Submission of The Child and Family Agency to the Joint Committee on Justice, Home Affairs and Migration regarding the General Scheme of the International Protection Bill 2025.

4th June 2025

1. The Child and Family Agency 's current role in respect of unaccompanied and separated children seeking international protection in Ireland.

1.1. Under the International Protection Act 2015 the Child and Family Agency receives notification from immigration officials in circumstances whereby it appears to the official that the person who is seeking international protection is a child and is unaccompanied. The presumption of minority is applied, and the Agency utilises its statutory powers and duties under the Child Care Act 1991 to provide care and accommodation to the child. The Agency acts as the child's representative and makes the application for international protection on their behalf in accordance with Section 15(4) International Protection Act 2015. Unaccompanied minors are currently not provided with material reception conditions by IPAS. Provision of material reception conditions to unaccompanied minors is met by the Child and Family Agency in default of the State providing unaccompanied minors with appropriate material reception conditions under the Reception Directive.

1.2. Unaccompanied minors make up approx. 1-1½ % of all international protection applicants in Ireland. Newly arrived unaccompanied minors are predominantly from Afghanistan, Syria and Somalia though there are 30 different nationalities currently being cared for or accommodated by the Child and Family Agency. The majority of arrivals are male and aged 16&17 years. Comparator data from the EU[1] shows that Ireland is broadly in line with EU trends regarding age, sex and country of origin for unaccompanied minors seeking international protection.

1.3. The pattern over 2022 to date has indicated a significant increase of unaccompanied minors arriving in Ireland. For the Separated Children Seeking

[1] https://euaa.europa.eu/publications/data-analysis-unaccompanied-minors-2023-fact-sheet-no-29

International Protection (SCSIP) Team, this has resulted in 340 referrals to the service in 2022, a further 350 in 2023 and 410 referrals in 2024 and 74 in Q1 2025.[2]

1.4. In Ireland in 2024, of the 18,561 applications for international protection submitted, 248 of them were unaccompanied minors: 1.3% of all applicants. This was similar in 2023, when unaccompanied minors were 1.4% of the total applicants. This is a significantly lower percentage than the EU+ average, whereby 4% of all applicants are unaccompanied minors[3]. In 2023, some 43,000 unaccompanied minor applications were made across the EU, with Ireland receiving just 0.43% of these applications. In 2024, the UK received 4,104 international protection applications from unaccompanied minors, which was 4% of their total applications.[4] In England in 2024, 9% of all looked after children were unaccompanied children seeking asylum[5]. The comparator figure for Ireland in December 2024 is 5%[6].

2. Observations on the General Scheme of the International Protection Bill 2025

The Child and Family Agency respectfully makes the following observations on the general scheme. Per the definitions set out in the general scheme, Tusla Child and Family Agency is referred to as the Agency below.

The Agency has had some engagement with officials in the Department of Justice and Department of Children Equality and Disability regarding the operational impact of the

[2] This data excludes unaccompanied minor Ukrainian BOTP

[3] https://euaa.europa.eu/asylum-report-2024/461-data-unaccompanied-minors#:~:text=In%202023%2C%2041%2C000%20applications%20for,highest%20on%20record%20since%202015.

[4] https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2024/how-many-people-claim-asylum-in-the-uk

[5] https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions/2024

[6] https://www.The Child and Family Agency .ie/uploads/content/Monthly_Service_Performance_and_Activity_Report_Dec_2024_V1,0.pdf Includes SCSIP who are accommodated under Section 5 but excludes Ukrainian BOTP. If Ukrainian BOTP included, the figure would be 7.3%

EU Migration and Asylum Pact. There remain outstanding areas which require further scoping and clarification, which are set out in detail below but in summary include:

- The requirement for legislative provision which designates the Agency as the provider of material reception conditions to UAMs (with special reception needs).
- The potential conflict of interest which would arise if the Agency were to provide a Representative Service and is the provider of material reception conditions to UAMs.
- Clarification on the anticipated process for the appointment of a provisional representative, representative and guardian to an unaccompanied minor.
- The requirement for legislative provision for conduct of age assessments by officials of the Minister for Justice.
- The role of the Agency on the Advisory Board.

3. Head 2 Interpretation

3.1.1. The Child and Family Agency would welcome the inclusion of a definition of 'competent authority'.

4. Head 7: Taking of biometric data

4.1.1. The Child and Family Agency notes the requirement of taking of biometric data per the Pact and the legislative provision set out in Head 7.

4.1.2. Head 7(2)(d) - Head 141 provides that provisional representatives shall be appointed as soon as possible, and a representative shall be appointed as soon as possible and within 15 days. Given that there is provision for immediate appointment of a representative / provisional representative it is not clear why an employee or other person appointed by the Child and Family Agency would be present.

4.1.3. Head 7(3) The Child and Family Agency welcomes that officials will (a) take that child's fingerprints in a child-friendly and child-sensitive manner, (b) have completed appropriate training in relation to the taking of fingerprints from children, and (c) explain the fingerprinting procedure to the child.

4.1.4. The Agency notes that Art 14(1) Eurodac provides for a referral to child protection authorities if a UAM refuses to provide biometric data: *"Where a minor, in particular an unaccompanied or separated minor, refuses to give*

their biometric data and there are reasonable grounds for believing that there are risks relating to safeguarding or protecting the minor, as assessed by an official trained specifically to take a minor's biometric data, the minor shall be referred to the competent national child protection authorities, the national referral mechanisms or both." . This is not captured in the Head 7. Reference to requirements for reporting under Children First should be included here, if there is a proposal to include such a mechanism in Head 7.

5. **Head 12: Arrest and detention for the purposes of transfer to a Screening Centre**

5.1. Head 12(10) The Child and Family Agency would welcome clarity on the purpose of the notification to the Agency in the context of the functions of the Agency under Section 8 of the Child & Family Agency Act 2013.

6. **Head 17: Provision of information**

6.1. Head 17(4) appears to address unaccompanied minors as it refers to their representative or temporary representative. The Child and Family Agency respectfully suggests that this section should explicitly refer to unaccompanied minors and not all minors.

7. **Head 19: Preliminary vulnerability checks**

7.1. Head 19(4) It is not clear what the Child and Family Agency 's role is in relation to provision of vulnerability checks to minors and what is intended by "cooperation" with the Agency. How this potential requirement interacts with the Agency 's other obligations under the Child Care Act 1991, the Child and Family Agency Act 2013 and Children First Act 2015 should be set out.

8. **Head 20: Guarantees for minors**

8.1. Head 20(3) provides that provisional representatives shall be appointed as soon as possible, and a representative shall be appointed as soon as possible and within 15 days. Given that there is provision for immediate appointment of a representative / provisional representative it is not clear why an employee or other person appointed by the Child and Family Agency would be required to support the minor.

9. **Head 26: Application for International Protection**

9.1. The Child and Family Agency respectfully requests an explicit statement that an unaccompanied minor can make an application for international protection on their own behalf. We refer in particular to Article 33 of Regulation 2024/1348

which provides that "An unaccompanied minor shall have the right to lodge an application in his or her own name if he or she has legal capacity in accordance with the national law of the Member State concerned."

10. Head 50: Guarantees for minors

10.1. Head 50(3) The Child and Family Agency respectfully requests an explicit statement that an unaccompanied minor can make an application on their own behalf.

10.2. The Agency also requests clarification on the role of 'Child and Family Agency representative' and if this is a reference to the representative provided for at Head 141.

11. Head 61: Prioritisation

11.1. Head 61(2)(a) The Child and Family Agency welcomes the consideration by the Minister of prioritising applications from minors who are the care and protection of the Agency.

12. Head 110: Exceptions to the Asylum Border Procedure

12.1. Head 110(1)(a) The Agency notes that the asylum border procedure shall be applied to unaccompanied minors only in the circumstances where there are reasonable grounds to consider the applicant is a danger to national security or public order. The Agency would welcome clarification on what competent authority will provide care and accommodation to unaccompanied minors who are in the border procedure.

12.2. Head 110(1)(b) makes reference to the competent authorities carrying out an age assessment in accordance with head yy (age assessment). The Child and Family Agency notes that a Head on age assessment has not been provided and would request that this be urgently addressed.

12.3. Head 110(2)(a)(ii) provides that the border procedure shall not apply if the necessary supports cannot be provided to applicants with special reception needs. The Agency would welcome clarification on whether the Agency will have a role at the screening stage in carrying out vulnerability checks to identify applicants with special reception needs.

13. Head 118: Allocation of Applicants to Accommodation

13.1. Head 118(1) sets out that the Minister will allocate an accommodation centre to be the location at which the material reception conditions shall be

made available to an applicant. The Child and Family Agency respectfully suggests that provision of accommodation which will meet material reception conditions for unaccompanied minors should also be set out in this section.

13.2. The Child and Family Agency anticipates that it will be the competent authority for provision of material reception conditions to unaccompanied minors and clarity is required in relation to whether legislation will designate the Child and Family Agency as the provider of material reception conditions for unaccompanied minors (with special reception needs). The Child and Family Agency will require clarification on planning laws which would exempt any accommodation provided by Agency for this purpose from requirement of planning permission.

14. Head 129: Appointment and terms and conditions of members of Advisory Board

14.1. The Agency notes that there is provision in Head 129 for Child and Family Agency CEO to be on the advisory board for the Chief Inspector of Asylum Border Procedures. The role of Chief Inspector provides for the establishment of an independent monitoring mechanism whose purpose will be to ensure that, during the screening process and the application of the border procedure, there is full compliance with EU and international law, including the EU Charter of Fundamental Rights, and to investigate any allegations of breaches of same.

14.2. The Agency respectfully requests clarity on potential conflict of interest in relation to the Agency being on the advisory board in circumstances where the Agency may have a role in the provision of reception conditions to UAMs and in relation to the screening process and the border procedure, as set out in Head 110(1)(a), Head 110(1)(b) and Head 110(2)(a)(ii).

15. Head 140 and Head 141

15.1. Head 141(1) and (2). The Child and Family Agency notes that it is likely to be the competent authority for provision of material reception conditions to unaccompanied minors. It further notes that a conflict of interest may arise if it is also designating an organisation as a representative organisation or designates itself. Article 27(2) Reception Conditions Directive provides that Persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be designated as a person suitable to provisionally act as a representative. Article 27 Reception Conditions Directive also provides that there is a requirement for administrative or judicial authorities or other entities responsible to supervise the proper performance of tasks by

the representatives and persons suitable to provisionally act as representatives." Article 27(8) Reception Conditions Directive (RCD) states that representatives should be "appointed in accordance with the procedure defined by national law".

15.2. The Child and Family Agency also queries the interaction of the Child and Family Agency Act 2013 with this potential role to designate representative organisations. Section 56 Child and Family Agency Act provides a basis for the Child and Family Agency to enter into an arrangement with a person for the provision of child and family services or services provided pursuant to *section 8*. The designation of representative organisations under international protection legislation is unlikely to fall within the definition of child and family services or services provided pursuant to Section 8 of the Child and Family Agency Act 2013.

15.3. As such, it is respectfully submitted that consideration should be given to providing a statutory basis for representative organisations to be appointed and overseen independently.

15.4. Head 141(3) The Child and Family Agency would welcome a full statutory basis and process for undertaking of an age assessment by an official of the Minister prior to notification to the Agency. This is required as Head 141(6) sets out the presumption of minority applies once the notification is received by the Agency.

15.5. Head 141(7) outlines that the Child and Family Agency may provide services under the Child Care Act whether or not the child is in care under a court order. The Agency would welcome clarification on whether this includes children who are in the voluntary care of the Agency (section 4 Child Care Act 1991) or accommodated by the Agency (section 5 Child Care Act 1991). If the Child and Family Agency is permitted to provide services and essentially act in loco parentis for unaccompanied minors seeking international protection, those services should be defined explicitly in legislation. The Child and Family Agency would also welcome consideration of whether an amendment to the Child Care Act 1991 to 2024 and the Child and Family Agency Act 2013 also required. In particular, consideration may be required to be given to ensuring that UAMs are not treated less favourably than other children in the State without there being specific legal provision and lawful justification for that difference in treatment.

15.6. As noted above, clarification is respectfully sought in relation to whether legislation will provide for the Agency to be the provider of material reception conditions for unaccompanied minors. Directive (EU) 2024/1346 refers in

particular to the requirement on Member States to ensure that material reception conditions are available to applicants from the moment they make their application for international protection. Article 26 of Regulation (EU) 2024/1348 sets out that Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence, protects their physical and mental health and respects their rights under the Charter. The State must provide material reception conditions to UAMs and those must be shaped according to the UAM's particular needs and vulnerabilities. Consideration may need to be given to whether any failure to designate a particular agency/body as a provider of reception conditions for UAMs could be challenged as a failure to correctly transpose the Directive which states that all applicants for IP are entitled to reception conditions. Without a clear determination of roles and applicable legislation, there may be a concern that the State would operate an ad hoc system in relation to reception conditions for UAMs that is reactive as opposed to establishing a robust legal framework for the provision of reception conditions to UAMs. If legislation does not provide for the Agency to be the provider of material reception conditions for unaccompanied minors, there will be no clear pathway for where the 1991 Act and the requirements under the Pact diverge. Issues may arise from the parallel entitlements a UAM will have under the 1991 Act and the Pact.

15.7. Head 141(10)(f) there is reference to age assessment, but no Head has been drafted. The Child and Family Agency would welcome a full statutory basis and process for undertaking of an age assessment by an official of the Minister.

15.8. Head 141(11) The Child and Family Agency recommends inclusion of obligations under Children First Act 2015 and consideration if a representative will be a mandated person.

15.9. Head 141 (14)(d) there is reference to the appointment of a guardian following the granting of International Protection. This is provided for under Article 33(1) of the Qualification Regulation 1347/2024. The Child and Family Agency would welcome clarification on how this provision interacts with the definitions of guardian within the Guardianship of Infants Act 1964 (as amended) and how it is proposed that such a guardian would be appointed.

ENDS