloideachas
Galway Traveller Movement
Good Shepherd Cork
Helium Arts
Humanist Association of Ireland
Hygiene Hub
Immigrant Council of Ireland
Inclusion Ireland
Inner City Organisations Network (ICON)
Institute of Guidance Counsellors
Irish Association for Infant Mental Health
Irish Association of Social Workers
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Primary Principals' Network
Irish Refugee Council
Irish Second Level Students' Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement
Irish Youth Foundation
iScoil
Jigsaw
Katharine Howard Foundation
Kerry Diocesan Youth Service (KDYS)
Kids' Own Publishing Partnership
Laois Domestic Abuse Services
Leap Ireland
Let's Grow Together
LGBT Ireland
Meath Women's Refuge & Support Services
Mecpaths
Mental Health Reform
Mercy Law Resource Centre
Migrant Rights Centre Ireland
Mothers' Union
Move Ireland
Museum of Childhood Ireland
Music Generation
My Mind
My Project Minding You
National Childhood Network
National Forum of Family Resource Centres
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
Neurodiversity Ireland
New Directions
Novas
One Family
One in Four
Our Lady of Lourdes Community Services Group
Parents Plus
Pavee Point
Peter McVerry Trust
Prevention and Early Intervention Network
Psychological Society of Ireland
Rainbow Club Cork
Rainbows Ireland
Rape Crisis Network Ireland (RCNI)
Realt Beag/Ballyfermot Star
Respond
SAFE Ireland
Saoirse Domestic Violence Services
SAOL Project
School of Education UCD
Scouting Ireland
Sexual Violence Centre Cork
Simon Communities of Ireland
SIPTU
Social Care Ireland
Society of St. Vincent de Paul
SPHE Network
Sphere 17 Regional Youth Service
SpunOut.ie
St. Nicholas Montessori Teachers' Association
St. Patrick's Mental Health Services
StartBright Early Learning Centres
TASC
Teachers' Union of Ireland
Teach Tearmainn
Terenure College Rugby Football Club
The Ark, A Cultural Centre for Children
The Irish Red Cross
The Jack and Jill Children's Foundation
The UNESCO Child and Family Research Centre, NUI Galway
The Wheel
Transgender Equality Network Ireland
Traveller Visibility Group Ltd
Treoir
UNICEF Ireland
Variety – the Children's Charity of Ireland
Vision Ireland
Women's Aid
YMCA Dublin
Young Ballymun
Young Social Innovators
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

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Introduction

The Children's Rights Alliance unites over 160 organisations working together to make Ireland one of the best places in the world to be a child. We change the lives of all children by making sure that their rights are respected and protected in our laws, policies and services.

The Children's Rights Alliance welcomes the opportunity to make a written submission to the Joint Oireachtas Committee on Justice, Home Affairs and Migration on the General Scheme of the International Protection Bill 2025. This submission has been developed following consultation with our members who work with children, young people and families across Ireland including those who have experience of the international protection process. When enacted, the International Protection Bill 2025 will introduce far-reaching reforms of the international protection system as the Bill provides for the legislative changes contained in the EU Pact on Migration and Asylum (the Pact),[1] which the Government has opted into.[2]It will affect the daily lived experiences of all children and young people seeking international protection, including unaccompanied minors. The Bill therefore must be compliant with long established children's rights and international obligations.

Article 22 of the UN Convention on the Rights of the Child (UNCRC) obliges States to ensure that children seeking or holding refugee status, whether unaccompanied or not, shall receive appropriate protection and assistance in the enjoyment of the rights of the Convention and other applicable human rights treaties.[3] The State is further obliged to assist the child in the tracing of their family and in obtaining information relevant for their reunification.[4] Ancillary to this, States are also obligated to pay particular attention to children experiencing trauma by giving appropriate protection and the special support necessary for recovery under Article 39.[5] These rights apply to children who enter Ireland with their families as well as unaccompanied asylum-seeking minors.

Article 20 recognises that States have a duty to provide care and protection to children who are separated from their families. The Committee on the Rights of the Child is clear that equal standards of protection must be provided to every child under the age of 18, infants and adolescents alike, and that child protection and welfare actors should take primary responsibility for children in the context of international migration.[6] Reception conditions for those awaiting status determination must provide adequate space and privacy for children and their families.[7]

[1] The EU Pact on Migration and Asylum contains the Asylum and Migration Management Regulation, the Asylum Procedure Regulation, the Return Border Procedure Regulation, the Crisis and Force Majeure Regulation, the Eurodac Regulation, the Screening Regulation, the Qualification Regulation, the Revised Reception Conditions Directive and the Union Resettlement and Humanitarian Admission Framework (Union Framework) Regulation.
[2] Ireland has opted into all the Regulations and Directives in the EU Pact except the Screening Regulation and the Asylum Return Border Procedure Regulation but they have committed to replicating these in national law.
[3] UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) art 22.
[4] ibid.
[5] ibid art 39.
[6] Committee on the Rights of the Child and Committee on the Protection of the Rights of all Migrant Workers Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return CMW/C/GC/4-CRC/C/GC/23 para 3 and para 13.
[7] ibid.

There are some welcome provisions in the General Scheme. There are several places where it states that information or support for minors will be provided in a child friendly and age appropriate manner:

- Head 7(3) states the person taking biometric data from those under the age of 18 shall take that child's fingerprints in a child-friendly and child-sensitive manner and have completed appropriate training in relation to the taking of fingerprints from children.[8]
- Head 17(4) states that in the case of minors, information in the screening process shall be provided in a child-friendly and age appropriate manner, and with the involvement of the representative or person temporarily assisting the minor.[9]
- Head 19 (4) states that physical and mental health support given to minors where there are indications of special reception needs shall be given in a child-friendly and age-appropriate manner by personnel trained and qualified to deal with minors, and in cooperation with Tusla.[10]
- Head 50 states that, in relation to the personal interview of a child when assessing their international protection application, it shall be conducted by a person who has the necessary knowledge of the rights and special needs of minors in a child-sensitive and context-appropriate manner, taking into consideration the age and maturity of the child'.[11]

Head 141 provides for a representative organisation which could be Tusla, the Child and Family Agency or another organisation designated by Tusla to be a representative organisation to act as a representative for an unaccompanied minor.[12] Head 141(10) lists the tasks that shall be carried out by the representative.[13] The provision of a representative for an unaccompanied minor is a very welcome development and is further analysed in the body of the submission.

List of recommendations

The Best Interests of the Child

- Consideration should be given to including the best interests of the child principle as per Article 3 of the UN Convention of the Rights of the Child in the following parts of the General Scheme:
    - Part 2: Arrivals and Screening
    - Part 3: Application for International Protection
    - Part 4: Asylum and Migration Management
    - Part 5: Assessment of Applications for International Protection at First Instance
    - Part 6: Examination of Applications for International Protection
    - Part 7: Assessment of Applications for in International Protection at Second Instance
    - Part 8: Declaration and other outcomes
    - Part 12: Asylum Border Procedure
    - Part 13: Return Border Procedure
    - Part 14: Allocation of Accommodation, Restrictions of Movement, and Detention

[8] General Scheme of the International Protection Bill 2025, Head 7(3).
[9] ibid Head 17(4).
[10] ibid Head 19(4).
[11] Ibid Head 50(2).
[12] ibid Head 141.
[13] ibid Head 141(10).

- At a minimum, a provision stating that the best interests of the child shall be a primary consideration should be included in Head 20 which deals with Guarantees for Minors in the screening process and Head 50 which deals with Guarantees for Minors when international protection applications are being assessed.
- Head 47(5)(a)(iii) should include that the onus is on the State to argue why interviewing a child would not be in their best interest.
- The best interests of the child principle should be included in Head 123 which deals with the interpretation of Part 15: Chief Inspector of Asylum Border Procedures.

Presumption of Adulthood (Head 7, Head 12 and Head 45)

- Head 7(4) which allows for the use of reasonable force to obtain biometric data or prevent the data from being lost or damaged to apply to young people whose age is in doubt should be deleted.
- Head 12(9) which allows for the arrest and detention of young people whose age is in doubt for the purposes of transfer to a Screening Centre should be deleted.
- Head 45(5)(b) which allows for the detention of young people whose age is in doubt while they are waiting to be transferred to another EU Member State should be deleted.

Appeal to the Second Instance Body (Head 67)

- The time to provide notice of appeal under Head 67 should be increased to at least three weeks.

Suspensive Effect of an Appeal (Head 68)

- The timeframe for all relevant applicants, including children to submit a request to the Second Instance Body to remain in the State pending the outcome of their appeal in Head 68(4) should be increased to two weeks.

Detention of Applicants (Head 122)

- Head 122 should not include any provision for detention of children, including unaccompanied children.
- Should detention be included, the Head should explain how assessments of the best interest of the child will be used to ensure that children as a rule are not detained.
- The General Scheme should outline how the limits on the detention of children in the Pact will be strictly enforced in practice and how detention will remain an absolute exception only to be used as a measure of last resort and for the shortest appropriate period of time.
- The General Scheme should outline how the acceleration of relevant processes to release children from detention will be operationalised.
- An assessment of the best interest of the child principle should be included in the General Scheme:
    - where in exceptional cases children are detained,
    - when the child's parent or primary caregiver is detained,
    - or in the case of unaccompanied minors, where detention safeguards the child.
- The General Scheme should list the alternatives to detention for families with children in accordance with the principle of family unity. Alternatives to detention should ensure they meet the material reception conditions and special reception conditions outlined in the Reception Condition Directive for both children in families and unaccompanied children.
- When detention is used the General Scheme should outline how children will have access to education as required under the Reception Conditions Directive. In these instances, the

General Scheme should also outline how children will practically be able to engage in leisure activities, including play and recreational activities appropriate to their age.

- The General Scheme should specify the type of facilities that will be used when unaccompanied minors are detained and ensure:
    - they are staffed with appropriately qualified staff that meet the children's specific needs and
    - that children are accommodated separately from adults.
- The General Scheme should also outline how they will ensure that the detention facilities for families with children are adapted to the needs of children.

Establishment and role of the Advisory Board and Appointment and terms and conditions of members of Advisory Board (Heads 128 and 129)

- Head 129 should provide for an immigration/asylum law expert that specialises in child rights to become a member of the Advisory Board of the Chief Inspector of Asylum Border Procedures.

Unaccompanied Minors (Heads 140 and 141)

- Head 141 should include a specific provision to protect the unaccompanied minor against all forms and risks of violence and exploitation.
- Head 141 should include specific provisions to support unaccompanied minors to enrol in education and access healthcare services.
- In Head 141(13), consideration should be given to reducing the maximum number of unaccompanied minors a representative or provisional representative shall act for.
- Head 141(12)(c) should be amended to state that representatives or provisional representatives 'shall have the necessary resources to carry out their tasks under subhead (10) and to receive initial and continuous appropriate training under subhead 11(c)'.

Age Assessment (Head YY)

- The following safeguards when carrying out age assessments should be included in the Head on Age Assessment:
    - the multidisciplinary age assessment procedure is undertaken and carried out by qualified professionals;
    - the assessment of age shall not be based solely on the applicant's physical appearance or behaviour;
    - if the results of the age assessment are inconclusive the applicant shall be assumed to be a child.
- The Head should state that age assessments should only be conducted as a last resort, not as standard or routine practice and only where there is a reasonable doubt regarding the age following interviews and attempts to gather documentary evidence on the individual's age as outlined in the Separated Children in Europe Programme Statement.
- The Head should state that when carrying out age assessments the least invasive option must always be followed, and the individual's privacy and dignity must be respected at all times.
- The Head on Age Assessments should include a provision stating the benefit of the doubt in relation to documents should be provided to the individual as required by the UN Committee on the Rights of the Child and the European Court of Human Rights. It should state that training should be provided all professionals involved in determining age assessments on how to assess documents.

- The Head should include an independent appeal on initial age assessment determinations as well as provisions to support the applicant to make the appeal, including with legal assistance.
- The Head on Age Assessment should include provision for the results of both the determination of the age assessment and an independent appeal to be communicated to the individual both verbally in a language they understand and in writing as outlined by the *SCEP Statement.*
- The Head should state that age assessments should take place in a prompt manner according to the UN Committee on the Rights of the Child and the Council of Europe.

Legal Counselling/Representation (Head YY)

- Legal counselling should be defined in the General Scheme in such a way as to include free legal assistance, which is defined as legal aid or legal advice within the meaning of the Civil Legal Aid Act 1995.
- Part 5 of the General Scheme: Assessment of applications for International Protection should include access to free legal assistance at first instance to all applicants including children.
- Part 7 of the General Scheme: Assessment of applications for International Protection at Second Instance should include access to free legal assistance and representation at appeal stage for all applicants including children.

Reception Conditions Directive: Standards and Inspection of Accommodation

- The *National Standards* or, if required, newly drafted standards appropriate to each new type of accommodation should apply to all international protection accommodation centres.
- If new standards are to be drafted, all relevant stakeholders including child rights experts should be consulted.
- HIQA should be given the authority to inspect all accommodation centres against the relevant standards in a statutory instrument.

The Best Interests of the Child

Article 3 of the UN Convention on the Rights of the Child (UNCRC) states:

1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of a child shall be a primary consideration.*
2. *State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and to this end, shall take all appropriate legislative and administrative measures.*[14]

The concept of the child's best interests is a procedural rule which should be followed in all decisions that will have an impact on the rights of the child. In its 2023 *Concluding Observations* on Ireland, the UN Committee on the Rights of the Child called on the State to ensure that the principle of the

[14] UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 3.

best interests of the child is consistently applied in all programmes and legislative, administrative and judicial proceedings involving children.[15] It also recommended that the State provide guidance to all relevant persons in authority for determining the best interests of the child and for giving those interests due weight as a primary consideration.[16]

Article 24(2) of the Charter of Fundamental Rights of the European Union (FRA) also states that 'in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration'.[17]

The General Scheme provides for the best interests of the child to be a primary consideration in relation to specific Heads of the Bill. This is very welcome. Head 20(2) states that in the screening process where the attendance of an adult family member is considered by the Child and Family Agency not to be in the best interests of the child, a representative shall be appointed to the child.[18] Head 47(5)(a)(iii) in relation to the substantive interview for the assessment of the application for international protection states that where the applicant is a child the interview may be omitted if it has been established that an interview would be against their best interests.[19] Head (54)(6) states that where an applicant is an unaccompanied minor and it is decided they can receive internal protection in a part of their country of origin the best interests of the child shall be taken into account, in particular the availability of sustainable and appropriate care and custodial arrangements.[20]

Head 93(2) states that in the application of Part 9 of the General Scheme in relation to the content of international protection, the best interests of the child shall be the primary consideration for those under the age of 18.[21] This includes the provisions on family reunification. The best interest of the child is also referenced in relation to the role of the representative for unaccompanied minors under Part 16 of the General Scheme. This includes Head 140 on the responsibilities of the representative,[22] Head 141(10)(a) and (c) on the tasks of the representative[23] and Head 141(12) on the independence of the representative.[24]

While the inclusion of the best interests of the child principle under these provisions is very welcome, these measures are not sufficient to comply with the UNCRC or FRA. Indeed, the Pact itself contains more provisions on the best interests of the child than the General Scheme. The Asylum Procedures Regulation,[25] the Screening Regulation,[26] the Reception Conditions Directive,[27] the

[15] UNCRC, 'Concluding Observations Ireland' (2023) UN Doc CRC/C/IRL/CO/5-6, para 16.
[16] ibid.
[17] Charter of Fundamental Rights of the European Union, 200/C 364/01 (18 December 2000) art 24(2).
[18] General Scheme of the International Protection Bill 2025, Head 20(2).
[19] ibid, Head 47(5)(a)(iii).
[20] ibid, Head 54(6).
[21] ibid, Head 93(2).
[22] ibid, Head 140
[23] ibid, Head (141)(10)(a) and (c).
[24] ibid Head 141(12).
[25] Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU OJEU L art 22.
[26] Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 OJEU L art 13.
[27] Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (recast) OJEU L art 26.

Eurodac Regulation,[28] the Asylum and Migration Management Regulation,[29] and the Qualification Directive[30] all contain specific articles that state that the best interests of the child shall be a primary consideration for the competent authorities when applying the Regulation or Directive. Consideration should be given to including a similar provision in the General Scheme. This could be done in each relevant Part of the General Scheme.[31] This would include:

- Part 2: Arrivals and Screening
- Part 3: Application for International Protection
- Part 4: Asylum and Migration Management
- Part 5: Assessment of Applications for International Protection at First Instance
- Part 6: Examination of Applications for International Protection
- Part 7: Assessment of Applications for in International Protection at Second Instance
- Part 8: Declaration and other outcomes
- Part 12: Asylum Border Procedure
- Part 13: Return Border Procedure
- Part 14: Allocation of Accommodation, Restrictions of Movement, and Detention

At a minimum, a provision stating that the best interests of the child shall be a primary consideration should be included in Head 20 which deals with Guarantees for Minors in the screening process and Head 50 which deals with Guarantees for Minors when international protection applications are being assessed.

There are also other specific areas in the General Scheme where the best interests of the child principle should be inserted. Head 7, which deals with biometric data, should include a specific provision on the best interests of the child when taking biometric data from those under 18.[32] It states in the Eurodac Regulation of the Pact that biometric data will be taken in full respect of the best interests of the child and the safeguards laid down in the UN Convention on the Rights of the Child.[33] This is missing from the General Scheme. Head 47(5)(a)(iii) in relation to the substantive interview for the assessment of the application for international protection states that where the applicant is a child, the interview may be omitted if it has been established that an interview would

[28] Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council OJEU L art 14.

[29] Directive (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 OJEU L art 23.

[30] Regulation (EU) 2024/1347 of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU OJEU L art 20 (5).

[31] It is already effectively done under Part 9 of the General Scheme relating to the content of international protection. See Head 93(2).

[32] ibid Head 7.

[33] Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council OJEU L art 14.

be against their best interests.[34] In the Asylum Procedures Regulation of the Pact it states that the onus is on the State to argue why interviewing a child would not be in their best interest.[35] This should be included in Head 47(5)(a)(iii).

The Chief Inspector of Asylum Border Procedures is the way in which the monitoring mechanism of the EU Pact will be implemented.[36] The Pact states that the mechanism will monitor compliance with EU and international law in particular as regards to the best interests of the child principle, among other issues.[37] This has not been inserted into Part 15 of the General Scheme which deals with the Chief Inspector. The best interests of the child principle should be included in Head 123 which deals with the interpretation of Part 15 of the General Scheme.

Recommendations

- Consideration should be given to including the best interests of the child principle as per article 3 of the UN Convention on the Rights of the Child in the following parts of the General Scheme:
    - Part 2: Arrivals and Screening
    - Part 3: Application for International Protection
    - Part 4: Asylum and Migration Management
    - Part 5: Assessment of Applications for International Protection at First Instance
    - Part 6: Examination of Applications for International Protection
    - Part 7: Assessment of Applications for in International Protection at Second Instance
    - Part 8: Declaration and other outcomes
    - Part 12: Asylum Border Procedure
    - Part 13: Return Border Procedure
    - Part 14: Allocation of Accommodation, Restrictions of Movement, and Detention

- At a minimum, a provision stating that the best interests of the child shall be a primary consideration should be included in Head 20 which deals with Guarantees for Minors in the screening process and Head 50 which deals with Guarantees for Minors when international protection applications are being assessed.
- Head 7, which deals with biometric data, should include a specific provision on the best interests of the child when taking biometric data from those under the age of 18.
- Head 47(5)(a)(iii) should include that the onus is on the State to argue why interviewing a child would not be in their best interest.
- The best interests of the child principle should be included in Head 123 which deals with the interpretation of Part 15: Chief Inspector of Asylum Border Procedures.

Presumption of adulthood (Head 7, Head 12 and Head 45)

[34] General Scheme of the International Protection Bill 2025, Head 47(5)(a)(iii).
[35] Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU OJEU L art 22(3).
[36] General Scheme of the International Protection Bill 2025, Part 15: Chief Inspector of Asylum Border Procedures.
[37] Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 OJEU L art 10(2).

Head 7(4) states that if and for so long as the immigration officer, officer of the Minister or member of An Garda Síochána concerned has reasonable grounds for believing that the person has attained the age of 18 the provisions of subhead (2) shall apply as if he or she has attained the age of 18 years.[38] This would then mean that Head 8 which allows for the use of reasonable force to obtain biometric data or prevent the data from being lost or damaged would apply to young people whose age is in doubt.[39]

Head 12(9) similarly allows for the arrest and detention of young people whose age is in doubt for the purposes of transfer to a Screening Centre.[40] Head 45(5)(b) also allows for the detention of young people whose age is in doubt while they are waiting to be transferred to another EU Member State under Part 4 of the General Scheme which deals with Asylum and Migration Management.[41]

The UN Committee on the Rights of the Child has stated that in cases of uncertainty as to an individual's age, the individual shall be given the benefit of doubt and be considered a child.[42] There is still uncertainty as to an individual's age even when there are reasonable grounds for believing a person has reached the age of 18. Therefore, even if an immigration officer has reasonable grounds for believing that a person has reached the age of 18 the benefit of the doubt should apply, and they should be considered a child.

Head 7(4) which allows for the use of reasonable force to obtain biometric data or prevent the data from being lost or damaged to apply to young people whose age is in doubt should be deleted from the General Scheme as required by the Committee. Head 12(9) which allows for the arrest and detention of young people whose age is in doubt for the purposes of transfer to a Screening Centre should also be deleted, as well as Head 45(5)(b) which allows for the detention of young people whose age is in doubt while they are waiting to be transferred to another EU Member State.

Recommendations

- Head 7(4) which allows for the use of reasonable force to obtain biometric data or prevent the data from being lost or damaged to apply to young people whose age is in doubt should be deleted.
- Head 12(9) which allows for the arrest and detention of young people whose age is in doubt for the purposes of transfer to a Screening Centre should be deleted.
- Head 45(5)(b) which allows for the detention of young people whose age is in doubt while they are waiting to be transferred to another EU Member State should be deleted.

Appeal to the Second Instance Body (Head 67)

Heads 67 provides that a notice of appeal shall be submitted in writing to the Second Instance Body within five days from the date of a decision on admissibility, where an application has been rejected where it has been established that the applicant does not qualify for international protection or

[38] General Scheme of the International Protection Bill 2025, Head 7(4).
[39] Ibid Head 8
[40] General Scheme of the International Protection Bill 2025, Head 12(9).
[41] General Scheme of the International Protection Bill 2025, Head 45(5)(b).
[42] Committee on the Rights of the Child, General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin CRC/GC/2005/6 para 31.

where there has been an implicit withdrawal of an application is notified.[43] A notice of appeal shall also be submitted in writing to the Second Instance Body within two weeks from the date of the sending to the applicant subject to withdrawal of international protection.[44]

The *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* define child-friendly justice as being among other things accessible, speedy and diligent.[45] It states that children should have recourse to remedies to effectively exercise their rights.[46] The short amount of time given to provide notice of appeal as set out in Head 67 is very problematic. Certain applicants, which will include both children in families and unaccompanied minors, will only have five days from from the date of when a decision is notified. This is not effective as it is not enough time to get legal assistance and representation and provide notice of an appeal. The estimated minimum time needed for an applicant to prepare an appeal properly is at least 30 days.[47] All applicants, including children and unaccompanied minors, should be given enough time to get legal assistance and representation and make an appeal. The time to provide notice of appeal under Head 67 should be increased to at least three weeks.

Recommendation

- The time to provide notice of appeal under Head 67 should be increased to at least three weeks.

Suspensive Effect of an Appeal (Head 68)

Heads 68(4) states that an applicant or person subject to withdrawal of international protection who falls into any of the categories specified in subhead (2) may submit a request, in writing, to the Second Instance Body to remain in the State pending the outcome of his or her appeal, within five days of the first instance decision being notified to them and should outline the grounds on which the request is being made.[48] Subhead (2) lists the categories of people whose appeals do not have suspensive effect.[49] This includes children in families in the border procedure and the accelerated examination procedure among other categories of applicants.[50]

Again, the short amount of time given to provide notice of appeal as set out in this Head is problematic. It does not provide for accessible, speedy and diligent child-friendly justice as required by the Council of Europe.[51] There is a real risk that if they do not meet this very short timeframe, children in families could be put in the returns procedure and returned to their country of origin or another third country while their appeal is ongoing. This also means there is a risk of non-refoulement. The timeframe for all relevant applicants, including children to submit a request to the

[43] General Scheme of the International Protection Bill 2025, Head 67(2)(a).
[44] ibid, Head 67(2)(b).
[45] Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (COE 2010) 9.
[46] ibid 26.
[47] European Committee on Refugees and Exiles, *ECRE Comments on the Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU* (ECRE October 2024) 105.
[48] General Scheme of the International Protection Bill 2025, Head 68(4).
[49] General Scheme of the International Protection Bill 2025, Head 68(2).
[50] It is welcome that this will not apply to unaccompanied minors in the border procedure, this is stated in Head 68(3).
[51] Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (COE 2010) 9.

Second Instance Body to remain in the State pending the outcome of his or her appeal should be increased to two weeks.

Recommendation

- The timeframe for all relevant applicants, including children to submit a request to the Second Instance Body to remain in the State pending the outcome of their appeal in Head 68(4) should be increased to two weeks.

Detention of Applicants (Head 122)

Head 122 deals with the detention of applicants. It does not provide for the detention of children. However, in the Explanatory Notes it states that the Reception Conditions Directive of the Pact provides that minors, shall as a rule, not be detained, but does allow for the detention of minors in certain limited circumstances.[52] It goes on to state that the issue of making provisions for the very limited circumstances where a minor could be detained has not yet been addressed and will be considered further during drafting.[53]

The UN Committee on the Rights of the Child has stated that detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.[54] Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37(b) of the UNCRC that requires detention to conform to the law of the relevant country and only to be used as a measure of last resort and for the shortest appropriate period of time.[55] The Committee states that all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.[56] In the exceptional case of detention, the Committee states that conditions of detention must be governed by the best interests of the child and that special arrangements must be made for living quarters that are suitable for children and separate from adults, unless it is considered in the child's best interests not to do so.[57]

The Committee also emphasises the harm inherent in any deprivation of liberty and the negative impact that immigration detention can have on children's physical and mental health and on their development, even when they are detained for a short period of time or with their families.[58]

The Separated Children in Europe Programmes *Statement of Good Practice* (*SCEP Statement*) states that separated children must never be detained for reasons related to their immigration status or

[52] General Scheme of the International Protection Bill 2025, explanatory note p281.
[53] ibid.
[54] Committee on the Rights of the Child *General Comment No. 6 (2005) regarding the treatment of unaccompanied and separated children outside of their country of origin* CRC/GC/2005/6 para 61.
[55] ibid and UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 37(b).
[56] Committee on the Rights of the Child *General Comment No. 6 (2005) regarding the treatment of unaccompanied and separated children outside of their country of origin* CRC/GC/2005/6 para 61.
[57] ibid para 63.
[58] Committee on the Rights of the Child and Committee on the Protection of the Rights of all Migrant Workers *Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return* CMW/C/GC/4-CRC/C/GC/23 para 9.

illegal entry.[59] This includes, whether temporary or otherwise, detention at the border or in international zones, in detention centres, in police cells, in prisons or in any other special detention centres for young people. Judicial oversight must be exercised where it is deemed in a child's best interests to be placed in a closed centre. Detention must only be used as a measure of last resort and for the shortest appropriate period of time.[60]

The Reception Conditions Directive states that children, as a rule, should not be detained but that in exceptional circumstances, as a measure of last resort, and after detention is assessed to be in their best interests, children may be detained where the child's parent or primary caregiver is detained or in the case of unaccompanied minors, where detention safeguards the child.[61] However, article 4 of the Directive allows States to introduce or retain more favourable provisions with respect to reception conditions for applicants and their family members than those which are established in the Pact.[62] Given this, and in order to be in compliance with the UNCRC detention for children, children in families or unaccompanied minors should not be included in Head 122.

Should detention be provided for the Head should explain how the assessment of the best interest of the child will be used to ensure that children as a rule, are not detained. It should also outline how the limits on the detention of children in Reception Conditions Directive will be strictly enforced in practice and how detention will remain an absolute exception only to be used as a measure of last resort and for the shortest appropriate period of time.[63] In ensuring that all efforts are made to release children from detention and place them in suitable accommodation, the acceleration of relevant processes should be allowed.[64] Furthermore, how the acceleration of relevant processes to release children from detention will be operationalised should be outlined in the General Scheme.

An assessment of the best interest of the child should also take place where in exceptional cases children are detained when the child's parent or primary caregiver is detained or in the case of unaccompanied minors, where detention safeguards the child. The General Scheme should list the alternatives to detention for families with children in accordance with the principle of family unity. Alternatives to detention should meet the material reception conditions, and special reception conditions outlined in the Reception Condition Directive for both children in families and unaccompanied minors.[65]

The General Scheme should specify the type of facilities that will be used when unaccompanied minors are detained, ensuring they are staffed with appropriately qualified staff that meet the children's specific needs as required under the Reception Conditions Directive.[66] Minors must also be accommodated separately from adults. It should also outline how they will ensure that the detention facilities for families with children are adapted to meet the needs of children.[67]

[59] Separated Children in Europe Programme, *SCEP Statement of Good Practice 4th Revised Edition* (SCEP 2009) 26.
[60] ibid.
[61] Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (recast) OJEU L art 13(2).
[62] ibid art 4.
[63] ibid and UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 37(b).
[64] Committee on the Rights of the Child *General Comment No. 6 (2005) regarding the treatment of unaccompanied and separated children outside of their country of origin* CRC/GC/2005/6 para 61.
[65] Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (recast) OJEU L arts, 19, 20, 22, 24, 26 and 27.
[66] ibid art 13(3).
[67] ibid art 13(4).

Lastly, the General Scheme should explain how children will have access to education when they are detained, as required under the Reception Conditions Directive.[68] It should also outline how children that are detained will practically be able to engage in leisure activities, including play and recreational activities appropriate to their age.

Recommendations

- Head 122 should not include any provision for detention of children, including unaccompanied children.
- Should detention be included, the Head should explain how assessments of the best interest of the child will be used to ensure that children as a rule are not detained.
- The General Scheme should outline how the limits on the detention of children in the Pact will be strictly enforced in practice and how detention will remain an absolute exception only to be used as a measure of last resort and for the shortest appropriate period of time.
- The General Scheme should outline how the acceleration of relevant processes to release children from detention will be operationalised.
- An assessment of the best interest of the child principle should be included in the General Scheme:
    - where in exceptional cases children are detained,
    - when the child's parent or primary caregiver is detained,
    - or in the case of unaccompanied minors, where detention safeguards the child.
- The General Scheme should list the alternatives to detention for families with children in accordance with the principle of family unity. Alternatives to detention should ensure they meet the material reception conditions and special reception conditions outlined in the Reception Condition Directive for both children in families and unaccompanied children.
- When detention is used the General Scheme should outline how children will have access to education as required under the Reception Conditions Directive. In these instances, the General Scheme should also outline how children will practically be able to engage in leisure activities, including play and recreational activities appropriate to their age.
- The General Scheme should specify the type of facilities that will be used when unaccompanied minors are detained and ensure:
    - they are staffed with appropriately qualified staff that meet the children's specific needs and
    - that children are accommodated separately from adults.
- The General Scheme should also outline how they will ensure that the detention facilities for families with children are adapted to the needs of children.

Establishment and role of the Advisory Board and Appointment and terms and conditions of members of Advisory Board (Heads 128 and 129)

The monitoring mechanism of the Pact will be implemented by the appointment of The Chief Inspector of the Asylum Border Procedure. Head 128 of the General Scheme states that the Advisory Board shall consult with, guide and advise the Chief Inspector in relation to his or her strategic direction, and, when requested to do so by the Chief Inspector, consult with, guide and advise the

[68] ibid art 16.

Chief Inspector in relation to the performance of his or her functions.[69] The Explanatory Note states that the Board would assist in the monitoring mechanism's effective functioning and their independence through practical guidance and counselling, as well as providing technical support. It is not recommended that the Board would have any governing powers, nor responsibility to receive or consider individual monitoring reports but would likely require access to information around the number and types of incidents being monitored or investigated.[70]

Head 129 provides for membership of the Advisory Board of the Chief Inspector of Asylum Border Procedures.[71] It states that the Ombudsman, the Ombudsman for Children, the Chief Executive of Tusla - the Child and Family Agency, the Director of the Irish Human Rights and Equality Commission, a person who operates as an independent National Preventive Mechanism under OPCAT, the High Commissioner, and the Chief Inspector of the Health Information and Quality Authority will be members of the Board.[72] This is welcome. The Children's Rights Alliance recommends that an immigration/asylum law expert that specialises in child rights should also be a member of the Board. A person specifically qualified to assess child rights in the context of immigration and asylum law will be an important addition to the Advisory Board given the complexity of the multiple procedures in the new system and the risk of breaches of child rights to both children in families and unaccompanied minors.

Recommendation

- Head 129 should provide for an immigration/asylum law expert that specialises in child rights to become a member of the Advisory Board of the Chief Inspector of Asylum Border Procedures.

Unaccompanied Minors (Heads 140 and 141)

Heads 140 and 141 of the General Scheme deal with unaccompanied minors. It is welcome that Head 141 provides for the appointment of representatives and provisional representatives for unaccompanied minors.[73] This is completely separate from a legal representative provided for elsewhere in the General Scheme. Head 141(3) states 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'.[74] Head 141(5) states that the representative organisation shall appoint a person suitable to provisionally act as a representative until a representative has been appointed, and as soon as possible and no later than 15 working days from the date on which the application is made, a person to act as a representative.[75]

Head 141(6) states that following notification 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

[69] ibid 128(2).
[70] ibid, Explanatory Notes p293.
[71] General Scheme of the International Protection Bill 2025, Head 129.
[72] ibid Head 129(2).
[73] General Scheme of the International Protection Bill 2025, Head 141.
[74] ibid Head 141(3).
[75] ibid Head 141(5).

enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply accordingly. This is the provision in the current legislation, the International Protection Act 2015.[76] Head 141(7) states that Tusla, the Child and Family Agency may provide child care services to an unaccompanied minor whether or not the minor is in its care pursuant to an order of a Court under the Child Care Acts 1991 to 2024.[77] This is a welcome addition as it provides clarity that Tusla, the Child and Family agency can provide child care services to unaccompanied minors even when they are not under an order of the Court.

The UNCRC requires States to ensure the protection of children who are without parental care which extends to any child, no matter the nationality or residence status, in a State.[78] The UN Committee on the Rights of the Child has noted that the appointment of a representative or guardian is a key procedural safeguard for protecting the best interests of the child, and that asylum or other procedures should only be referred to once a guardian has been appointed to the child. [79] The European Union Agency for Fundamental Rights (FRA), recognising the need for a guardian or representative to be appointed promptly, recommends that a time limit should be set for the appointment of a guardian. It is therefore welcome that a 15 working day limit has been set in the General Scheme and that a person suitable to provisionally act as a representative will be appointed until the representative is.

Head 141(10) lists the tasks any appointed person under Head 141(5) will carry out.[80] It is important to note that any appointed person includes both the representative, and the suitable person provisionally assigned to act as a representative.

The UN Committee on the Rights of the Child has provided guidance on the role of the guardian or representative stating that they should have expertise in the area of child care, they should ensure that the child's 'legal, social, health, psychological, material and educational needs' are looked after, and they act as a link between the child and state agencies providing care to the child.[81] The FRA states that a key role of a guardian or representative is to hold public authorities accountable and to ensure that 'the child's legal, social, health, psychological, material and educational needs are met'.[82] The FRA has set out what the role of a guardian should be to support unaccompanied minors when applying for International Protection as including:

- safeguarding the child, including by ensuring the child receives appropriate care and services and protecting the child against all forms and risks of violence and exploitation.
- supporting children to enrol in education, access healthcare services and facilitate their participation in decisions being made about them.
- act as an advocate for the child and ensure they have access to information and legal advice as needed.[83]

[76] International Protection Act 2015, s14(2).
[77] General Scheme of the International Protection Bill 2025, Head 141(7).
[78] UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989). Art 20.
[79] Committee on the Rights of the Child General Comment No. 6 (2005) regarding the treatment of unaccompanied and separated children outside of their country of origin CRC/GC/2005/6 para 21.
[80] General Scheme of the International Protection Bill 2025, Head 141(10).
[81] Committee on the Rights of the Child General Comment No. 6 (2005) regarding the treatment of unaccompanied and separated children outside of their country of origin CRC/GC/2005/6 para 33.
[82] European Union Agency for Fundamental Rights (FRA), *Guardianship Systems for Unaccompanied Children In The European Union — Developments Since 2014* (Publications Office of the European Union 2022) 7.
[83] ibid 60.

It is therefore very welcome that the tasks under Head 141(10) include: to safeguard the minor's best interests and general well-being to enable them to benefit from his or her rights under this Act; to meet with the unaccompanied minor and take into account the minor's own views about his or her needs; to assist the unaccompanied minor in providing information relevant to the assessment of the best interests of the child; providing and assisting them in understanding information in the Act and where applicable, assist with the age-assessment procedure. Other tasks the appointed person should carry out are; to assist with the registration and lodging of the minor's international protection application and assist them with the preparation of, and be present for, the personal interview; to inform the unaccompanied minor about the purpose and possible consequences of the personal interview and about how to prepare for that interview and where applicable, support the engagement of the unaccompanied minor with elements of the family tracing procedure including with engagement with international and other relevant organisations.[84]

Head 141 does not include any specific provisions to protect unaccompanied minors against all forms and risks of violence and exploitation. This should be specifically included in the Head 141 as outlined by the UN Committee on the Rights of the Child and the FRA. This is notwithstanding that Head 141(6) states that following notification to Tusla, the Child and Family Agency, 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.[85]

Head 141 also does not include any provisions to support unaccompanied minors to enrol in education or access healthcare services. These should be included to ensure the holistic support outlined by the UN Committee on the Rights of the Child and the FRA is provided to the unaccompanied minor.

Head 141(13) states that a person appointed as a representative or provisional representative shall act for no more than 30 unaccompanied minors at the same time.[86] While it is important that a cap is included 30 unaccompanied minors is much higher than the current maximum in many EU countries.[87] It is a lot of children for one representative to assist in line with their tasks as set out in Head 141(10). The FRA also states that a maximum number of cases to be assigned to any one guardian is the best way to ensure they have a reasonable caseload which allows them to perform their duties effectively.[88] Consideration should be given to reducing the maximum number of unaccompanied minors a representative or provisional representative shall act for.

Head 141(12)(c) states that representatives or provisional representatives 'shall have the resources'.[89] As the body responsible for unaccompanied minors, including by designating an organisation or itself to be a representative organisation,[90] it will be very important that Tusla, the Child and Family Agency be given the appropriate resources to carry out the tasks outlined in Head 141(10). Resources should also be provided for initial and continuous training for representatives concerning the rights and needs of minors including those relating to any applicable child

[84] General Scheme of the International Protection Bill 2025, Head 141(10).
[85] ibid Head 141(6).
[86] ibid Head 141(13)
[87] Platform for International Cooperation on Undocumented Migrants*, Children's Rights in the 2024 Migration and Asylum Pact* (October 2024) 26.
[88] European Union Agency for Fundamental Rights (FRA), *Guardianship Systems for Unaccompanied Children In The European Union — Developments Since 2014* (Publications Office of the European Union 2022) 58-59.
[89] General Scheme of the International Protection Bill 2025, Head 141(12)(c).
[90] ibid, Head 141(1)(2).

safeguarding standards as outlined in Head 141(11)(c).[91] The FRA recommends that representatives should receive appropriate initial and ongoing training.[92] This is important to respond effectively to the needs of unaccompanied minors including those that have been victims of trafficking or have experienced trauma up to and including torture.[93]

Consideration should be given to amending Head 141(12)(c) to state that representatives or provisional representatives 'shall have the necessary resources to carry out their tasks under subhead (10) and to receive initial and continuous appropriate training under subhead 11(c)'.

Recommendations

- Head 141 should include a specific provision to protect the unaccompanied minor against all forms and risks of violence and exploitation.
- Head 141 should include specific provisions to support unaccompanied minors to enrol in education and access healthcare services.
- In Head 141(13) consideration should be given to reducing the maximum number of unaccompanied minors a representative or provisional representative shall act for.
- Head 141(12)(c) should be amended to state that representatives or provisional representatives 'shall have the necessary resources to carry out their tasks under subhead (10) and to receive initial and continuous appropriate training under subhead 11(c)'.

Age Assessment (Head YY)

Where there are doubts as to an individual's age, as a result of statements by the applicant, available documentary evidence or other relevant indications, the process for age assessment has not yet been dealt with in the General Scheme. A placeholder (Head YY) has been inserted when age assessments are referenced, and it is assumed a Head on Age Assessments is forthcoming in the Bill. Head 141(10) states that the representative (appointed to unaccompanied minors) shall assist with the age-assessment procedure referred to in Head YY (head on age assessment).[94] Head 110(1)(b) states that where there is doubt as to the applicant's age, the competent authorities shall promptly carry out an age assessment in accordance with head YY (age assessment).[95]

The UN Committee on the Rights of the Child states that to make an informed estimate of age, States should undertake a comprehensive assessment of the child's physical and psychological development, conducted by specialist paediatricians or other professionals who are skilled in combining different aspects of development. It states assessments should be carried out in a prompt, child-friendly, gender sensitive and culturally appropriate manner, including interviews of children and, as appropriate, accompanying adults, in a language the child understands.[96] It goes on

[91] ibid, Head 141(11)(c).
[92] European Union Agency for Fundamental Rights (FRA), *Guardianship Systems for Unaccompanied Children In The European Union — Developments Since 2014* (Publications Office of the European Union 2022) 49.
[93] ibid.
[94] General Scheme of the International Protection Bill 2025, Head 141(10)(f).
[95] General Scheme of the International Protection Bill 2025, Head 110(10(b).
[96] Committee on the Rights of the Child and Committee on the Protection of the Rights of all Migrant Workers Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return CMW/C/GC/4-CRC/C/GC/23 para 4.

to state that documents that are available should be considered genuine unless there is proof to the contrary and that the benefit of the doubt should be given to the individual being assessed. It says that States should refrain from using medical methods which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes and that States should ensure that their determinations can be appealed to a suitable independent body'.[97]

The Committee has also found that authorities may violate article 8 of the UNCRC by failing to assign evidentiary value to the person's documents, including where the person's circumstances of flight precluded them from obtaining a passport.[98] The European Court of Human Rights (ECtHR) has stated that the benefit of the doubt as to the credibility of statements or documents must be given to asylum seekers in light of their vulnerability and the special situation in which they find themselves in.[99] In relation to appeals of age assessments, the Council of Europe states that appeals must be child-sensitive, timely and allow for effective participation of the child.[100]

The Separated Children in Europe Programmes *Statement of Good Practice* (*SCEP Statement*) states that age assessment procedures should only be undertaken as a measure of last resort, not as standard or routine practice, where there are grounds for serious doubt and where other approaches, such as interviews and attempts to gather documentary evidence, have failed to establish the individual's age.[101] If an age assessment is thought to be necessary, the *SCEP Statement* states that authorities should ensure there is informed consent and the procedure should be multi-disciplinary and undertaken by independent professionals with appropriate expertise and familiarity with the child's ethnic and cultural background.[102]

The *SCEP Statement* also states that age assessments must balance physical, developmental, psychological, environmental and cultural factors. It goes on to state that it is important to note that age assessment is not an exact science, and a considerable margin of uncertainty will always remain inherent in any procedure. When making an age assessment, the *SCEP Statement* state that authorities should ensure individuals whose age is being assessed should be given the benefit of the doubt.[103] Examinations must never be forced or culturally inappropriate. The least invasive option must always be followed, and the individual's dignity must be respected at all times.[104]

The *SCEP Statement* states the procedure, outcome and the consequences of the age assessment must be explained to the individual in a language that they understand, and the outcome must also be presented in writing.[105] It also states there should be a procedure to appeal against the decision and the provision of the necessary support to do so.[106]

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[97] ibid.
[98] CRC, R.Y.S. v. Spain, Communication no. 76/2019, 4 February 2021, 8.11; CRC, R.K. v. Spain, Communication no. 27/2017, 18 September 2019, 9.5 and 9.6.
[99] ECtHR, *M.A. v. Switzerland, Application No. 52589/13*, 18 November 2014, para.55; ECtHR, *A.A. and Others v. Sweden, Application no.34098/11*, 24 July 2014, para. 73; ECtHR (GC), *F.G. v. Sweden, no. 43611/11*, 23 March 2016, para. 113.
[100] Council of Europe, *Age assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration* (CoE September 2017) para 179-180.
[101] Separated Children in Europe Programme, *SCEP Statement of Good Practice 4th Revised Edition* (SCEP 2009) 25.
[102] ibid.
[103] ibid.
[104] ibid.
[105] ibid.
[106] ibid.

The *SCEP Statement* further states that in cases of doubt the person claiming to be less than 18 years of age should provisionally be treated as such.[107] An individual should be allowed to refuse to undergo an assessment of age where the specific procedure would be an affront to their dignity or where the procedure would be harmful to their physical or mental health.[108] A refusal to agree to the procedure must not prejudice the assessment of age or the outcome of the application for protection.[109]

The Head on Age Assessments should state that a multidisciplinary age assessment procedure is undertaken and carried out by qualified professionals, that the assessment of age shall not be based solely on the applicant's physical appearance or behaviour and that if the results of the age assessment is inconclusive the person shall be assumed to be a child. These are explicitly provided for in the Asylum Procedure Regulation in the Pact[110] as well as the UN Committee on the Rights of the child and the *SCEP statement*. The Head should also state that age assessments should only be conducted as a measure of last resort, not as standard or routine practice and only where there is a reasonable doubt regarding their age following interviews and attempts to gather documentary evidence on the individuals age as outlined by the *SCEP Statement*. When carrying out age assessments the least invasive option must always be followed, and the individual's privacy and dignity must be respected at all times.

The Head on Age Assessments should include a provision stating the benefit of the doubt in relation to documents should be provided to the individual as required by the UN Committee on the Rights of the Child and the ECtHR. This is to acknowledge that asylum seekers are inherently vulnerable and may not always have appropriate identification documents due to the circumstances that they find themselves in. The Head should also state that training should be provided to all professionals involved in determining age assessments on how to assess documents.[111]

There is no explicit right to appeal the determination on age assessment in the Asylum Procedure Regulation. The UN Committee on the Rights of the Child[112] and *SCEP Statement*[113] both state there should be access to appeal the initial determination to an independent body, as well as the provision of the necessary support to do so. Tusla's Guidance and Assessment Framework to determine eligibility for Tusla services under the Child Care Act 1991 currently provides for an independent appeal on age assessments.[114] The Head should include provision for an independent appeal on initial age assessment determinations as well provisions to support the applicant to make the appeal, including with legal assistance.

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[107] ibid.
[108] ibid.
[109] ibid.
[110] Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU OJEU L art 25.
[111] The Committee on the Rights of the Child has stated that relevant professionals should receive training on the rights of migrant children and, in particular, the standards set by the Committee's jurisprudence and General Comments. See CRC, R.Y.S. v. Spain, Communication no. 76/2019, 17 August 2021, 9 (d).
[112] Committee on the Rights of the Child and Committee on the Protection of the Rights of all Migrant Workers Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return CMW/C/GC/4-CRC/C/GC/23 para 4.
[113] Separated Children in Europe Programme, *SCEP Statement of Good Practice 4th Revised Edition* (SCEP 2009) 25.
[114] Tusla, the Child and Family Agency, *Procedural Guidance and Assessment Framework for the determination of eligibility for services under the Child Care Act 1991 for separated children seeking international protection* (Tusla 2023). While the independent appeal is not currently taking place Tusla are working towards full implementation of the appeal provisions in the Framework.

The Head should include provision for the result of the determination of the age assessment and an independent appeal to be communicated to the young person both verbally in a language they understand and in writing as outlined by the *SCEP Statement.*

The Head should state that age assessments should take place in a prompt manner according to the UN Committee on the Rights of the Child. The Council of Europe also states that appeals must be timely.[115] Delays can have a detrimental knock-on effect for children and young people in terms of education, employment and other supports they may receive if they are considered unaccompanied children. It can also have a negative effect on their right to family reunification. Timely age assessments and appeals, if necessary, will minimise disruption to the young person's life.

The Reception Condition Directive states that gender and age-specific concerns and the situation of applicants with special reception needs shall be taken into consideration when providing material reception conditions.[116] It also states that minors and unaccompanied minors are more likely to have special reception needs.[117] Young people whose age is in doubt should not be put in the border procedure. The Head should state that child-appropriate accommodation should be provided to young people whose age is in doubt and are undergoing the age assessment process. Currently Tusla are working towards opening a separate residential unit for these young people, separate from both residential units accommodating unaccompanied minors and adult international accommodation service (IPAS) centres.[118]

Recommendations

- The following safeguards when carrying out age assessments should be included in the Head on Age Assessment:
    - multidisciplinary age assessment procedure is undertaken and carried out by qualified professionals;
    - the assessment of age shall not be based solely on the applicant's physical appearance or behaviour;
    - if the results of the age assessment are inconclusive the applicant shall be assumed to be a child.
- The Head should state that age assessments should only be conducted as a last resort, not as standard or routine practice and only where there is a reasonable doubt regarding the age following interviews and attempts to gather documentary evidence on the individuals age as outlined in the Separated Children in Europe Programme Statement.
- The Head should state that when carrying out age assessments the least invasive option must always be followed, and the individual's privacy and dignity must be respected at all times.
- The Head on Age Assessments should include a provision stating the benefit of the doubt in relation to documents should be provided to the individual as required by the UN Committee on the Rights of the Child and the European Court of Human Rights. It should state that training should be provided all professionals involved in determining age assessments on how to assess documents.

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[115] Council of Europe, *Age assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration* (CoE September 2017) para 179-180.
[116] Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (recast) OJEU L art 20.
[117] ibid art 24.
[118] Information received from Tusla, 21 October 2024.

- The Head should include an independent appeal on initial age assessment determinations as well as provisions to support the applicant to make the appeal, including with legal assistance.
- The Head on Age Assessments should include provision for the results of both the determination of the age assessment and an independent appeal to be communicated to the individual both verbally in a language they understand and in writing as outlined by the Separated Children in Europe Programme Statement.
- The Head should state that age assessments should take place in a prompt manner according to the UN Committee on the Rights of the Child and the Council of Europe.

Legal Counselling/Representation (Head YY)

Legal counselling, legal advice and legal representation are referenced in numerous parts of the General Scheme but a placeholder (Head YY) on the definition of legal counselling and who is entitled to legal representation has been inserted. It is assumed a Head on legal counselling, legal advice and legal representation is forthcoming in the Bill. Head 17(c) refers to the right to legal counselling in the screening process,[119] Head 41(g) provides that a notification of transfer decision contains information on how to access legal assistance under Head YY (legal counselling /representation), Head 77 (8) states that where international protection is withdrawn, the person shall have access to legal representation in accordance with Head YY (free legal assistance, representation and counselling). Head 48(6)(a) states that the presence of the applicant's legal adviser at the personal interview, where the applicant has decided to avail themselves of legal assistance in accordance with Head XX, shall be ensured including when it is held by video conference.[120] The only place where there is clarity on the right to legal advice and representation is in relation to the detention of applicants.[121] Legal assistance is defined as legal aid or legal advice, within the meaning of the Civil Legal Aid Act 1995.[122]

The Asylum Procedure Regulation in the EU Pact states that all applicants have a right to consult, in an effective manner, a legal adviser or other counsellor at all stages of the procedure.[123] The Regulation states that applicants can request free legal counselling in their initial asylum claim. They can only request free legal assistance and representation in appeal procedures. It states that free legal counselling includes guidance on and explanation of the procedure(s) and assistance in lodging an asylum claim.[124] Free legal assistance and representation in appeals procedures includes the preparation of procedural documents, the preparation of the appeal and in the event of a hearing, participation in that hearing.[125]

The UN Committee on the Rights of the Child states that an unaccompanied or separated child should in all cases, be given access, free of charge, to a qualified legal representative, including

[119] General Scheme of the International Protection Bill 2025, Head 17(1)(c).
[120] General Scheme of the International Protection Bill 2025, Head 48(6)(a).
[121] General Scheme of the International Protection Bill 2025, Head 122(13)(b) and 122(14)(a)(b).
[122] General Scheme of the International Protection Bill 2025, Head 2(1).
[123] Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU OJEU L art 15(1).
[124] ibid art 16.
[125] ibid art 17.

where the application for refugee status is processed under the normal procedures for adults.[126] It further states that minimum procedural guarantees should include that the application will be determined by a competent authority fully qualified in asylum and refugee matters. Where the age and maturity of the child permits, the opportunity for a personal interview with a qualified official should be granted before any final decision is made.

The *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (*Guidelines*) states children should have recourse to remedies to effectively exercise their rights.[127] The *Guidelines* advise that States should facilitate where appropriate the possibility of access to Court for children who have sufficient understanding of their rights and of the use of remedies to protect these rights, based on adequately given legal advice.[128] It further states that children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties,[129] as well as access to free legal aid.

It is very concerning that the Asylum Procedure Regulation states that applicants in their initial asylum claim, including children and unaccompanied minors, will not have free legal assistance and representation. It states that only free legal counselling will be provided which includes guidance on, and explanation of, the procedure(s) and assistance in lodging an asylum claim.[130] The UN Committee on the Rights of the Child is clear that unaccompanied minors in all cases, should be given access, free of charge, to a qualified legal representative and the Council of Europe states that access to free legal aid be given to all children when accessing their right to legal counsel and representation. Ensuring that protection applicants receive proper legal assistance and representation would also contribute to quality decisions and improve the fairness and efficiency of the system.[131]

Free legal assistance and representation should be provided for all children, including unaccompanied minors for both the first instance and the appeal procedure. The EU Pact sets out the minimum base standards for States to have in place, it does not preclude States from retaining provisions that are above the minimum, including free legal assistance at first instance. Legal counselling should be defined in such a way as to include free legal assistance, which is defined as legal aid or legal advice, within the meaning of the Civil Legal Aid Act 1995.[132] Access to free legal assistance at first instance to all applicants including children should be provided for Part 5 of the General Scheme: Assessment of applications for International Protection. Access to free legal assistance and representation at appeal stage for all applicants including children should be provided for in Part 7: Assessment of applications for International Protection at Second Instance.

Recommendations

[126] Committee on the Rights of the Child *General Comment No. 6 (2005) regarding the treatment of unaccompanied and separated children outside of their country of origin* CRC/GC/2005/6 para 69.
[127] Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (COE 2010) 26.
[128] ibid.
[129] ibid 27.
[130] Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU OJEU L art 16.
[131] Platform for International Cooperation on Undocumented Migrants, *Children's Rights in the 2024 Migration and Asylum Pact* (PICUM October 2024) 18.
[132] General Scheme of the International Protection Bill 2025, Head 2(1).

- Legal counselling should be defined in the General Scheme in such a way as to include free legal assistance, which is defined as legal aid or legal advice within the meaning of the Civil Legal Aid Act 1995.
- Part 5 of the General Scheme: Assessment of applications for International Protection should include access to free legal assistance at first instance to all applicants including children.
- Part 7 of the General Scheme: Assessment of applications for International Protection at Second Instance should include access to free legal assistance and representation at appeal stage for all applicants including children.

Reception Conditions Directive: Standards and Inspection of Accommodation

Many provisions of the Reception Conditions Directive of the EU Pact have not been included in the General Scheme. The Explanatory Note in the General Scheme states that further specific details with respect to Reception Conditions will be provided for in a statutory instrument.[133] This was also done with the previous iteration of the Reception Conditions Directive (2013).

The General Scheme does not reference standards in international protection accommodation or the inspection of same. Currently the *National Standards*[134] apply to permanent international protection accommodation centres and the Health Information and Quality Authority (HIQA) carries out inspections of these centres against the *National Standards*. This does not apply to emergency accommodation which currently accommodates the majority of people, including children in the system.[135] HIQA's authority is laid out in S.I. No. 649 of 2023.[136]

The *National Standards* are important as they provide a framework for the continual development of person-centred, high quality, safe and effective services and supports for residents living in accommodation centres. They address the rights and needs of children through, for example, the requirement to provide families with own-door accommodation, dedicated space for educational activities, access to cooking facilities and age-appropriate information, and engagement with children on matters affecting them.[137] Across all areas, service providers are also obliged to act in the best interests of the child in line with the UNCRC.[138] The *National Standards* have the ability to improve quality, challenge underperformance, provide oversight, and they are designed help to ensure that there is uniformity in service provision.[139]

HIQA through inspecting international protection accommodation centres against the *National Standards* plays a vital role in shining a spotlight on the safety and welfare of children and young

[133] General Scheme of the International Protection Bill 2025, Explanatory Note p265.
[134] Department of Justice and Equality, National Standards for accommodation offered to people in the protection process (DOJE 2019).
[135] Department of Children, Equality, Disability, Integration and Youth, IPAS Weekly Accommodation Statistics – 18 May 2025 (DCEDIY May 2025) < bit.ly/3FN5HPK > accessed 9 June 2025. For a detailed discussion on this see Children's Rights Alliance, *Report Card 2025* (CRA 2025) 258.
[136]European Communities (Reception Conditions) (Amendment) Regulations 2023 S.I. No. 649 of 2023.
[137] Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (Department of Justice and Equality 2019) see Theme 4: Accommodation; Standard 4.6; Standard 6.1.9; Theme 5: Food, Cooking and Catering Facilities.
[138] UN Convention on the Rights of the Child, A/ RES/44/25 (20 November 1989) Art 3.
[139] Michele Clarke, *Briefing Paper on the Inspection of Direct Provision* (Department of Justice and Equality 2015) 7

people living in these centres contracted by the State. The only way to guarantee the rights of all people in state-funded accommodation is to contract services that comply with a rules-based system and where inspections by a public body (HIQA, in this instance) take place. HIQA's first overview report of the monitoring inspection of accommodation centres for people seeking international protection was published in March 2025.[140] It provides details of inspections carried out in 51 centres in 2024 including details of non-compliance against the *National Standards* in areas such as governance and child safeguarding.[141] HIQA works with centres through developing compliance plans in order to raise the quality of standards and ensure compliance in the future.

Ireland's National Implementation Plan for the Pact states that accommodation for international protection applicants will be provided in the screening procedure, in the border procedure and in the standard procedure.[142] There will also be basic needs accommodation centres and there may be specific return accommodation centres.[143] The *National Standards* or, if required, newly drafted standards appropriate to each new type of accommodation should apply to all international protection accommodation centres. If new standards are to be drafted, all relevant stakeholders including child rights experts should be consulted. HIQA should be given the authority to inspect all accommodation centres against the relevant standards in a statutory instrument as is the case with the authority they currently have.

Recommendations

- The *National Standards* or, if required, newly drafted standards appropriate to each new type of accommodation should apply to all international protection accommodation centres.
- If new standards are to be drafted all relevant stakeholders including child rights experts should be consulted.
- HIQA should be given the authority to inspect all accommodation centres against the relevant standards in a statutory instrument.

[140] Health Information and Quality Authority, *Monitoring and inspecting International Protection Accommodation Service Centres in 2024* (March 2025).
[141] ibid.
[142] Department of Justice, Home Affairs and Migration, *Implementation of the Pact on Migration and Asylum* (March 2025) 68, 69
[143] ibid 69.