UNHCR Observations on the General Scheme of the International Protection Bill 2025

Executive Summary

1. UNHCR welcomes the opportunity to provide observations to the Joint Committee on Justice, Home Affairs and Migration on the General Scheme of the International Protection Bill 2025. This significant reform, introduced as part of the national implementation of the EU Pact on Migration and Asylum, presents a critical opportunity to establish a fair, efficient, and predictable international protection system in Ireland. Implemented with sufficient safeguards, the Scheme will strengthen both the integrity and efficiency of the protection process.

2. Part 12 of the Scheme introduces an asylum border procedure for the first time in Ireland. While such procedures can support a well-functioning protection system, they must fully uphold legal safeguards, including the right to seek asylum and the principle of *non-refoulement*. UNHCR recommends exempting vulnerable applicants and ensuring that border procedures do not result in *de facto* detention.

3. UNHCR supports the inclusion of preliminary health and vulnerability checks but stresses these must not replace comprehensive assessments required under EU law. These checks should be conducted by trained, multidisciplinary personnel and followed by ongoing reassessment of applicants' needs throughout the procedure.

4. The Scheme lacks clarity regarding access to legal counselling and representation. UNHCR recommends maintaining the continued provision of free legal aid and representation for all applicants, especially, but not only, those subject to detention or movement restrictions, at all stages of the procedure. This is essential to ensure applicants can effectively exercise their rights. It also assists with better quality decisions, which ultimately leads to fewer appeals of first-instance decisions, resulting in a more effective and less costly system.

5. UNHCR is concerned about some aspects of the detention and movement restrictions in the General Scheme. While detention is not presented as a preferred policy, its use must be strictly necessary, proportionate, and a measure of last resort. The Scheme also removes the current prohibition on child detention under Article 20(6) of the *International Protection Act 2015*. Detaining children, including unaccompanied children, even in border procedures, is never in their best interests and should not occur for immigration-related purposes under any circumstances as per international obligations of Ireland related to children's rights. Restrictions on movement must adhere to the principle of minimum intervention, avoid punitive measures, and be carefully applied to prevent *de-facto* detention. All such measures must be subject to regular review and judicial oversight to ensure compliance with applicants' rights.

6. The creation of the Chief Inspector of Asylum Border Procedures under Part 15 is a welcome development. This role will be vital in ensuring a protection-sensitive border management system. It is important that the Chief Inspector is ensured full operational autonomy with the power to conduct unannounced visits and refer rights violations for legal action.

7. UNHCR welcomes that the proposed appeal procedure allows for a full and *ex nunc* examination of both facts and points of law, and that the Second Instance Body is expressly stated to be inquisitorial in nature. However, UNHCR is concerned about the short timeframes for lodging appeals—five days in some cases and two weeks in others—which may not comply with EU law and, in practice seriously impair applicants' ability to exercise their fundamental rights. Flexibility should be maintained to allow for the submission of late appeals where an extension is requested and granted, as is possible under the current legislative regime. Without sufficient time to access legal advice and prepare appeals, especially for vulnerable applicants, the right to a fair procedure may be compromised.

8. UNHCR is also concerned about the broad range of decisions that would not automatically suspend removal. The five-day window to request suspension may be insufficient, and there is no guarantee that removal will be halted while a suspension request is pending. UNHCR recalls that, under international and EU law, appeals must have suspensive effect to protect against *refoulement*. Any derogations should be strictly limited, and courts must have the power to grant suspension *ex officio*. UNHCR nonetheless welcomes the exemption of unaccompanied children from non-suspensive appeals.

9. The Scheme defaults to deciding appeals without oral hearings, allowing them only in limited cases. UNHCR recommends that applicants should be allowed to request a hearing, especially where credibility is at issue, and that Appeals Officers have discretion to hold hearings. While EU law does not mandate hearings in all cases, the Court of Justice of the European Union has confirmed that courts must have the power to order one when necessary to ensure a fair and full examination.

10. UNHCR is concerned that the provisions governing the Second Instance Body may result in its management and administration being closely linked to the Minister for Justice, Home Affairs and Migration, whose decisions the SIB is tasked with reviewing on appeal. This raises potential concerns regarding the perceived independence of the appeals process. To meet EU standards, UNHCR recommends revising governance provisions to ensure full external independence from the Department of Justice, Home Affairs and Migration. Consideration should be given to placing the body under the Courts Service to ensure institutional autonomy and safeguard the integrity of the appeals process.

11. The General Scheme of the International Protection Bill 2025 represents a critical opportunity to modernise Ireland's international protection system in line with EU and international standards. UNHCR urges the Oireachtas to ensure that the final legislation includes the necessary safeguards to uphold fundamental rights, guarantee procedural fairness, and maintain the independence of decision-making bodies. With these essential adjustments, the Scheme has the potential to deliver a system that is both effective and guarantees rights. Following enactment, attention must turn to protection-sensitive implementation, supported by adequate resources, specialised training, and robust oversight to safeguard the rights of all applicants.

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I. Introduction

1. The Office of the United Nations High Commissioner for Refugees (hereinafter "UNHCR") would like to thank the Joint Committee on Justice, Home Affairs and Migration for the invitation to provide observations on the General Scheme of the International Protection Bill 2025 (hereinafter the General Scheme).[1]

2. UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to refugee problems.[2] Paragraph 8(a) of UNHCR's Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees, while Article 35 of the 1951 Convention relating to the Status of Refugees (1951 Convention)[3] and Article II of the 1967 Protocol to the Convention (1967 Protocol)[4] require States to facilitate UNHCR's role in the exercise of its mandate supervising the application of the provisions of the 1951 Convention and 1967 Protocol. This has also been reflected in European Union law, including by way of reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union.[5] UNHCR's supervisory responsibility extends to each European Union (EU) Member State, all of which are State Parties to these instruments. UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions for forcibly displaced and stateless persons.

3. UNHCR welcomes to the opportunity to comment on the proposed legislation at this critical juncture. The Bill will considerably overhaul the Irish system of international protection as part of the transposition of the EU Pact on Asylum and Migration (hereinafter "the Pact"). UNHCR appreciates the considerable efforts made by the authorities to ensure that the legal, administrative and operational requirements are put in place in time for implementation of the Pact by June 2026. With sufficient procedural safeguards, the implementation of the Pact will increase efficiencies in the Irish protection system and enhance cooperation in the management of migration flows across Europe.

4. Given the scope and extent of changes in the Irish protection system, UNHCR stresses the importance of ensuring a consultative process with relevant stakeholders. This is particularly relevant in the context of aspects not yet addressed in this General Scheme, such as the concept of legal counselling, as highlighted further below.

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[1] General Scheme of the International Protection Bill 2025, available at: https://assets.gov.ie/static/documents/General_Scheme_International_Protection_Bill_2025.pdf

[2] UN General Assembly, 1950 Statute of the Office of the United Nations High Commissioner for Refugees, A/RES/428(V), 14 December 1950, https://www.refworld.org/legal/constinstr/unga/1950/en/72586

[3] UN General Assembly, 1951 Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951, https://www.refworld.org/legal/agreements/unga/1951/en/39821

[4] UN General Assembly, 1967 Protocol Relating to the Status of Refugees, United Nations, Treaty Series, vol. 606, p. 267, 31 January 1967, https://www.refworld.org/legal/agreements/unga/1967/en/41400

5 European Union, Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, OJ L. 326/47-326/390; 26.10.2012, available at: http://www.refworld.org/docid/52303e8d4.html.

5. These observations focus on the matters of greatest relevance to UNHCR's mandate and do not seek to address every aspect of the General Scheme. A lack of comment on any particular aspect of the General Scheme should not be construed as a tacit endorsement of it. This is also without prejudice to any further comments or recommendations that UNHCR may submit in the future.

II. Asylum Border Procedure (Part 12)

6. Part 12 of the General Scheme regulates the implementation of the Asylum Procedures Regulation (APR) relating to the border asylum procedure. This will be the first time that Ireland introduces a border procedure. UNHCR's position is that any border procedure must be carried out in line with legal and procedural safeguards from the outset and will full respect for the right to seek asylum and the principle of *non-refoulement*.

7. While UNHCR considers that border procedures can form part of a well-functioning asylum system, in order for them to work effectively, cases should be strictly assessed for suitability to be included within them. Border procedures must comply with the same due process requirements and safeguards as the standard administrative procedure.[6] Despite the artificial construct of non-entry, with Head 14, Head 105(3)(a) and Head 113 indicating that applicants in the screening procedure, asylum border procedure and return border are not authorised to enter the State, the State's legal obligations under international law remain unaltered. A State which is presented with an asylum request at its borders is required to provide admission at least on a temporary basis to examine the asylum claim, as the right to seek asylum would otherwise be rendered meaningless.[7]

Exceptions to the Asylum Border Procedure

8. In UNHCR's view, necessary support for certain groups with specific needs, such as survivors of trauma or trafficking, persons with disabilities, persons with medical issues, including mental health issues, and unaccompanied and separated children will, in practice, prove impossible to secure within the context of a border procedure. Therefore, as a matter of principle, such applicants should automatically be exempted from these procedures. While the inclusion of Head 110 (2)(a) (ii-iv) on the exemption of applicants with special procedural needs,[8] special reception needs and medical needs from the accelerated and border procedures in certain circumstances is welcomed, for administrative ease and for operational efficiency, this should be complemented by an approach exempting certain categories of applicants as set out

[6] UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation, COM (2016) 467, April 2019, https://www.refworld.org/legal/intlegcomments/unhcr/2019/en/122595

[7] UN High Commissioner for Refugees (UNHCR), Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response, 16 March 2020, https://www.refworld.org/policy/legalguidance/unhcr/2020/en/122898

[8] See also Head 31(2) of the General Scheme which provides that '*where the Minister, including on the basis of the assessment of another relevant national authority, considers that the necessary support [...] cannot be provide within the framework of the accelerated examination procedure pursuant to Heads 63 or 105(Asylum Border Procedure), the Minister shall not apply or shall cease to apply those procedures to the applicant.*'

above. This will also be an important safeguard to ensure respect for the fundamental rights for those groups with specific protection needs.

9. When it comes to defining '*necessary support*' for the purpose of exceptions to the border procedure under Head 110, this should include allowing sufficient time for applicants to understand relevant procedures and to adequately prepare for their asylum interview and provide access to specialized services (for e.g. medical, psychosocial, child protection services etc). There should be a low threshold for redirecting individual applicants out of border procedures and back into regular procedures based on the complexity of the claim and/or inability to provide sufficient support and services for persons with specific protection needs.

10. In light of the unsuitability of border procedures for some applicants, UNHCR underscores the importance of early and robust vulnerability screenings, conducted by specialised and well-trained multidisciplinary personnel, to ensure that applicants are channelled into the appropriate procedure from the outset. Furthermore, border procedures must be implemented in a protection-sensitive manner and should not lead to *de-facto* detention situations.

Location and operation of the border procedure

11. The definition of an '*external border crossing point*' in Head 105(5) includes a Screening Centre as designated by the Minister under Head 10. Head 111 also outlines the Minister's power to designate locations for carrying out the border procedure and requires applicants to reside in those locations. The National Implementation Plan (NIP)[9] indicates that "it is proposed to designate international protection application locations where applicants first engage with immigration control as border processing locations for the purposes of the Asylum Procedures Regulation". As a result, the national implementation plan anticipates that 65% of applicants may be eligible for the border procedure.

12. Article 43 of the Asylum Procedures Regulation sets out an exhaustive list of circumstances in which the border procedure may take place, including "following an application made at an external border crossing point or in a transit zone" and "following apprehension in connection with an unauthorised crossing of the external border." There is no indication in the EU Pact legislation, that the border procedure is intended to be defined in the manner set out in the General Scheme. As the name suggests, several references emphasise the connection between the procedure and the crossing of a border, or proximity to a border crossing point.[10] Moreover, the ordinary meaning of the words "border crossing point" do not support an interpretation that

[9] National Implementation Plan – Ireland: Implementation of the Pact on Migration and Asylum, p.13, available at: IE-EU_Pact_National_Implementation_Plan_Ireland.pdf

[10] For instance, Recital 58 of the APD:
"The purpose of the border procedure for asylum and return should be to quickly assess in principle at the external borders whether applications are unfounded or inadmissible and to swiftly return those with no right to stay, in a manner that fully respects the principle of non-refoulement, while ensuring that those with well-founded claims are channelled into the regular procedure and provided quick access to international protection. Member States should therefore be able to require applicants for international protection to reside at or in proximity of the external border or in a transit zone as a general rule…"

includes screening centres with no connection to a border.[11] Another indication that the legislation never intended such a large proportion of applicants to be channelled into the border procedure is the definition of adequate capacity which in Article 46 APR puts a cap of 30,000 on the number of border procedure places all EU Member States must have in place, with the allocation per country determined by a formula that relies upon data on irregular entry to the EU.[12] The adequate capacity Ireland must initially have in place is just 464 places.[13]

13. Finally, when a provision of EU law is open to more than one interpretation, preference must be given to the interpretation which ensures that the provision retains its effectiveness (*effet utile*).[14] *Recent experience with the acceleration of international protection applications for certain categories of cases in Ireland has demonstrated that such measures are only effective when applied to a modest and manageable proportion of cases. While UNHCR acknowledges that additional resources are expected to be dedicated to support the implementation of the procedure, it remains concerned that, without careful planning and ongoing assessment, broader application could strain the system. It is therefore essential that any expansion of accelerated procedures be accompanied by a thorough assessment of capacity and the sustained allocation of sufficient resources*. Article 51 Asylum Procedures Regulation sets a maximum period for the border procedure at 12 weeks, whereafter an applicant must be authorised to enter the Member State's territory. Article 50 sets out the procedure that is to be followed once a State's adequate capacity is reached whereby a Member State may no longer be required to continue examining certain categories of applications in a border procedure. *Given the tight timeframes and the operational demands of the asylum border procedure, it is critical that sufficient resources are in place to ensure its fair and effective implementation. Without such resourcing, there is a serious risk that the system will not function as intended, leading to unfair treatment of applicants for international protection*.

14. The Asylum Procedures Regulation provides a level of discretion for States to decide the locations where border procedures will be conducted. UNHCR notes that urban areas, which may be close to border zones, will likely provide better possibilities to provide adequate reception conditions in line with the diverse needs of applicants subject to border procedures and the requirements of the Reception Conditions Directive which remain applicable during the border procedure. Article 54(2) of the Asylum Procedures Regulation also requires that Member State ensure that families with children reside in reception facilities in the border procedure which are appropriate to their needs after assessing the best interests of the child and that such facilities ensure a standard of living adequate for the child's physical, mental, spiritual, moral and social development. More generally, Articles 19(2), 20 and 22(3) Reception

[11] The European Migration Network Asylum and Migration glossary for instance defines it as "Any crossing point authorised by the competent authorities for the crossing of external EU borders." Available at: https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary_en

[12] Specifically: irregular crossings of the external border, arrivals following search and rescue operations and refusals of entry at the external border

[13] COMMISSION IMPLEMENTING DECISION (EU) of 5.8.2024 laying down rules for the application of Regulation (EU) 2024/1348 of the European Parliament and of the Council, as regards the adequate capacity of Member States and the maximum number of applications to be examined by a Member State in the border procedure per year. Available at: https://ec.europa.eu/transparency/documents-register/api/files/C(2024)5595_1/090166e51065f68a?rendition=false

[14] See for example Case 187/87 *Saarland and Others* [1998] E.C.R. I-7477, para. 54

Conditions Directive require that Member States ensure an adequate standard of living, including adequate housing and access to health care to all applicants with special reception needs as defined by Article 24 Reception Conditions Directive. It is of concern that this requirement does not seem to be replicated in the current General Scheme.

UNHCR recommends:

- exempting the following categories of applicants from the asylum border procedure: including for example unaccompanied and separated children, victims of trauma or trafficking and persons with disabilities, and persons with medical issues, including mental health issues.
- ensuring that the border procedure is implemented in a protection-sensitive manner and does not lead to *de-facto* detention
- removing the reference to a Screening Centre in the definition of an 'external border crossing point' in Head 105(5)
- introducing the following section in Head 111 '***the Minister shall ensure that families with minors reside in reception facilities appropriate to their needs after assessing the best interests of the child and shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.'***

III. Detention and Restrictions of Movement (Part 14)

15. The following Heads of the General Scheme are the main provisions on detention and restrictions of movement: Head 12 in the context of transfers to a screening centre, Head 45 for applicants in the asylum and migration management (hereinafter AMMR)[15] procedure, Head 115 for the border procedure and Heads 119-122 in Part 14 of the Scheme. UNHCR supports the guiding principle in Head 122(1) that a person should not be arrested for the sole reason that they are an applicant or on the basis of their nationality. UNHCR has consistently held that international protection applicants shall not be detained, including on the basis of their mode of entry. Detention must only be used when strictly necessary, proportionate, and a measure of last resort in the absence of alternatives. Such an approach is in line with the principle that asylum seekers and refugees should not be penalised for seeking international protection, or, subject to limited exceptions, for irregular entry or stay.[16] Consideration could be given to including an explicit reference to Article 31 Refugee Convention in relation to this

[15] European Union: Council of the European Union, European Union: European Parliament, Regulation (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, 32024R1351, 14 May 2024, https://www.refworld.org/legal/reglegislation/council/2024/en/148011

[16] UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees, HCR/GIP/24/14, 23 September 2024, https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148632

principle.[17] UNHCR recommends the inclusion of that guiding principle in Head 45 for applicants subject to the AMMR also.

16. According to the European Court of Human Rights any measures limiting freedom of movement must be necessary, proportionate and aimed at achieving a legitimate objective.[18] In UNHCR's view, the same protection must be afforded to asylum-seekers under the 1951 Convention.[19] Detention can only be justified after a careful, individual assessment based on a lawful purpose and if it necessary, reasonable in all the circumstances and proportionate to the lawful purpose pursued.[20] UNHCR emphasises that where, based on individual assessment, detention grounds apply, authorities must consider alternatives to detention first, and emphasises that the least intrusive and restrictive measure possible in the individual case should be applied. UNHCR advises bringing in the expertise of non-governmental organisations in designing potential alternatives to detention. In that regard, UNHCR welcomes the procedural guarantee in Head 122(5) that detention can only apply if a ground for decision is applicable and alternative measures under Head 121 cannot be applied effectively.

Grounds for detention

17. Head 122(2) outlines all the grounds for detaining applicants. While UNHCR notes that the NIP affirms that the State plans to continue its practice of detaining international protection applicants only under strict conditions, UNHCR recommends reviewing the list of detention grounds to avoid the risk of an overly broad interpretation and application of these grounds.[21] An overall assessment of the specific circumstances of the individual case must be conducted in every situation where detention is being considered, to ensure detention is utilised as a measure of last resort and in the absence of alternatives.

18. While minimal periods of detention may be permissible at the outset during the screening procedure, UNHCR stresses that Head 122(2)(d) must not lead to widespread or systematic detention in the border procedure, contrary to Article 31. Similarly, Head 122(2)(c) enables the Minister to detain an applicant to ensure compliance with restrictions on freedom of movement under Head 121(1), where the applicant has not complied with these restrictions and where there is a risk of absconding that cannot be mitigated through appropriate alternatives to detention.

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[17] UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees, HCR/GIP/24/14, 23 September 2024, https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148632

[18] Article 2(1) of Protocol No. 4 to the ECHR. See e.g. *Nada v. Switzerland*, ECtHR [GC], App. No. 10593/08, Judgment of 12 September 2012, para. 183 (restrictions on freedom of movement must strike a fair balance between the individual's rights and the public interest and be proportionate to the aim pursued).

[19] Art. 26 of the 1951 Convention.

[20] UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, https://www.refworld.org/policy/legalguidance/unhcr/2012/en/87776. See also: Article 10(2) Reception Conditions Directive, and Article 6 read in conjunction with Article 52(1) EU Charter of Fundamental Rights

[21] UN High Commissioner for Refugees (UNHCR), UNHCR Comments and Recommendations on the proposed amendments to the Czech Asylum Act, April 2025, https://www.refworld.org/legal/natlegcomments/unhcr/2025/en/150020

UNHCR cautions against the use of detention, in particular as a punitive measure for non-compliance, as it may amount to arbitrary detention.

Detention of children

19. Article 20(6) International Protection Act 2015 prohibited the detention of children, including accompanied children. However, the General Scheme no longer includes this prohibition on child detention. The explanatory memorandum foresees the possibility of detaining unaccompanied children in a border procedure where there are reasonable grounds to consider the child a danger to national security or public order. While Article 13 Reception Conditions Directive permits the possibility of detaining children it provides that it should be in exceptional circumstances only and as a measure of last resort and where it is assessed that detention is in the best interests of the child.[22] In the case of unaccompanied children, Article 13(2)(b) Reception Conditions Directive outlines that detention may be applied for the purposes of safeguarding the minor. According to the Committee on the Rights of the Child, immigration detention of children can never be in their best interests. It has called on States to expeditiously and completely cease the detention of children on the basis of their immigration status.[23] The UN Task Force on Children Deprived of Liberty also considers detention of children in the migration context a child rights violation, which is never in their best interests.[24] Similarly, UNHCR takes the view that children should not detained for immigration-related purposes, irrespective of their legal or migratory status or that of their parents.[25]

Guarantees for detained applicants

20. Head 122(12) and 122(13) requires immigration officers or members of *a Garda Siochana* to inform applicants of the fact that they will be brought before the District Court in relation to their detention and provided with a copy of the warrant for their detention which shall contain information on the reasons for their detention and their entitlement to certain rights. The provisions refer to information in a language '*that he or she may reasonably be supposed to understand*' which may not be fully in line with the obligations stemming from Article 5(2) of the European Convention on Human Rights which states that *'everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and any of any charge against him*.'[26] While Article 11(4) Reception Conditions Directive gives Member States discretion to provide information in this manner, UNHCR recommends that the Bill is

[22] The NIP also states that detention is as measure of last resort for children (p. 99).
[23] Committee on the Rights of the Child, Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration, United Nations, 2012, https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf.
[24] UN Task Force on Children Deprived of Liberty, *End Immigration Detention of Children, Inter-Agency,* February 2024, https://www.refworld.org/policy/themreport/ia/2024/en/147364
[25] UN High Commissioner for Refugees (UNHCR), UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, https://www.refworld.org/policy/legalguidance/unhcr/2017/en/115250; UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) – COM (2016) 465, August 2017, https://www.refworld.org/legal/intlegcomments/unhcr/2017/en/100418
[26] Council of Europe, European Convention on Human Rights, as amended by Protocols Nos. 11, 14 and 15, ETS No. 005, 4 November 1950, https://www.refworld.org/legal/agreements/coe/1950/en/18688

amended to the provision of information in writing in a language which the detained applicant understands.

21. Head 122(14) provides that a person who is detained is entitled to have the notification of his/her detention and place of detention sent to UNHCR. However, Article 12(3) Reception Conditions Directive requires Member States to ensure that persons representing UNHCR or other organisations working on behalf of UNHCR have the possibility to communicate with and visit detained applicants in conditions that respect privacy. It also provides that family members, legal advisors and others must have the possibility to communicate with and visit applicants under similar conditions. Both these guarantees in the Directive are not replicated in the General Scheme.

Risk of absconding

22. The requirement to define a risk of absconding in national law is set out in Recital 24 and Article 2(11) Reception Conditions Directive. The definition should include objective criteria which is assessed in light of the existence of specific reasons and circumstances in an individual case. Head 120 of the General Scheme outlines a number of provisions to be considered when assessing an applicant's risk of absconding.[27] It includes broad grounds such as the requirement to consider the applicant's nationality and personal circumstances and whether the applicant previously failed to comply with the law of the State relating to his/her entry or presence here. UNHCR is concerned that Head 120, as currently worded, is overly broad and lacks sufficient clarity, which may lead to arbitrary or inconsistent application. This should be carefully reviewed in light of the implications for individuals found to be at risk of absconding including the possibility of detention. UNHCR reiterates that where a risk of absconding is found, detention must not be automatic but imposed only when strictly necessary, proportionate, and a measure of last resort in the absence of effective alternatives, such as restrictions of movement or alternatives to detention.

Restrictions on freedom of movement

23. Head 121 sets out the General Scheme's provisions on restrictions on freedom of movement which corresponds with Article 9 Reception Conditions Directive. Head 121(4) provides for regular reporting requirements including in-person reporting and electronically as directed by an immigration officer. Arrangements may be made for the fitting of electronic reporting systems including for the provision of personal data. Head 122(5) acknowledges that Head 121 is an alternative measure to detention but there are no further provisions outlining other alternative measures.

24. Head 121 only interprets alternatives to detention as physical in-person reporting and electronic reporting but there is a lack of clarity around what form the electronic reporting may take in practice. In UNHCR's view, any alternatives to detention that are based on electronic monitoring should comply with the principal of minimum intervention and should not be modelled on criminal law bail arrangements that carry connotations of the criminal system, and are punitive in nature, such as wrist or ankle bracelets or tags.

25. Article 9(4) Reception Conditions Directive requires decisions to restrict applicant's freedom of movement to be proportionate and take into account the applicant's

[27] A similar provision on the risk of absconding for persons subject to the AMMR procedure is set out in Head (45(4)) of the General Scheme and in relation to persons subject to a return order under Head 86 (6).

individual circumstances, including any special reception needs. This procedural safeguard is not replicated in Head 121. The jurisprudence of the European Court of Human Rights (ECtHR) has found that any measures limiting freedom of movement must be necessary, proportionate, and aimed at achieving a legitimate objective.[28] In UNHCR's view, the same protection must be afforded to asylum-seekers under the 1951 Convention.[29] Restricted areas should also be sufficiently large to prevent undue interference with private life and ensure that applicants maintain access to essential services, employment and social networks.[30]

26. UNHCR cautions against movement restrictions, including in the border procedure, that due to their intensity or cumulative effect may amount to *de facto* detention. Restrictions such as curfews, requirements to seek permission to leave centres and monitoring or control of movements as well as practical barriers to mobility such as the remote location of centres can all contribute to *de facto* detention. The General Scheme introduces a combination of different types of restrictions and reporting requirements. If applied cumulatively they may create undue pressure on applicants. Head 27 also outlines some requirements that applicants may be notified of, including in relation to reporting at specified intervals to immigration officers and residing in specified places in the State. However, this Head does not cross-reference Heads 119 and 121 on restrictions of movement. With that in mind, the operation of Head 27, Heads 119 and 121 will need to be monitored and assessed at regular intervals to ensure they do not result in *de facto* detention.

27. Head 121(9) provides for the review of a decision to restrict movement of an applicant, but the nature of that review and the responsible appellate body is not outlined in the General Scheme. Article 9(5) Reception Conditions Directive requires any restriction applied under Article 9, which is the corresponding provision to Head 121 in the Reception Conditions Directive, to be reviewed by a judicial authority *ex officio* where the restriction has applied for more than two months.[31] This is not transposed in the General Scheme.

[28] Article 2(1) of Protocol No. 4 to the ECHR. See e.g. *Nada v. Switzerland,* ECtHR [GC], App. No. 10593/08, Judgment of 12 September 2012, para. 183 (restrictions on freedom of movement must strike a fair balance between the individual's rights and the public interest and be proportionate to the aim pursued).
[29] Article 26 of the 1951 Convention.
[30] This observation is also relevant for Head 119 on allocation of applicants to a geographical area; UN High Commissioner for Refugees (UNHCR), *UNHCR Observations on the Legislative Proposals in the Final Report "The Reception Act: A New Law for the Organized Reception of Asylum-seekers and Efficient Returns",* 15 January 2025, https://www.refworld.org/legal/natlegcomments/unhcr/2025/en/149421
[31] Applicants can also appeal a decision to restrict their movement under Article 29 of the Reception Conditions Directive.

UNHCR recommends in relation to detention:

- including a reference to Article 31 Refugee Convention in Head 122
- removing Head 122(2)(d) on the use of detention during the border procedure
- replacing Head 122(12) and 122(3) wording 'in a language that he or she may reasonably be supposed to understand' to ***'in a language that he or she understands'***
- including a provision prohibiting the detention of children
- amending 122 to ensure that UNHCR or other organisations working on their behalf, family members, legal advisors and other persons concerned have the ability to communicate with and visit detained applicants in conditions which respect privacy

UNHCR recommends in relation to restrictions on movement:

- including a new provision under Head 121 as follows '***Decisions taken under this Head shall be proportionate and take into account relevant aspects of the individual situation of the applicant, including the special reception needs of the applicant'***
- including a new subsection on the review procedure in place for decisions restricting freedom of movement under Head 121 in accordance with Article 29 Reception Conditions Directive
- including a new subsection permitting a judicial authority to review a restriction of movement decision *ex officio* under Head 121 if applied for more than two months in accordance with Article 9(5) Reception Conditions Directive

IV. Assessments of Applications for International Protection at Second Instance (Part 7)

28. A meaningful and effective right of appeal is a fundamental requirement in international protection determinations, where the consequences of an erroneous decision can be particularly serious. Parts 7 and 11 of the General Scheme address appeals and the Second Instance Body (hereinafter SIB) respectively.

29. UNHCR welcomes both the fact that the proposed appeal procedures allow for a full and *ex nunc* examination of both facts and points of law under Head 73 and that it is expressly stated that the SIB shall be inquisitorial in nature, and independent in the performance of its functions.[32] The second instance body will have competency to address appeals on the following decisions:[33]

    - inadmissibility
    - refusals of international protection in the regular and accelerated procedure including the border procedure
    - AMMR transfers
    - returns

[32] Head 98

[33] Reception conditions appeals and the framework for reception is not addressed in the General Scheme

- variations on return orders
- withdrawal of international protection status
- implicit withdrawal of international protection applications
- revocation of temporary protection

30. It remains to be seen by way of secondary legislation whether the SIB will retain competence for appeals under the Reception Conditions Directive as outlined in S.I. 230/2018 European Communities (Reception Conditions) Regulations 2018 and whether it will be given responsibility for reviewing restrictions of movement under Head 121.

Short timeframes

31. The General Scheme under Head 67 introduces short timeframes for the lodging of appeals. For example, an appeal against a refusal of international protection must be submitted within 5 days in accordance with Head 64(3), 64(4) under 67(2)(b) while other appeals must be submitted within two weeks. These time limits are in significant contrast to the current framework in the International Protection Act 2015 whereby standard appeals are made within 15 working days and accelerated appeals are within 10 working days.

32. The current wording of 67(2)(a) and (b) is unclear as reference is made to two different timeframes of five days and two weeks respectively, but both include decisions made under Head 64. Standard appeals for refusals of international protection require a minimum of two weeks in line with Article 67(7)(b) of the Asylum Procedures Regulation. As it is currently drafted, Head 67(2)(a) with reference to Head 64(3) is not in compliance with that requirement in only permitting 5 days to submit an appeal. For the sake of clarity, the meaning and scope of these provisions should be further clarified.

33. Furthermore, Head 67(2)(b) refers to a requirement to submit an appeal with two weeks from the *date of the sending of a decision* (own emphasis added). However, this approach is inconsistent with Article 67(8) of the Asylum Procedures Regulation which requires the time limits to run from the date of notification of the decision to the applicant.

34. Overall, UNHCR is concerned that the general time limits for appealing a decision are extremely short. Insufficient time limits may render a remedy ineffective in both law and practice. Asylum seekers must have adequate time to allow them to undertake all the required procedural steps to submit an appeal, including accessing legal assistance and representation in a meaningful way. The impact of this short time limit is further compounded by the fact that Head 4 considers a decision duly served on an applicant where electronic means is the mode of communication when the sender's facility for the delivery of documents generates a message or other record confirming the delivery of the notice.

35. Even the two-week time limit under Head 67(2)(b) will only be feasible if appropriate modalities are already in place, such as access to interpreters and adequate resources for legal assistance to be provided seven days of the week. While recognising the

importance of speedy remedies, both the CJEU and the ECtHR have found this should not be privileged over the effectiveness of procedural guarantees.[34]

36. In addition, the General Scheme provides for no flexibility in case specific procedural needs are to be addressed. The short timeframes will be particularly challenging for certain applicants, such as unaccompanied children and torture survivors. There should be discretion to set longer time limits for appeal to take into account the individual circumstances of each application. Regulation S.I. No. 116/2017 enabled the International Protection Appeals Tribunal (IPAT) to receive late requests for appeals and accept them where individual Tribunal members were satisfied that there were special circumstances as to why the notice of appeal was submitted late and that in the circumstances concerned it would be unjust not to extend the prescribed procedure.[35] UNHCR recommends that a similar provision is provided in the General Scheme.

Suspensive effect of appeal

37. The General Scheme introduces some notable exceptions to the principle of automatic suspensive effect of appeals. Appeals under the International Protection Bill will not be suspensive for the following decisions:
    a. refusal of international protection for persons in the accelerated procedure and the asylum border procedure including manifestly unfounded applications
    b. inadmissibility in certain circumstances
    c. AMMR transfers[36]
    d. implicitly withdrawn applications
    e. subsequent applications which were refused at first instance
    f. withdrawal of international protection in certain circumstances

38. UNHCR welcomes the fact that unaccompanied children will be exempt from non-suspensive effect appeals under Head 68(3) when subject to accelerated and/or asylum border procedures but is concerned at the number of broad categories of appeals without suspensive effect.

39. UNHCR considers that in respect of the principle of *non-refoulement*, the remedy must allow automatic suspensive effect except for very limited cases. The European Court of Human Rights (ECtHR) has held in asylum cases before the Court that the mere possibility to request suspensive effect is insufficient to ensure the applicant's right to an effective remedy.[37] Member States should only be able to derogate from the

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[34] ECHR. *I.M. c. France*, Requête no 9152/09, Council of Europe: European Court of Human Rights, 2 February 2012, para. 147, available at: http://hudoc.echr.coe.int/fre?i=001-108934 and
Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration, Case C-69/10, European Union: European Court of Justice, 28 July 2011, para. 49,
available at: http://www.refworld.org/cases,ECJ,4e37bd2b2.html

[35] S.I. No. 116/2017 – International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017, available at: https://www.irishstatutebook.ie/eli/2017/si/116/made/en/print

[36] See Head 43 in the General Scheme

[37] For example, *Gebremedhin [Gaberamadhien] c. France*, 25389/05, Council of Europe: European Court of Human Rights, 26 April 2007,
available at: https://www.refworld.org/cases,ECHR,46441fa02.html ; *K.R.S. against the United Kingdom*, Application No. 32733/08,
2 December 2008, available at: https://www.refworld.org/cases,ECHR,49476fd72.html

automatic suspensive effect of an appeal on an exceptional basis, when the decision determines that the claim is "*clearly abusive*" or "*manifestly unfounded*" as defined in EXCOM Conclusion No. 30 (XXXIV) 1983.[38] UNHCR is concerned by the mandatory exclusion of automatic suspensive effect for certain categories of applications, most notably refusal decisions issued in an accelerated examination or border procedure, as this significantly increases the risk that individuals may be returned to countries where they could face irreparable harm, constituting a violation of the absolute principle of *non-refoulement*.

40. UNHCR also notes the time limit for requesting suspensive effect is very short in that only five days are provided from notification of decision to request suspensive effect of appeal. In UNHCR's view, the time limit for requesting suspensive effect must be reasonable and permit the applicant to effectively exercise his right in practice, including exercising the right to legal assistance.[39] Article 68(4) of the Asylum Procedures Regulation requires that a Court or Tribunal has the power to decide on the suspensive effect of an appeal under Article 64(3) *ex officio*. However, Head 68 of the General Scheme does not grant this power to the SIB which is an important omission.

41. Furthermore, Article 68(5)(d)(ii) of the Asylum Procedures Regulation prohibits the removal from the territory of an applicant who has requested suspensive effect of an appeal pending the decision of the Court or Tribunal. This is an important safeguard which is not effectively transposed in the General Scheme, which prohibits removal in Head 68(5) only during the five-day period which the applicant has to request suspension. A similar omission exists in Head 43 concerning the non-suspensive effect of a transfer decision under AMMR whereby Article 43(3) of the AMMR Regulation requires States to suspend a transfer of an applicant until a decision on the suspension request has been taken by a competent Court or Tribunal. The General Scheme prohibits removal during the statutory deadline for a decision by the SIB under Head 68(9) but does not provide protection if the SIB is unable to issue a decision on suspensive effect within that five-day period.

Oral hearing

42. The General Scheme requires appeals to be determined without an oral hearing by default. Head 69(2) does provide some discretion to the Chief Appeals Officer to direct an oral hearing to take place, but only in very narrow circumstances, and only upon the request of the applicant.

43. As a matter of general principle, UNHCR maintains an applicant should be given the possibility to request an oral hearing on appeal, in particular where facts or credibility

[38] Executive Committee of the High Commissioner's Programme, Conclusion No. 30 (XXXIV): The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum - Adopted by the Executive Committee (1983), No. 30 (XXXIV) 1983, 20 October 1983, https://www.refworld.org/policy/exconc/excom/1983/en/15126

[39] High Commissioner for Refugees (UNHCR), UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation, COM (2016) 467, April 2019, https://www.refworld.org/legal/intlegcomments/unhcr/2019/en/122595

are at issue, and the SIB should have the power to conduct an oral hearing either upon the applicant's request or at its own discretion.[40]

44. Under the Asylum Procedures Regulation, there is no explicit right to a hearing on appeal. Art. 67(4) Asylum Procedures Regulation provides that applicants shall be provided with interpretation for the purposes of a hearing before the competent court or tribunal, *where such a hearing takes place* and appropriate communication cannot otherwise be ensured. This wording suggests *a contrario* that a hearing is not mandatory in all cases. However, it is clear from the Court of Justice of the European Union (CJEU's) decision in *Sacko*[41] that the right to be heard, guaranteed by Article 47 of the Charter of Fundamental Rights, requires a Court or Tribunal to have the power to order a hearing where it considers it necessary to ensure a full and *ex nunc* examination of both facts and points of law. Accordingly, UNHCR recommends that the conditions set out in subsection (2)(a) and (b) be removed and only condition (c) remain, and references to the Chief Appeals Officer be changed to 'an Appeals Officer'.

The independence of the Second Instance Body

45. As Recital 89 of the Asylum Procedures Regulation acknowledges, "the notion of court or tribunal is a concept governed by Union law, as interpreted by the Court of Justice of the European Union". In determining whether a national body is a court or tribunal under Article 267 of the Treaty on the Functioning of the European Union, the CJEU has articulated in great detail a number of relevant criteria to be consider, one of which is whether the body is independent. In addition, Article 47 of the Charter of Fundamental Rights of the EU, concerning the right to an effective remedy, mandates: "a fair and public hearing within a reasonable time by an *independent* and impartial tribunal".[42] A Tribunal must act "as a third party in relation to the authority which adopted the contested decision." [43] It must also exercise its functions "wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions."[44]

46. With respect to the independence of the SIB, under the General Scheme, it will hear appeals of decisions of the Minister for Justice, Home Affairs and Migration. Under subsections 98(4) and (5) and 99(1), responsibility for the appointment of staff and appeal officers and their remuneration is vested in the Minister. Subsection 99(4) prevents a Minister from appointing an appeals officer "unless the Public Appointments Service (PAS), after holding a competition under Section 47 of the Public Service Management (Recruitment and Appointments) Act 2004, has selected him or her for

[40] UNHCR's legal submissions in the S.U.N. case – S.U.N. v RAT [2012] IEHC 338.
[41] CJEU, judgment of 26 July 2017, C-348/16, Sacko, para. 49, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0348
[42] EU, Charter of Fundamental Rights of the European Union, 2012/C 326/02, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT
[43] CJEU, judgment of 21 January 2020, C-274/14, Banco de Santander SA, para. 62, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0274
[44] CJEU, judgment of 27 February 2018, C-64/16, Associação Sindical dos Juízes Portugueses, para. 44, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0064

appointment to the position." The Minister may, however, reappoint – or conversely decide not to reappoint - an Appeals Officer for a second term without the need for a recommendation from PAS.

47. Head 99(13) states that "An appeals officer may be removed from office by the Minister for a failure to fulfil contractual obligations in respect of the performance of their functions *or for other stated reasons*." The CJEU's judgment in *Banco de Santander SA*[45] provides greater clarity on what is required under EU law with respect to such procedures: "*The guarantee of irremovability of the members of a court or tribunal thus requires dismissals of members of that body should be determined by specific rules, by means of express legislative provisions offering safeguards that go beyond those provided for by the general rules of administrative law and employment law"*. The circumstances in which an appeals officer may be removed, and the procedures that apply to their removal, should:
    - define, in particular, both conduct amounting to disciplinary offences and the penalties actually applicable;
    - provide for the involvement of an independent body in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, in particular the rights of the defence;
    - and lay down the possibility of bringing legal proceedings challenging the disciplinary bodies' decisions.[46]

48. Head 103 creates the position of the Director of the SIB, a person appointed by the Minister who is responsible to the Minister for the performance of his or her functions. Head 104 sets out the functions of the Director, which includes: managing and controlling generally the staff and administration of the SIB; the efficient management of the work of, and the expeditious performance of its functions by, the SIB; other functions (if any) as may be required by the Minister. The Director is also required to make a report to the Minister "in relation to any function that the Director performs under this Act, if requested to do so by the Minister" and "an annual report to the Minister". This differs from the role of the Registrar to the International Protection Appeals Tribunal in a number of key respects: the Registrar is currently required to perform functions conferred on him or her by the Chairperson and to comply with their directions with respect to the assignment of cases to him or her. The preparation of an Annual Report as well as the preparation of a report upon the request of the Minister, is currently now the function of the Chairperson of the Tribunal. Moreover, subsection100(8) provides that the Minister "may request the Chief Appeals Officer to consider certain matters in relation to their functions under this Act, as the Minister may specify in the request."

[45] CJEU, judgment of 21 January 2020, C-274/14, Banco de Santander SA, para. 60, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62014CJ0274

[46] CJEU, judgment of 29 November 2021, C-287/19, W.Ż., para. 113, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2021_481_R_0012

49. These provisions may result in the management and administration of the SIB being closely linked to the Minister for Justice, Home Affairs and Migration, whose decisions the SIB is tasked with reviewing on appeal. This raises potential concerns regarding the perceived independence of the appeals process. The rules applicable to the exercise of judicial functions must preclude "not only any direct influence, in the form of instructions, but also types of influence which are more indirect and which are liable to have an effect on the decisions of the judges concerned."[47] In light of the institutional links between the Department of Justice, and the SIB, UNHCR recommends reviewing Part 11 of the General Scheme to ensure the SIB's institutional independence and that arrangements for its governance meet the requirements of external independence under EU law. As such, consideration should be given to instead establishing the SIB under the administration and management of the Courts Service.

UNHCR recommends:

- reviewing Head 67 (2)(a) and (b) to ensure compliance with Article 67 Asylum Procedures Regulation
- including a new subsection in Head 67 to enable individual appeal officers of the SIB to exercise his/her discretion to accept late appeals as provided for in Regulation 4 of S.I. No. 116/2017 – International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017
- including a new subsection in Head 68 to grant the individual appeals officers of SIB the power to decide on suspensive effect of appeals *ex officio* in accordance with Article 68 Asylum Procedures Regulation.
- amending Head 69 in line with Article 68(5)(d)(ii) Asylum Procedures Regulation to allow an applicant to remain in the State pending the decision of the SIB on whether they shall be allowed to remain on the territory.
- amending Head 43 on the non-suspensive effect of an AMMR transfer decision pending the decision on a suspension request by the SIB
- amending Head 69 to enable an individual appeal officer of the SIB to hold an oral hearing where an applicant requests it or upon its own motion when considered necessary to ensure a full and *ex nunc* examination of both facts and points of law
- removing the reference to "for other stated reasons" from Head 99(13) with the circumstances in which an appeals officer may be removed, and the procedures that apply, set out in greater detail and providing the safeguards required under EU law.
- reviewing Part 11 of the General Scheme to ensure that the second instance body meets all the requirements of an independent Court or Tribunal in accordance with EU law ensuring, in particular, its external independence from the Department of Justice.

[47] CJEU, judgment of 16 November 2021, C-748/19 to C-754/19, Criminal proceedings against WB and Others, para. 69, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CJ0748

V. Preliminary Vulnerability Checks (Head 19)

50. Head 18 and 19 of the General Scheme provides for preliminary health and vulnerability checks respectively while Head 31 provides for applicants in need of special procedural guarantees. UNHCR welcomes the inclusion of these provisions. Early and effective identification of vulnerabilities is important to identify people with specific protection and other needs and provide them with timely support, including reception conditions adapted to their needs, and to channel those for whom accelerated, and border procedures are not appropriate into the regular procedure.

51. However, Head 19(5) departs from the approach set out in Article 12(5) of the Screening Regulation,[48] which provides that preliminary checks may contribute to—but not replace—the assessment of special reception needs (Article 25 of the Reception Conditions Directive) and special procedural guarantees (Article 20 of the Asylum Procedures Regulation). Head 19(5), by contrast, allows preliminary vulnerability and health checks (under Head 18) to constitute, where appropriate, part or all of these assessments.

52. UNHCR cautions against conflating preliminary checks with the more comprehensive assessments required under the Asylum Procedures Regulation and Reception Conditions Directive. Preliminary checks should serve as an initial step and must not substitute the in-depth assessments foreseen in the Reception Conditions Directive and Asylum Procedures Regulation. A layered approach is essential to identifying vulnerabilities that may not be immediately visible, thereby reducing the risk of under-identification of non-visible or complex needs.

53. This position is reinforced by the European Commission's Common Implementation Plan, which calls on Member States to adapt existing practices and procedures to support the early identification and follow-up of specific procedural or reception needs.[49] The requirement that such assessments be concluded within 30 days of lodging of an application further underscores the need for timely and structured processes beyond the initial screening phase.

54. Although Ireland is not bound by the Screening Regulation due to its non-participation in the Schengen *acquis*, the Government has expressed its intention to align national law with its provisions. In contrast, Ireland is legally bound by both the Reception Conditions Directive and the Asylum Procedures Regulation. Accordingly, reliance solely on preliminary vulnerability checks would be insufficient to meet these binding obligations.

55. UNHCR recommends that the General Scheme include an explicit provision requiring that comprehensive assessments of special reception needs, and special procedural guarantees be conducted in all cases where preliminary vulnerability checks indicate

[48] European Union: Council of the European Union, European Union: European Parliament, 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, 32024R1356, 14 May 2024, https://www.refworld.org/legal/reglegislation/council/2024/en/148013

[49] European Commission, Common Implementation Plan for the Pact on Migration and Asylum, available at: https://home-affairs.ec.europa.eu/common-implementation-plan-pact-migration-and-asylum_en

potential vulnerabilities. This should also include re-assessments and review of an applicant's special reception needs or special procedural needs whenever they become apparent, including at later stages of the protection procedure. Additionally, UNHCR recommends the removal of the phrase "or the entirety" from Head 19(5). These measures will ensure compliance with EU legal obligations and safeguard the rights of applicants with specific needs.

56. UNHCR welcomes the inclusion of Head 31 on the provision of necessary support for applicants identified as being in need of special procedural guarantees based on an assessment conducted under Article 20 of the Asylum Procedures Regulation.

Personnel involved in identifying vulnerabilities

57. UNHCR welcomes the provision under Head 19(1) of the General Scheme, which requires that preliminary vulnerability checks be conducted by specialised multidisciplinary personnel of the screening authority trained for that purpose.

58. To ensure the effectiveness of the vulnerability assessment process, UNHCR recommends that the Irish government ensures the designated screening centres are adequately resourced and staffed by personnel with specialised expertise. This should include a multidisciplinary team comprising professionals with backgrounds in medical care, mental health, psychosocial support, gender-based violence, child protection, anti-human trafficking, disability, elderly, and statelessness. A multidisciplinary approach is essential to ensure that a broad spectrum of vulnerabilities — particularly those that are non-visible or complex — are identified. To maintain high standards, such personnel must receive comprehensive and ongoing training.

59. In accordance with Article 8(9) of the Screening Regulation, the General Scheme should also provide that preliminary vulnerability checks involve national child protection and anti-trafficking authorities, where appropriate. In addition, the screening authority should be required to transmit information related to suspected trafficking activities and victims to the competent authorities, thereby ensuring effective coordination with the national referral mechanism for identifying and supporting victims of trafficking.

60. UNHCR welcomes the fact that Head 19(1) provides for the inclusion of personnel who are trained in the identification of stateless persons and further recommends that the risk of statelessness be explicitly considered as part of the screening process. Any indications of statelessness should subsequently be recorded in the screening form.

61. UNHCR also supports the provision under Head 19(2), which permits assistance from non-governmental organisations, medical personnel, or other competent authorities. This inclusion of trained experts from these sectors will enhance the screening process and ensure appropriate identification and referral of applicants with specific needs.

62. UNHCR is concerned by the inclusion of Head 19(6) which is absent from the EU Pact on Migration and Asylum and allows negative credibility inferences to be drawn from an applicant's refusal to undergo a preliminary vulnerability assessment, particularly when later raising claims related to health or torture. This provision is inconsistent with Article 25(2) of the Reception Conditions Directive, which states that an assessment of

special reception needs shall be without prejudice to the assessment of international protection needs.

63. Applicants may decline to participate in a vulnerability check for a variety of legitimate reasons, including psychological trauma, fear or mistrust of authorities, cultural or linguistic barriers, or a lack of understanding of the process. Penalising non-engagement risks disproportionately affecting the very individuals the assessment is intended to protect—such as individuals with mental health conditions, disabilities, or survivors of torture and trauma whose vulnerabilities may not be immediately apparent.

UNHCR recommends:

- amending the language in Head 19(5) by removing the phrase '*or the entirety'* to ensure that the vulnerability check in this provision only forms part of the assessment required under the Reception Conditions Directive and Asylum Procedures Regulation
- including a new provision(s) in the General Scheme on the comprehensive assessment of special reception needs and special procedural needs in accordance with Article 25 of the Reception Conditions Directive and Article 20 Asylum Procedures Regulation
- deleting Head 19(6) on the implications of a refusal to undergo a vulnerability check

VI. Legal Counselling and Representation

64. While Head 2 of the General Scheme of the International Protection Bill 2025 includes definitions on legal assistance and legal representative, the General Scheme of the International Protection Bill does not specify how legal aid, or counselling, will be organised and delivered. Head 77 on the withdrawal of international protection explicitly refers to applicants having access to legal representation when their international protection status is being withdrawn but no similar provision exists with regard to legal representation for international protection appeals. According to the explanatory memorandum of the General Scheme, the model of legal counselling and assistance is still under development.

65. UNHCR recommends that there is an explicit provision included in the International Protection Bill on access to free legal assistance and representation including for applicants subject to restrictions of movement and detention.

Early Legal Advice

66. UNHCR encourages the Irish government to retain the current procedural safeguard of ensuring the availability of free legal aid and representation to all international protection applicants during all stages of the international protection procedure. UNHCR recalls that the central objective of the EU Pact on Migration and Asylum is to simplify and enhance the efficiency of procedures. Effective access to legal aid at the earliest stages of making an application is crucial for meeting that objective and

enhancing the protection system overall. It facilitates fair and efficient procedures for applicants who may then have confidence in the decision and strengthens the quality of decisions, resulting in reduced appeal rates.[50] It reduces the financial costs borne by the State, by reducing the burden on decision-makers to identify the material elements of an applicants' claim and better equips applicants with information to understand the relevant procedures so that they engage appropriately in the process and meet relevant time limits —thereby reducing the likelihood of appeals against first-instance decisions. The right to free legal assistance is also a crucial safeguard in the protection of fundamental rights.

Merits test

67. UNHCR discourages the making of free legal assistance conditional on the merits of the case ('*tangible prospect of success'*). This could lead to arbitrary restriction of access to legal assistance and impact individual applicant's access to an effective remedy. Administratively this may also be difficult to implement in light of the timeframes envisaged in the protection procedure and the necessity to ensure that a judicial authority can also review any refusal of a merits test in line with Article 17(3) of the Asylum Procedures Regulation. In UNHCR's view, exceptions to the provision of free legal aid should only be made where the applicant has adequate financial resources to afford it.

68. Furthermore, given the complexity of legal issues often involved in second or higher-level appeals, UNHCR recommends that access to free legal assistance and representation is maintained in these proceedings without being subject to a merits test.

UNHCR recommends:

- maintaining the provision of free legal aid and representation to all international protection applicants at all stages of the asylum procedure and appeal
- introducing an explicit provision in the General Scheme on access to free legal assistance and representation
- ensuring that the provision of legal assistance is not conditional on a merits test, including for higher onwards appeals

VII. Chief Inspector of Asylum Border Procedures (Part 15)

69. UNHCR welcomes Part 15 of the General Scheme of the International Protection Bill which establishes the role of a Chief Inspector of Asylum Border Procedures in accordance with Article 10 Screening Regulation.[51] While Ireland has not opted into the Screening Regulation, the Irish government has agreed to closely align Irish law with that Regulation, a positive approach which will harmonise practice across EU Member States. Independent monitoring mechanisms of this kind can contribute to protection-

[50] UNHCR, Position on legal representation for asylum seekers, March 2017, available at: https://www.unhcr.org/au/media/position-legal-representation-asylum-seekers

[51] European Union: Council of the European Union, European Union: European Parliament, 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, 32024R1356, 14 May 2024, https://www.refworld.org/legal/reglegislation/council/2024/en/148013

sensitive border management and entry-systems and assist in enhancing and/or adapting processes to identify asylum seekers at borders for their swift access to fair and fast asylum procedures.

70. The power of the Chief Inspector to carry out inspections and investigations as set out in Head 125, 131 and 133 is welcomed. Head 131(2) in particular, outlines that inspections carried out shall have due regard to the fundamental rights of applicants and to existing laws, regulations, policies and procedures relating to the management and operation of a designated asylum border facility. Nevertheless, UNHCR recommends that a specific provision is included in Head 125 to the effect that part of the Chief Inspector's functions will be to monitor compliance with EU and international law, including the Charter of Fundamental Rights, in particular as regards access to the asylum procedure, the principle of *non-refoulement* and the best interests of the child as set out in Article 10(2) of the Screening Regulation. The Fundamental Rights Agency also recommends that adherence to procedural safeguards and dignified treatment and reception conditions, in terms of the provision of food, clothing, temporary shelter and healthcare and the treatment of people in vulnerable situations should be equally monitored.[52]

71. UNHCR welcomes the fact that the Chief Inspector is given unimpeded access to asylum border facilities in accordance with Head 131(6) for inspections and under Head 133 for formal investigations. However, for legal clarity, UNHCR recommends that explicit provision is made for the Chief Inspector to conduct periodic on-the-spot checks as well as random and unannounced checks at all stages of the process. This should also include the right to observe by shadowing the screening and registration of applications with due precautions to confidentiality, protection of personal data and the 'do no harm' principle.[53]

72. Head 133 covers the possibility to conduct formal investigations with a final report being submitted to the Minister for Justice, Home Affairs and Migration including any findings and recommendations. Similarly, Head 134 empowers the Chief Inspector to provide a report to the Minister when a concern is disclosed in relation to the fundamental rights of applicant in designated border facilities. Notwithstanding that, the functions of the Chief Inspector should include the power to refer cases for the initiation of civil or criminal justice proceedings for failure to respect or to enforce fundamental rights as required under Article 10 (1) Screening Regulation. UNHCR also recommends that the findings from monitoring activities are made publicly available in the spirit of transparency and accountability.

73. UNHCR welcomes the establishment of the advisory board to guide and advise the Chief Inspector including in terms of strategic direction. From experience in other countries, the creation of advisory boards to assist independent monitoring mechanisms has proven beneficial for all.[54]

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[52] European Union Fundamental Rights Agency: Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms (2024) (available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-independent-border-monitoring-mechanisms_en.pdf

[53] Ibid.

[54] EP, Schengen and European Borders, National Independent Monitoring Mechanisms for Fundamental Rights Compliance at the EU's External Borders, Iris Goldner Lang, available at:

74. It is important that monitoring mechanisms are ensured independence and operational autonomy including with ensuring sufficient and sustainable funding. UNHCR, the UN Human Rights Office and the European Network of National Human Rights Institutions recommends that such mechanisms are independent and free from any institutional relationship with the authorities responsible for border management and migration policies.[55] This is also recommended by the Fundamental Rights Agency and is in line with the Paris Principles.[56] With that in mind UNHCR recommends that the Chief Inspector's role and engagement with the Minister for Justice, Home Affairs and Migration — in particular Head 126-127 in respect of the budget and staffing of the Office of the Inspector — is reviewed in Part 15 of the General Scheme to ensure full operational autonomy.

75. Similarly, for an effective monitoring mechanism, there must be strong enforcement measures. However, Head 134 enables the Minister, on foot of a report disclosing fundamental rights concerns, to only notify the Chief Inspector of any action (if any) on foot of the report and the rationale for same. This significantly restricts the power of the Chief Inspector to take action in response to potential breaches of fundamental rights. Similarly, Head 139(10) prohibits the Chief Inspector from expressing opinions on government policy, to an Oireachtas Committee, which unnecessarily limits his or her ability to discuss matters relevant to the functions of the office. UNHCR recommends strengthening enforcement mechanisms to ensure that the Chief Inspectorate's recommendations are acted upon by the relevant institutions, and that actions taken are reported publicly to ensure transparency, accountability, and access to remedies.

https://www.europeanpapers.eu/it/system/files/pdf_version/EP_eJ_2024_3_SS3_1_Iris_Goldner_Lang_00806.pdf

[55] UNHCR, OHCHR, ENNHRI: Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece (2021) (available at: https://ennhri.org/wp-content/uploads/2021/09/Independent-National-Monitoring-Mechanism-Consultations-EN.pdf

[56] European Union Fundamental Rights Agency: Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms (2024) (available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-independent-border-monitoring-mechanisms_en.pdf; UN, Principles relating to the State of National Institutions (Paris Principles), December 1993, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris

UNHCR recommends:

- including a new provision in Head 125 outlining the Chief Inspector's role to monitor compliance with EU and international law, including the Charter of Fundamental Rights, in particular as regards access to the asylum procedure, the principle of *non-refoulement* and the best interests of the child as set out in Article 10(2) Screening Regulation
- including a new power of the Chief Inspector and/or his office to refer cases for the initiation of civil or criminal justice proceedings for failure to respect or to enforce fundamental rights in Part 15 of the General Scheme
- including a new provision in Head 131 enabling on-the-spot checks and random and unannounced visits as required under Article 10 (1) Screening Regulation
- reviewing the Chief Inspector's relationship with the Minister for Justice in Part 15 of the General Scheme to ensure full operational autonomy and independence
- strengthening the Chief Inspector's enforcement powers to require the Minister or relevant institutions to take appropriate action in response to concerns relating to the fundamental rights of applicants under Head 134, and to publicly report on actions taken to ensure transparency, accountability, and access to remedies
- removing the prohibition in Head 139 (10) on the Chief Inspector expressing opinions on government policy, to an Oireachtas Committee

VIII. Implicit withdrawal of application (Head 75)

76. Head 75 provides six grounds whereby an application may be declared implicitly withdrawal. The grounds include non-compliance with reporting duties, refusal to cooperate in relation to various different aspects of the procedure and situations of onward movement that fall within the scope of the AMMR.

77. UNHCR acknowledges that a decision-making body may, in specific cases, decide to discontinue the examination of an international protection application, for example, when an applicant has been provided with effective opportunities but has failed to appear to present their protection application with adequate reasons. However, non-compliance with procedural obligations, such as attendance at asylum interviews or reporting requirements should not automatically result in an application being deemed implicitly withdrawn without a thorough assessment of the person's individual circumstances and reasons for non-compliance.[57] Failure to comply with reporting obligations, for example, can stem from a variety of different reasons including

[57] UN High Commissioner for Refugees (UNHCR), UNHCR Observations on the Legislative Proposals in the Final Report "The Reception Act: A New Law for the Organized Reception of Asylum-seekers and Efficient Returns", 15 January 2025, https://www.refworld.org/legal/natlegcomments/unhcr/2025/en/149421

logistical challenges and not necessarily indicate the lack of international protection needs.[58]

78. Head 75(2)(a) provides that a competent authority other than the Minister may conduct an assessment as to whether the grounds for implicit withdrawal of an application apply and may deem that an application must be considered implicitly withdrawn. According to the explanatory memorandum to the General Scheme this allows the authority in charge of reception centres to report when an applicant is not complying with requirements under the Reception Conditions Directive and *an Garda Siochana* to report when an applicant is not comply with reporting duties. UNHCR is concerned that some of the grounds in Head 75 are punitive in nature and may lead to incorrect decisions where applications are withdrawn where people have protection needs. Head 75 also fails to take into account the special procedural or reception needs which may hamper compliance with reporting duties in particular.

79. While the Minister gives five working days for an applicant to response to a notice informing him or her of the potential applicability of Head 75, UNHCR is concerned that applicants whose claims are deemed withdrawn may result in denial of protection to individuals with international protection needs, which may in turn lead to serious violation of their rights, including risk of *refoulement*. This is compounded by the fact that appeals on implicit withdrawn decisions have non-suspensive effect under Head 68(2)(c) of the General Scheme.

UNHCR recommends:

- amending Head 55 to remove the power for another competent authority than the Minister to consider whether an application is deemed implicitly withdrawn
- including a new subsection in Head 55 as follows ***'The Minister shall ensure that an applicant whose application is considered to be implicitly withdrawn is not removed contrary to the principle of non-refoulement based on the information that is available to the authorities'***

IX. Examination of persons during screening (Head 23)

80. Head 23 gives immigration officers, officers of the Minister or a member of *an Garda Siochana* extensive powers to search any person subject to screening and any luggage or electronic devices belonging to him/her with a view to ascertaining whether the person is carrying any documents. These searches must be reasonably necessary for the purpose of enforcing the International Protection Bill or where any criminal offence is reasonably suspected and includes the obligation on applicants under Head 23(2)(a) to provide reasonable assistance in enabling such personnel to access information on devices including by providing passwords.

[58] High Commissioner for Refugees (UNHCR), UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation, COM (2016) 467, April 2019, https://www.refworld.org/legal/intlegcomments/unhcr/2019/en/122595

81. While the word 'devices' is not defined in the Bill it likely includes mobile phones and laptops. Any person found not to be providing such assistance in accessing devices may be guilty of an offence and liable to a penalty in accordance with Head 142(1).

82. UNHCR acknowledge that there may be situations in which the search of asylum seekers' personal electronic devices may be justified for the purpose of verifying their identity. However, certain legal standards must be met to ensure respect for the asylum seekers right to human dignity, right to private and family life, right to protection of personal data and the right to own, use, and dispose of his or her lawfully acquired possessions.[59] This includes adhering to the principals of necessity and proportionality, while ensuring that appropriate procedural safeguards are in place and respected in practice. While some of the electronic data may bear direct relevance to the consideration of an application for international protection, much will not, and may include a wide range of information of a personal and sensitive information. The UK High Court has ruled that the blanket policy of searching and seizing asylum seeker's phones breached Article 8 ECHR and data protection laws. [60]

83. Recital 22 of the Asylum Procedures Regulation requires any search be conducted in a way that respects fundamental rights and the principal of proportionality and Article 9(5) requires that any search be carried out by a person of the same sex with full respect for the principals of human dignity and of physical and psychological integrity. These safeguards are not replicated in Head 23 of the Bill. UNHCR recommends that these safeguards are inserted into Head 23 and similar considerations should apply with respect to Head 159 and its corresponding amendments to the Immigration Act of 2004.[61]

UNHCR recommends:

- amending Head 23 to include a new subsection stating that ***'an search under this head be carried out by a person of the same sex as the person subject to screening with full respect for the principals of human dignity and of physical and psychological integrity'*** in line with Article 9(5) of the Asylum Procedures Regulation
- amending Head 23 to include a new subsection on searches conducted under this Head being subject to the principles of necessity and proportionality.

[59] UN High Commissioner for Refugees (UNHCR), UNHCR Preliminary Legal Observations on the Seizure and Search of Electronic Devices of Asylum-Seekers, 4 August 2017, https://www.refworld.org/policy/legalguidance/unhcr/2017/en/118176

[60] *HM, R (On the application of) v SSHD* [2022] EWHC 695, 25 March 2022, available at: https://www.bailii.org/ew/cases/EWHC/Admin/2022/695.html See also Federal Administrative Court (Germany), judgment of 16 February 2023 - BVerwG 1 C 19.21, paras 22-28

[61] Ireland: Act No. 1 of 2004, Immigration Act, 13 February 2004, https://www.refworld.org/legal/legislation/natlegbod/2004/en/147178

X. Actors of Protection (Head 53)

84. Head 53(1)(b) states that protection against persecution or serious harm can be provided by parties or organisations provided that they are willing and able to offer protection. This is not reflected in Article 7 of the Qualification Regulation which states only the State or stable, established, non-State authorities including international organisations can be actors of protection.

85. Article 7(2) of the Qualification Regulation requires decision-making bodies to take into account precise and up-to-date information on countries of origin obtained from relevant and available national, Union and international sources for both assessing whether protection is available and assessing whether stable, established non-state authorities, including international organisations control a State or a substantial part of its territory. This latter requirement to research country information in relation to non-state authorities is omitted from Head 53.

UNHCR recommends:

- deleting the reference to '***parties or organisations'*** in Head 53(1)(b)
- amending Head 53(3) as follows '***when conducting an assessment under subhead 1(b) and (2)'***

XI. Internal protection (Head 54)

86. Under the General Scheme, in Head 54 it will now be mandatory to apply the internal protection provision where the applicant's claim is based on risk of persecution or serious harm from a non-state actor. Head (54)(3) only permits the applicant to provide evidence or elements which indicates that an internal protection alternative is not available to him or her to the SIB. It currently does not provide for evidence to be submitted to or considered by the Minister as part of the first instance determination process which is not in compliance with the requirements under Article 8(3) Qualification Regulation. In addition, Article 8(3) of the Asylum Procedures Regulation places the burden of demonstrating that an internal protection alternative is available to the applicant on the determining authority. This approach is in line with UNHCR's Guidelines on Internal Flight which affirms that the decision-maker bears the burden of proof of establishing that an analysis of relocation is relevant in a particular case.[62]

[62] UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/04, 23 July 2003, https://www.refworld.org/policy/legalguidance/unhcr/2003/en/32047

UNHCR recommends:

- amending Head 54(3) as follows 'the applicant shall be entitled to present evidence to ***the Minister*** or the Second Instance Body, where applicable, and submit any element which indicates that such an alternative is not available to him or her. ***The Minister or the Second Instance Body, where applicable shall take into account the evidence presented and elements submitted by the applicant'***
- including in Head 54 a new subsection stating '***the burden of demonstrating than an internal protection alternative is available to the applicant shall fall on the Minister'***

XII. Exclusion from being a refugee (Head 55)

87. Head 55 provides, that in a limited number of serious circumstances, an applicant may be excluded from eligibility for refugee status or subsidiary protection. Head 55(1) and (4) covers the situation outlined in Article 1D of the 1951 Refugee Convention, which particularly refers to persons falling under the protection and assistance mandate of UNRWA for Palestinian refugees.[63] In contrast to Article 12 of the Qualification Regulation there is no explicit reference to Article 1D in Head 55 nor in the International Protection Act 2015.

88. The objective of Article 1D is to avoid overlapping competencies between UNRWA and UNHCR, but also, in conjunction with UNHCR's Statute[64] recognises that certain categories of refugees may receive protection through separate arrangements. While the text of Article 1D is replicated in Article 12(1)(a) of the Qualification Regulation, it is not effectively transposed in Head 55 of the General Scheme. Article 12 affirms that when it is established that UNRWA's protection or assistance has ceased, Palestinian refugees are 'ipso facto' entitled to the benefits of the Qualification Regulation.

UNHCR recommends:

- amending Head 55(4) to include ***'that the third-country national or stateless persons shall ipso facto be entitled to the benefits of refugees recognized under this Act'*** in accordance with Article 12(1)(b) of the Qualification Regulation

[63] UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees, HCR/GIP/17/13, December 2017, https://www.refworld.org/policy/legalguidance/unhcr/2017/en/119322

[64] UN General Assembly, 1950 Statute of the Office of the United Nations High Commissioner for Refugees, A/RES/428(V), 14 December 1950, https://www.refworld.org/legal/constinstr/unga/1950/en/72586

XIII. Unaccompanied children (Part 16)

89. UNHCR welcomes Part 16 of the General Scheme which strengthens the protection of unaccompanied children who are seeking international protection including by promptly appointing a representative to safeguard their best interests and enable them to benefit from their rights under the General Scheme.

90. The tasks to be carried out by representatives of unaccompanied children are outlined in Head 141(10). These include, among other duties, informing the child about relevant procedures – such as the AMMR procedure – and assisting them with the age assessment process and preparation for their personal interview. While these responsibilities align with Article 23(8) of the Asylum Procedures Regulation, Head 141(10) omits the requirement that these tasks should, where appropriate, be carried out in cooperation with the legal advisor. Given that some of the tasks involve complex legal procedures, the legal advisor would be best placed and qualified to advise the child on their application. UNHCR recommends that this provision is amended to ensure that legal advisors can assist the unaccompanied child in cooperation with the appointed representative.

91. While Head 141(12) addresses parts of Article 23(10) of the Asylum Procedures Regulation, including the requirement to represent no more than 30 unaccompanied children at a time, it fails to address the role of administrative, or judicial authorities in the supervision of the proper performance of tasks by representatives and their role in reviewing complaints lodged by unaccompanied children. Transparent governance structures and effective oversight and supervision is critical to ensuring representatives deliver a quality service in supporting unaccompanied children in navigating the international protection system.

Age assessment

92. The General Scheme references age assessment procedures in several parts of the Bill and includes assistance with the age assessment procedure as a task for the appointed representative in Head 141. However, UNHCR is concerned that there is no provision in primary legislation reflecting the obligation in Article 25 of the Asylum Procedures Regulation to establish an age assessment procedure. While it is accepted that identification measures with respect to unaccompanied children may include an age assessment, UNHCR stresses the importance of having a clear transparent framework and procedural safeguards in place for such age assessment procedures.[65] Medical examinations must only be used as a measure of last resort,[66] and used to complement other primary methods of age assessment, within a multidisciplinary and child-sensitive framework. UNHCR recommends that the General Scheme includes a provision on age assessment procedures including their review.

[65] UNHCR, UNHCR Observations on the use of age assessments in the identification of separated or unaccompanied children seeking asylum, Case No. CIK-1938/2014 – Lithuanian Supreme Court, 1 June 2015, para. 9(xi), available at: https://www.refworld.org/pdfid/55759d2d4.pdf.

[66] Article 25(2) Asylum Procedures Regulation and ECtHR case-law (ECtHR, judgment of 6 March 2025, *F.B. v Belgium*, App. No 47836/21, para. 92)

UNHCR recommends:

- amending Head 141 (10) as follows 'Any person appointed under subhead (5) shall carry out the following tasks**, *where appropriate together with the legal advisor"***
- amending Head 141 to include a new subsection on the supervision of representatives and other designated persons by administrative or judicial authorities, including the review of complaints by unaccompanied children in accordance with Article 23 (10) of the Asylum Procedures Regulation
- introducing a specific provision on age assessment of children and their review in accordance with Article 25 of the Asylum Procedures Regulation

XIV. Requirements for personal interviews (Head 48)

93. A personal interview is critical to ensuring fair procedures including that decisions are based on complete information.[67] UNHCR welcomes the proposal to audio record personal interviews which will help ensure an accurate record of the applicant's statements and allow for a quick resolution to any challenges to the quality of the record or the interpretation.[68]

94. However, UNHCR is concerned that a number of key procedural safeguards for the interview are omitted from the General Scheme. Article 13(7)(a) of the Asylum Procedures Regulation requires that interviewing personnel be competent to take into account the applicant's age, gender, sexual orientation and gender identity and expression and special procedural needs. This is not included in Head 48(3) of the General Scheme. Furthermore, to ensure a gender-sensitive procedure, Article 13(9) of the Asylum Procedures Regulation provides for ensuring interviewers and interpreters are of the sex that the applicant prefers, where possible, which is omitted from Head 48. An open and reassuring environment during the interview is crucial to enable applicants with specific procedural needs, including victims of gender-based violence to disclose their protection needs in a comprehensive manner.

95. Head 48(2) permits the applicant, UNHCR or any other person concerned to make representations in writing to the Minister in relation to the examination of an individual protection application. This reflects Article 35(10) of the International Protection Act 2015 including the requirement that the Minister take into account such representations as long as they are made before or during a personal interview. However, there is an important safeguard in Article 35(12) of the International Protection Act 2015 which provides for the possibility of such representations being taken into account following the personal interview provided that they are made prior to the preparation of a decision. Head 48(2) omits this safeguard from the General Scheme. Given the envisaged timeframes for border and accelerated procedures it is

[67] UNHCR, ExCom Conclusion No. 8 (XXVIII) of 1977 and 30 (XXXIV) of 1983.

[68] UN High Commissioner for Refugees (UNHCR), Key Procedural Considerations on the Remote Participation of Asylum-Seekers in the Refugee Status Determination Interview, 15 May 2020, https://www.refworld.org/policy/legalguidance/unhcr/2020/en/123213

important that there is sufficient opportunity to enable representations to be submitted and considered by the Minister.

UNHCR recommends:

- amending Head 48(3) as follows 'the Minister shall – a) ensure that the persons who conduct the personal interviews are sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin, ***age, gender, sexual orientation and gender identity and expression***, vulnerability ***and special procedural needs***, ~~insofar as it is possible to do so'~~
- including a new subsection in Head 48 as follows '***Where requested by the applicant and where possible, the Minister shall ensure that the interviewers and interpreters are of the sex that the applicant prefers, unless he has reasons to consider that such request does not relate to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner'***
- including a new subsection after Head 48(12) as follows '***subsection 12 should not be construed as preventing the Minister from taking into account any representations made following a personal interview provided that such representations are made prior to the preparation of the decision in Head 64'***

XV. Statelessness

96. UNHCR welcomes the introduction of a definition of stateless person under Head 2 as having the same meaning as in the Asylum Procedures Regulation, i.e. *'a person who is not considered to be a national by any State under the operation of its law'*. Recital 24 of the Asylum Procedures Regulation also requires Member States to respect international obligations towards stateless persons in accordance with international human rights law instruments, including the 1954 Convention relating to the State of Stateless Persons.[69] Ireland has ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (the 1954 Convention and the 1961 Convention respectively) in 1962 and 1973 respectively.[70]

97. The Pact on Migration and Asylum contains several references to statelessness and emphasises the importance of identifying and protection stateless persons within the asylum procedure. For example, preliminary vulnerability checks may be carried out to identify if a person is stateless in accordance with the Screening Regulation. In addition, the Asylum Procedures Regulation mandates the clear registration of claims

[69] It further states '*where appropriate, Member States should endeavour to identify stateless persons and strengthen their protection, thus allowing stateless persons to enjoy core fundamental rights and reducing the risk of discrimination or unequal treatment.*'

[70] UN General Assembly, 1954 Convention relating to the Status of Stateless Persons, United Nations, Treaty Series, vol. 360, p. 117, 28 September 1954, https://www.refworld.org/legal/agreements/unga/1954/en/32744 and UN General Assembly, 1961 Convention on the Reduction of Statelessness, United Nations, Treaty Series, vol. 989, p. 175, 30 August 1961, https://www.refworld.org/legal/agreements/unga/1961/en/20424

of statelessness during asylum procedures and ensures that relevant documentation reflects an individual's statelessness.

98. There is currently no formal procedure for the determination of statelessness in Ireland. In 2023 UNHCR published a report which mapped statelessness in Ireland.[71] The report highlights that stateless persons experience numerous obstacles in accessing their rights under the 1954 Convention and can encounter difficulties in various procedures, including naturalisation. The absence of a statelessness determination procedure means that stateless persons are likely to face delays in resolving their situation and be left in a legal limbo for prolonged periods of time. In this regard, UNHCR welcomed the Government of Ireland's pledge to the Global Refugee Forum in 2023 to actively explore the introduction of a statelessness determination procedure.

99. It is timely as part of the implementation on the EU Pact on Migration and Asylum to ensure that there is a formal identification procedure in place for the protection of stateless persons.[72] Given that there will be a requirement to make a finding on whether an applicant is stateless UNHCR recommends that an opportunity is taken to create a determination procedure where stateless persons can access their rights under the 1954 Convention should they be found not to be in need of international protection.

UNHCR recommends:

- including in the General Scheme of the International Protection Bill enabling provisions to give further effect to the 1954 Convention on Statelessness and to introduce a statelessness determination procedure.

UNHCR Ireland
June 2025

[71] UN High Commissioner for Refugees (UNHCR), Mapping Statelessness in Ireland, 22 May 2023, https://www.refworld.org/reference/countryrep/unhcr/2023/en/124308

[72] UNHCR RBE, Statelessness and the EU Pact on Migration and Asylum, February 2025, available at: Statelessness and the EU Pact on Asylum and Migration | UNHCR Europe