DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART, GNÓTHAÍ BAILE AGUS IMIRCE

JOINT COMMITTEE ON JUSTICE, HOME AFFAIRS AND MIGRATION

Dé Máirt, 21 Deireadh Fómhair 2025

Tuesday, 21 October 2025

Tháinig an Comhchoiste le chéile ag 3 p.m.

The Joint Committee met at 3 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	**Seanadóirí / Senators**
Tom Brabazon,	Robbie Gallagher,
Paula Butterly,	Garret Kelleher,
Catherine Callaghan,	Anne Rabbitte,
Gary Gannon,	Lynn Ruane.
Pádraig O'Sullivan,	
Mark Ward.	

Teachta / Deputy Matt Carthy sa Chathaoir / in the Chair.

General Scheme of the International Protection Bill 2025: Discussion (Resumed)

An Cathaoirleach: We have received apologies from Deputy Kelly.

As usual, I remind members and witnesses to turn off their mobile phones or switch them to flight mode.

We have a very busy meeting with plenty of guests so we will try to run through proceedings as quickly as possible. I apologise at the start that my voice is a bit wonky, which will, I am sure, be disappointing to the members.

We are here to deal with the resumed pre-legislative scrutiny of the international protection Bill 2025. We have an engagement with a number of stakeholders who have made written submissions on this matter. I welcome to the meeting, and thank them for their attendance, the following witnesses. From the Children's Rights Alliance, we are joined by Ms Tanya Ward and Ms Lianne Murphy. Ms Maria Hennessy is Government liaison officer with the UN High Commissioner for Refugees Ireland. We are also joined by legal associate Ms Caroline Stephens. From Safetynet Primary Care, we have Ms Nicola Perry and Dr. Angy Skuce. From Nasc, we have Ms Fiona Hurley and Mr. Kostas Kapantais. Representing the Bar of Ireland, we have Ms Patricia Brazil and Ms Siobhán Clabby. From the Irish Refugee Council, we are joined by Mr. Nick Henderson and Mr. Alan O'Leary.

We welcome back and thank for attending officials from the Department of Justice, Home Affairs and Migration. They are here to assist the committee if any clarification is needed on the general scheme. Representing the Department are Ms Tracy O'Keeffe and Ms Kerry Doyle. They are welcome.

Before I invite our guests to deliver their opening statements, I must advise of the following information relating to parliamentary privilege. Witnesses and members are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in respect of an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction.

I will invite each organisation in turn to make an opening statement to a maximum of three minutes, which time limit we ask our guests to try to adhere to. Once all the opening statements have been delivered, I will call on the members of the committee in the order in which they have indicated to me to put their questions. The committee operates a rota system, which will, in this instance, provide an initial seven minutes to engage with our witnesses. It is important to note that this time is for both questions and answers, and, therefore, it is essential for members to put their questions as succinctly as possible and for witnesses to be succinct in their responses. After all members who have indicated have had their initial engagements, if time permits we will have a second round of shorter interactions. I note that the duration of the meeting is limited and, therefore, time limits must be strictly adhered to.

I will now call on each organisation to deliver its opening statement. I call Ms Tanya Ward to speak on behalf of the Children's Rights Alliance.

Ms Tanya Ward: I wish the committee members a good afternoon. I thank the committee for the invitation to speak on the general scheme of the international protection Bill. In my time, this is one of the most significant pieces of legislation impacting refugees, including child, that the State has faced. I want to bring attention to the importance of the best interests of the child principle and its application to the international protection system, the detention of children seeking international protection, the importance of standards for the international protection process, the appointment of a representative for unaccompanied children and the provision of an age assessment process that complies with children's rights.

The committee will be aware that the best interests principle is one of the main ways to ensure that a process complies with children's rights. The UN convention and Charter of Fundamental Rights of the European Union require the best interests principle to be a primary consideration. That is in the pacts. It concerns us that there is no appropriate reflection of what is in the pacts within the general scheme of the Bill. We would be concerned if it was not transposed. It would certainly be out of kilter with how children's rights have been transposed or implemented in legislation more broadly. The Child and Family Agency Act, which established Tusla, and the Children and Family Relationships Act 2015, include an obligation to promote the best interests of the child. It is generally how the State has applied a children's rights approach to the drafting of legislation.

The other thing that concerns us is that the reception directive in the pact provides for an adequate standard of living and reception conditions. That is not repeated in the general scheme, which concerns us in the context of the children and families who are arriving in the State. You can see already in Ireland that we have a two-tier system. We have HIQA national standards applying to designated accommodation and a new emergency system has arisen, whereby accommodation has been procured from private providers and there is a considerable variation in the quality of services and standards. At the very least, you want to make sure that accommodation provided to refugees is in compliance with human rights standards. That is not apparent in the general scheme of the Bill.

We are also concerned by the lack of reference to legal advice and representation. At this moment, people in the protection process have a right to legal advice and representation, including unaccompanied minors through the Legal Aid Board. Clearly, the Department of justice has deliberately only referenced legal counselling. The basic regulation in this space talks about legal advice and representation and legal counselling, but for some reason the general scheme only refers to legal counselling. The committee heard last week that legal advice in itself had a very clear definition. It is provided by solicitors in line with very particular rules from the Law Society of Ireland. For many children seeking protection and accelerated procedures, it concerns us greatly that there appears to be a downgrading of this type of support.

The legislation also refers to a representative service for unaccompanied minors. It is one of the positive things in the EU migration pact. However, it does not talk about who will deliver it. There is talk about the Child and Family Agency delivering it, but it is not independent. I ask the committee to think about other solutions. The Department of children is establishing a guardian *ad litem* service. Does that have potential to take on this area? That could make a big difference to children in this space.

We also ask the committee to consider, and make clear recommendations around, age assessments and ensuring that they do not rely on biometric measures, which should only be used as a last resort. Those assessments should be psychosocial in approach and delivered by a social worker-type service.

We also ask the committee to consider inviting child refugees to come before it to talk about their experiences of the protection process and ask them for their views about what a good protection system should look like, going forward.

Ms Maria Hennessy: I thank the committee for the invitation to address members today on the UNHCR's observations on the general scheme of the international protection Bill. The proposed scheme will have a direct and lasting impact on the lives of people seeking international protection in Ireland. This is an opportunity to get it right and to establish a fair, efficient and predictable protection system that works well for refugees and Ireland.

The UNHCR would like to focus on the following areas of concern. The first is legal counselling and representation. The scheme currently does not address legal counselling. We understand it is still under development. The UNHCR recommends the inclusion of an explicit provision guaranteeing access to free legal assistance and representation for all applicants at all stages of the asylum process. This is essential to ensure effective access to the asylum procedure and better quality decisions, and to reduce the volume of appeals, ultimately contributing to a more efficient and cost-effective procedure.

The establishment of a chief inspectorate of asylum Border procedures is a welcome development, and many of its proposed features align with the UNHCR's recommendations. We recommend that the enforcement mechanisms are further strengthened to ensure that the chief inspectorate's recommendations lead to concrete action and are reported publicly to promote transparency, accountability and access to remedies. It is equally important that the chief inspectorate's operational autonomy and independence are fully guaranteed in law and practice.

The UNHCR is concerned that several aspects of the proposed appeal procedure may infringe refugees' individual access to effective remedies. These include the short timeframes for lodging appeals, in some cases as little as five days, and the default practice of deciding appeals without oral hearings. Of particular concern is the absence of an automatic suspensive effect for certain refusal decisions, including for persons in the asylum border procedure and certain inadmissibility determinations, which could lead to the forced return of individuals who may be in need of international protection. The UNHCR recommends that these provisions of the general scheme be reviewed in line with our observations to ensure respect for the principle of non-*refoulement* and the right to an effective remedy.

While asylum border procedures can support a well-functioning protection system, they must fully uphold all legal safeguards. In the UNHCR’s view, such procedures are not suitable for unaccompanied children, trafficking and torture survivors and other vulnerable persons, who should be explicitly exempted and channelled into the regular procedure. It is equally important that any restrictions of movement envisaged in the border procedure do not amount to de facto detention.

With those amendments and adequate resourcing, the scheme has the potential to strengthen both the integrity and efficiency of the protection system. The UNHCR stands ready to work

with the Government and Members of the Oireachtas to transform the Irish protection system in a way that implements the EU pact on migration and asylum, but also reflects Ireland's obligations under international refugee and human rights law.

An Cathaoirleach: Thank you. From Safetynet Primary Care, I call Ms Nicola Perry.

Ms Nicola Perry: We are grateful for the invitation to attend today. I am joined by my colleague, Dr. Angy Skuce, the medical director of Safetynet. We are primarily an HSE-funded organisation providing health screening and medical assessments nationwide for international protection applicants, among other groups, including the homeless. We would like to highlight four concerns based on our clinical experience in delivering over 1,300 screenings in 2024 across 28 accommodation centres nationwide.

The first issue is consent and medical information. Head 18(5) allows for medical information to be shared without consent. We have seen multiple cases of people concealing HIV diagnoses because they fear discrimination in their protection application. They went without life-preserving medication for months and their disease progressed significantly as a result. We recommend requiring informed consent before sharing medical information.

The second issue is healthcare access after deportation orders. For us at Safetynet, this is probably one of our biggest concerns. When someone receives a deportation order, they immediately lose access to their medical card. The period before actual deportation can extend for months or even longer. In Dublin, we are fortunate to have a generic medical card number but we are not aware of any service outside Dublin with the same provision. This means that people lose access to medications. If someone with diabetes loses their insulin supply, they could be admitted to hospital within days. People with chronic conditions deteriorate. Chest infections go untreated. From a humane perspective, this is not acceptable. From a health systems perspective, it is vastly inefficient. We recommend guaranteeing continued healthcare access for individuals subject to deportation orders, at a minimum in cases of life-sustaining medications, communicable diseases and emergency and maternity care.

The third issue is accommodation and transfers. Short-notice transfers create significant challenges. We had the case of a blind man who was scheduled to transfer from Dublin to tented accommodation in Clare with 24 hours' notice. This was after six months of establishing his independence and learning his way around the site. Hotel staff recognised the concerns and sought help through various channels. We were eventually contacted and could act on this. This relied entirely on informal connections and chance circumstances. We recommend formal mechanisms for accommodation staff to raise concerns about residents' medical needs before transfers.

The fourth issue is medico-legal assessment capacity. Many applicants would benefit from reports based on the Istanbul Protocol standard but the capacity for provision is severely limited. It is currently not possible for applicants to obtain a compliant report within three months. As processing timelines accelerate, we are concerned that assessment capacity will not keep pace. We recommend significantly increased funding to organisations such as Spirasi and-or consideration of a State-funded medico-legal assessment.

Our written submission contains fuller detail and additional technical recommendations. The content of our statement is informed by our daily clinical experience. I am grateful for the opportunity to discuss this matter today.

An Cathaoirleach: Thank you. From Nasc, I call Ms Fiona Hurley.

Ms Fiona Hurley: I am grateful for the opportunity to contribute. Nasc, the Migrant and Refugee Rights Centre, has worked with and provided support to refugees and asylum seekers for 25 years. Nasc has grave concerns about the proposed international protection Bill 2025. For the sake of time, we are limiting this opening statement to three key issues.

The first is the lack of consultation and the implementation timeline. We would like to foreground the lack of consultation with people currently in the international protection process, or with lived experience of it. These are the individuals most directly affected by the proposed reforms, yet their voices have been largely absent from the process to date. The consultation has been minimal, limited in scope and poorly structured. We are also deeply concerned about the compressed legislative and implementation timeline. We are sceptical that the State will be in a position to meet its implementation deadline of 13 June 2026, given the scale of legal and institutional transformation required.

Second, there is a lack of clarity on key provisions in the general scheme. The committee is being asked to scrutinise a general scheme which omits essential details on key provisions. The most notable example is the proposed introduction of legal counselling, which is referenced across several heads but is not defined, and lacks any clarity as to its scope, provider, professional qualifications or regulatory framework. We are concerned that the proposed concept of legal counselling will fall significantly short of legal advice or representation. According to the Irish Human Rights and Equality Commission's written submission, it does not consider that barristers or solicitors can provide legal counselling under current professional, ethical or regulatory standards. The scheme, in effect, proposes a two-tier system, with a second category of "legal counsellor" not subject to regulation under the Legal Services Regulation Act 2015, and it raises serious concerns around confidentiality, oversight and the effective vindication of applicants' rights.

Third, and of fundamental concern to us, are the provisions in the general scheme relating to restrictions on movement and de facto detention, particularly as they relate to the screening process, border procedures and designated accommodation. While the scheme treats screening and border procedures as separate stages, in practice, it is likely they will be carried out in the same facilities and under similar conditions. Many of the concerns outlined here, therefore, apply to both processes. Under the general scheme, restrictions on movement may be imposed during screening and border procedures. These restrictions may include requirements to reside in designated locations or comply with regular reporting obligations. The scheme does not currently provide sufficient detail on how such restrictions will be applied, how long they will last or how applicants can challenge them. In practice, individuals subject to these restrictions may not be permitted to leave a defined geographic area without prior permission, limiting their ability to access legal assistance, attend appointments, maintain family connections or participate in community life. Failure to comply could carry serious consequences for an applicant's case.

The legal basis for detention in the general scheme is also problematic. Heads 110 to 112, inclusive, allow for detention where an applicant is deemed to pose a risk of absconding or obstructs return procedures or for reasons of public order. However, these grounds are vaguely defined, and the scheme sets no clear threshold for when they apply. There is no requirement for detention to be preceded by an individualised assessment, nor any obligation to exhaust less

coercive alternatives first. There is also no provision for judicial authorisation or automatic review of detention orders, and no guarantee of access to free legal assistance, despite these being minimum standards under Article 11(2) of the reception conditions directive.

Applicants may be detained in designated facilities near borders or in repurposed accommodation centres. Those detained may face limited access to legal representatives, family and psychosocial supports. Vulnerable applicants, including children, survivors of torture or trafficking, people with disabilities or those with serious physical or mental health needs face a heightened risk in these environments. While the EU asylum procedures regulation provides that applicants with special procedural needs or reception needs should not be channelled into the border procedure if necessary support cannot be provided, the effectiveness of this safeguard is entirely dependent on early and accurate identification, which the current screening provisions do not ensure.

Head 19 provides for preliminary vulnerability checks, but these are once-off, lack a mechanism for reassessment and allow for adverse inference where an applicant declines to participate. These are precisely the applicants most likely to struggle with early disclosure due to trauma, fear or mistrust. The absence of guaranteed legal representation at this stage means that many may never have the opportunity to disclose vulnerabilities in a safe or supported setting.

The issues I have outlined, together with those raised by my colleagues, point to a system that risks being rushed, opaque and overly focused on speed at the expense of fairness.

An Cathaoirleach: Thank you. From the Bar of Ireland, I call Ms Patricia Brazil SC.

Ms Patricia Brazil: I thank the members of the committee for inviting us to speak on the general scheme of the international protection Bill 2025. I am joined by my colleague, Ms Siobhan Clabby BL. The Bar of Ireland represents over 2,150 barristers. The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral bar. It is essential that any system for international protection is clear, workable, and fully respectful of constitutional and international rights.

While aligning Irish law with recent EU reforms is welcome, the proposed Bill's structure and drafting urgently require amendment to provide clarity for applicants, legal advisers and decision-makers. At present, definitions and procedural tracks, such as screening, border, accelerated and admissibility, are fragmented. This risks confusion, delay and error. We recommend that the scheme be redrafted for clarity, with plain-language, consistent definitions and consolidated procedural signposts introduced throughout.

Second, the procedures around legal advice and representation are, as drafted, insufficient. The Bill creates a two-tier system, allowing "legal counsellors" and "cultural mediators" who are not fully qualified lawyers to act as initial advisers. This undermines legal privilege, trust and the applicant's right to effective legal assistance. We strongly urge that only practitioners recognised under Irish law may advise or represent applicants at every stage, from screening to appeal, and that existing restrictions on legal practitioner participation be removed in line with international obligations.

Appeal safeguards must also be enhanced. The current five-day appeal window is so short as to be unworkable, especially for vulnerable people or those who require translation. The appeals process must instead allow a minimum of 20 working days and oral hearings should be readily available where credibility is at stake. These are basic fair procedures well-established in Irish and European law.

The proposed Bill's approach to vulnerability and children also falls short. There is no right to review or appeal of a vulnerability finding, nor are the roles of child representatives or the process of age assessment sufficiently defined. We urge the committee to ensure clear procedural safeguards, including mandatory qualifications for those representing unaccompanied minors, and a transparent framework for reviewing vulnerability and age determinations.

The State's legal duty to provide adequate accommodation and material reception must be directly stated in the Bill, not just left to policy. Recent High Court judgments have found repeated breaches of fundamental rights arising from the State's failure to meet reception standards. The legislation should specify enforceable obligations, clear duties to designate proper accommodation, and mechanisms for urgent complaint and redress.

In summary, we recommend that the Bill should clarify all definitions and procedures at the outset; guarantee free, qualified legal representation at every stage; provide fair, workable timeframes and oral hearing rights for appeals; introduce robust review and child protection safeguards; and ensure the rights to adequate accommodation and reception conditions are properly defined. These amendments will strengthen the Bill, reduce future litigation and ensure Ireland meets its constitutional and human rights obligations.

Mr. Nick Henderson: I thank the committee for the invitation to speak to it. This submission is further to the longer submission we made to the committee in June on behalf of more than 11 other organisations.

We have three principal concerns about the Bill. The first is that the content of the Bill is regressive and will implement multiple barriers and obstacles to accessing international protection. This means, and we do not say this lightly, that meaningful access to refugee status and refugee process in this country is under threat. Second, the process by which the pact text is transposed into Irish law is deficient, including the failure to transpose safeguards. Our third concern is that the pre-legislative scrutiny process is flawed due to key omissions in the Bill. I will now go through each concern.

A quick walk-through of the Bill, as experienced by a person in this process, is as follows. A person will apply for protection and go through a screening process, with a rushed vulnerability assessment, following which they may be referred to a border procedure. This referral will be crucial for an applicant, with significant consequences, and there is no effective remedy for this referral in the Bill. The border procedure will restrict a person's movement in a manner which could amount to detention, albeit not automatically. Their asylum procedure will be fast tracked. They may not have access to legal advice or representation, compromising their access to justice and right to an effective remedy. Should they receive a negative decision and lodge an appeal, that appeal will not or may not have a suspensive effect, severely undermining the right to an effective remedy and the credibility of the appeal process. The person will likely

not have access to an in-person appeal. We believe this provision is not compliant with EU law and is not required by the pact text whatsoever.

Our second concern is the deficient transposition process. We are gravely concerned that the Bill has failed to transpose many protections from the pact text itself. There are several examples in our submission of significant safeguards not being transposed.

Our third concern is the pre-legislative process. The committee is being asked to scrutinise a Bill that contains omissions on critical issues. There is no text on legal counselling, age assessment or reception conditions. Given this, we believe the pre-legislative scrutiny process is in doubt. There has also been insufficient engagement with civil society. Despite requests to meet people with lived experience and professional experience, we have not been able to engage with the Department on these issues. Organisations like ours and many others across the country have stepped up in recent years, supporting people through multiple crises and different issues and continue to do so. We know what will work and what will not work.

This committee has a unique opportunity to correct mistakes and omissions to avoid problems that could plague our system for years to come. We ask the committee to take this opportunity.

An Cathaoirleach: I thank our guests for the opening statements. I now give members an opportunity for an initial seven-minute engagement. Deputy Ward is first to indicate.

Deputy Mark Ward: Last week, Tusla appeared before the committee. Since then, we have had two very serious incidents. There was the violent murder of a 17-year-old Ukrainian boy in a Tusla unregulated facility. Today, a man has been charged with a serious sexual assault of a ten-year-old girl who went missing from Tusla care. In light of these two incidents, if it is allowed, Tusla should, at some stage, come back before this committee and answer some of the questions that people have to ask. As a father and a resident of Dublin Mid-West, I am horrified and heartbroken for the young girl. My thoughts are with the young child. People, especially children, have a right to be safe and feel safe. Yesterday's assault has caused widespread fear in Saggart and the surrounding areas.

For some time, we have been calling for serious and meaningful engagement between the Government and the local community on the management and the future plans for the Citywest centre, including the issue of community safety and Garda numbers. It is deeply regrettable that this meaningful engagement has not happened to date. I want to apologise because I will be leaving this meeting as I have a meeting with the Ministers for justice and for children directly after this. That such an attack can occur on a State-funded accommodation centre is unacceptable. People have a right to know how this could happen. These are legitimate questions that people in my area have been asking me. How did a young child in Tusla care end up in Citywest? Why was a man issued with a deportation order in March still in the State? These are legitimate questions. I do not expect the witnesses to answer these questions. As I said, I will be taking this up with the Ministers after this meeting.

The witnesses might be able to answer a few other questions. In relation to Tusla, do the witnesses have concerns about how the State is looking after children in State-run facilities? Ms Ward mentioned the best interests of the child. I genuinely have concerns in relation to how these State-run facilities are in the best interest of the child. How many children are in these unregulated settings? As we heard, the poor Ukrainian boy who lost his life last week was in an unregulated Tusla setting. We are discussing immigration here today and possible

changes to the rules relating to immigration. If a person fails to comply with a deportation order, they are breaking the rules under the existing rules. What do the witnesses think should happen in this case when someone does not comply with a deportation order?

Ms Tanya Ward: Like the Deputy, I was appalled to see the news last night of that event. There are two different things to look at. One is what is happening in Citywest and the questions around safeguarding. I would like to know what kind of safeguarding audit took place at Citywest and what safeguarding policy they have in place for events like this. One of my critiques of safeguarding policy is that they often decide that if children are here with their parents, it is up to their parents to keep them safe. That is something we need to look at. There is absolutely a need to do a safeguarding review to see how this event took place on this premises and to identify what measures could have been put in place to prevent it. Obviously Tusla will have to do its own review about how a child went missing from its care. I picked up from the media that a community voluntary organisation was supporting her at the time when she went missing. A review would be very important there, including respecting the privacy of that child. I would welcome the committee's attention in this area.

When it comes to the accommodation of unaccompanied minors more generally, there are very serious issues. Some of those young people are in SEAs. They are not in regulated accommodation. Part of that appears to have happened because Tusla cannot keep up with the numbers of children arriving and there are issues around registration of facilities. Tusla is inspected by HIQA when it runs the facilities. Where it contracts out to community and voluntary and private organisations, a unit in Tusla actually acts like HIQA and registers and inspects those facilities. It has not been able to keep up with the pace. One of the bigger issues is what the Government is doing to plan out accommodation facilities like this and to support Tusla. It is only in the past couple of years that Tusla has been given the resources and money to invest in public-run facilities and to buy facilities. That is where we should have gone in the first place. There is a broader issue about how we plan accommodation for unaccompanied minors. They should not be in unregistered accommodation facilities.

It is complex because they have a range of needs. We heard last week that a child as young as seven is an unaccompanied minor in Tusla's care. It goes all the way up to a couple of days before a person turns 18. What Tusla needs to provide is a range of different accommodation solutions for children based on their age, maturity and needs. One would expect the majority of children to be accommodated with foster care parents. That is where the best outcomes are. Older children and young people are more semi-independent and may be in contact with family members. One wants to provide them with a home but one wants to give them a bit more independence so really good residential facilities where they have care workers onsite to support them are really important as well.

Deputy Mark Ward: In layman's terms, what is the difference between unregulated and regulated settings?

Ms Tanya Ward: A regulated setting means a setting that is in compliance with a list of standards that has been agreed with either HIQA or Tusla's registration services and has also been inspected either by HIQA or Tusla's inspection unit. If it is unregulated, it means that it has procured in an emergency situation by Tusla and may not be in compliance with those standards. Sometimes it is and sometimes those facilities move towards registration and

become registered but sometimes because they are moving too quickly, those services are not regulated.

The question I have about some of them is that some of them could be in the city setting and may not be the most appropriate setting. This is where some of our members have been concerned. If they are city centre-based, there might be other facilities around where people could exploit children. They are the kind of considerations that need to be taken into account when you identify and select those accommodation facilities.

Deputy Gary Gannon: The EU pact requires that the best interests of the child be a primary consideration throughout the asylum process. Where in the Bill as drafted do the witnesses see that principle being put into practice, if anywhere?

Ms Lianne Murphy: There are a number of areas in the pact where it has outlined the best interests of the child and it is not in the general scheme. For example, under Part 2 with regard to arrivals and screenings, there is no reference to the best interests of the child. It also affects Part 3 regarding application for international protection and Part 4 regarding asylum and migration management. There are quite a number of areas there. The pact requires that states ensure that families with children reside in reception facilities in the border procedure that 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. This is in the pact but it is not in the general scheme so we recommend that this be in head 111. It is across a lot of different areas.

Deputy Gary Gannon: Does Ms Murphy see the rights of the child being met anywhere in this general scheme?

Ms Lianne Murphy: There is provision for it in the Bill. Heads 20 deals with guarantees for minors in the screening process and head 50 deals with guarantees for minors in the international protection process, so there are a number of areas. Regarding the representative service for unaccompanied children, the best interests of the child are also outlined in that head but there are many examples where it is omitted.

Deputy Gary Gannon: This may be for the Bar Council of Ireland, but also for all our witnesses, whom I thank for their contributions. What is meant by legal counselling? We were struggling with this last week and are still struggling.

Ms Siobhan Clabby: To be blunt, we are struggling as well. It is not defined within the general scheme and is not in the asylum procedure regulation either so we are trying to figure out what it is and what it is going to do in the future, especially when we now have this expedited and truncated process. It seems to be quite reliant on legal counsellors throughout the various forms of the initial phases of the Bill. There was a publication on legal counsellors yesterday under the European Union Agency for Asylum, EUAA. That is useful but it is still in the context of other European member states so in short, I do not know how we are going to implement it.

Deputy Gary Gannon: We are going to implement it in eight months and we do not understand what a legal counsellor constitutes at the moment. That seems extraordinary to me. Do any of the other witnesses understand what a legal counsellor is because we are struggling

with it? I do not see how we can continue with the work without being able to define what that means.

Mr. Nick Henderson: One thing that is missing is proper resourcing of our existing legal aid body, which is the Legal Aid Board. We should provide the Legal Aid Board with resources and capacity. Great work is done by the Legal Aid Board but it needs more capacity and resources. It is completely unnecessary to create a new system around the opaque idea of legal counselling. We heard that this could involve applicants going into a room and watching a TV screen and that on the screen, there would be somebody giving them information. Given the gravity of the process they are in, we believe that would be completely inadequate and inappropriate.

It is also worth noting that in its implementation plan, the European Commission states that if a member state is already providing free legal assistance and representation during the administrative phase, adjustments to its system is not necessary. It is not that we have to break the current system. We just have to resource it properly.

Deputy Gary Gannon: The Bill establishes that a chief inspector of asylum and border procedures will be appointed and will be removable by the Minister to act as the independent monitoring mechanism. Does the Bar Council or any other witnesses have any concerns about the independence of that role, what is required under the EU pact, the fundamental rights agency guidelines and what is actually catered for in the Bill because there seems to be a contrast?

Ms Patricia Brazil: It is crucial that those responsible for these kinds of functions are independent in their functions and are protected in carrying out the very important roles they are given. It is always best practice to safeguard independence to the highest extent possible so this is something the committee should give very careful consideration to.

Deputy Gary Gannon: Regarding the collection of biometric data from children as young as six, which allows reasonable force under the Bill as presented, where an officer has reasonable grounds to believe a person is an adult, from a children's rights perspective, how should the Bill be amended to explicitly protect the child's dignity and physical integrity and to ensure no child is ever subjected to coercion or force during a biometric procedure?

Ms Tanya Ward: On two counts, the general scheme is of concern. It is down to officials to decide. If they reasonably believe somebody to be over the age of 18, they can proceed. It is also of concern that there is a potential use of force. They should not be able to use force to obtain biometric data from children. It does not respect their dignity and rights and we think the legislation should be changed to reflect that.

Deputy Paula Butterly took the Chair at 3.49 p.m.

Senator Lynn Ruane: I thank everyone for their presentations. The issue of force is a follow-on question from the legal counsel. I have a fear and have hypothetical questions in my head as to what that could look like. I think about collective advice that is not tailored to individuals, that is not about a person's individual rights, needs or assessment, their own asylum process and that it is a kind of a catch-all loophole for the State potentially to kind of go, well we gave people a broad sweeping idea of what their rights are and we are off the hook. Do the witnesses see a potential for litigation? Is there a real concern that the State could avoid its

international or human rights obligations by saying it gave them legal counsel? Is that a legal defence in terms of deportation, human rights or international law in regard to asylum?

Ms Patricia Brazil: On behalf of the Bar Council, we said in our submission that we are concerned about the creation of a two-tier system of legal advice and legal counselling. The fact that legal counselling would be provided by people who are not qualified lawyers and who are not regulated under the LSRA Act is therefore unclear. For example, duties of confidentiality and legal professional privilege and all sorts of questions we do not have the answer to because the information is not currently there in the draft of the general scheme that has been provided. As the Irish Refugee Council has pointed out, there is no requirement to create the second tier where we have a functioning system of legal advice and legal representation, if that was to be adequately resourced. So there is a concern about the quality and the standard of what will be provided through this legal counselling mechanism, to what extent it will be adequately tailored to the situation of individuals in what are sometimes extremely truncated timescales, and the potential for that to violate the right to an effective remedy will give rise, potentially, to litigation. So it is important that the scheme, as it is ultimately enacted, avoids those risks in so far as possible. One way to do that is to ensure that those who do provide legal counselling are qualified to do so.

Senator Lynn Ruane: Yes. The qualified piece also raises a concern for me and it is more to note it when we are going forward to write our report. One of the most concerning parts in the legislation is always when Ministers have particular powers in situations. As part of this legislation, the Minister can enter into contracts for services directly. One of my concerns is always that we end up with privatised detention and border procedures. It is also that that legal counsel piece will be a contract of the Minister rather than that independent legal piece. That contracts piece worries me in that regard as well as the detention points that I have brought up previously.

I have some health-specific questions. I did not realise and I think one of the witnesses said that the moment that someone is given notice of deportation that their medical access ends and not when they are actually deported? Could somebody have started, say, cancer treatment? Is it all medicines that are captured under that and that could cease to exist?

Dr. Angela Skuce: My understanding is that when a deportation order is issued people lose their right to a number of things, including healthcare and medical card. We see it all the time. We only see the people who come to us but our GPs see, on average, about ten people a week who have been issued deportation orders. Some of them are waiting many months before they are deported. They have lost their medical card and cannot afford their medication anymore. That would include people with diabetes, heart failure, arthritis or rheumatoid arthritis. There is one person they are looking after at the moment who has schizophrenia who was very well controlled on medication for a number of years in this country, and doing really well and supporting himself. He lost his medical card and medication and became unwell. That relapse into schizophrenia causes further brain damage and he became so unwell that he had to be involuntary admitted. He was an inpatient for four months before he got better again. He was discharged again. Luckily, he came to our service where we could use a generic medical card to prescribe his medication. The relapse and four months in hospital at huge cost to the State, and him, was directly as a result of losing his medical card because of a deportation order.

Senator Lynn Ruane: Yes. It is extremely concerning that continuity of care would be interrupted in such a way while somebody is still in this country regardless or not of a deportation order. I was quite surprised when Dr. Skuce said that.

I wish to raise one issue with the time I have left and I will probably come back in with health-related questions. I have a question for the UN High Commissioner for Refugees Ireland and maybe the Bar Council of Ireland. Something that I noticed is that the provisions on the screening and the role of the chief inspectorate deviate somewhat from the pact in that it applies screening to all international applicants and, consequently, applies border procedure and attention to a wide range of people but it also fails to provide a monitoring mechanism for the principle of non-refoulement. How does that intersect with Schengen measures? The Government has chosen to align our national legislation with that so there seems to be a differentiation between the two, if I understand this correctly. I know that the Bar Council mentioned that we could make a provision to enable vulnerability assessments to continue after the initial screening. Have the witnesses any further recommendations on how we can uphold the principle of non-refoulement in that regard? Do the witnesses have any opinions on whether we should legislate for that regulation specifically?

Ms Maria Hennessy: I thank the Senator for her questions. On the screening regulation, there has been a commitment here to align it in the Irish domestic legislation even though it is not fully opted into, that measure. Specifically Article 10 of the screening regulation contains provisions that are not reflected currently in the general scheme and I will give an example. Head 125 of the current International Protection Bill scheme does not refer to the requirements under the screening regulation to monitor compliance with EU and international law, including the Charter of Fundamental Rights, in particular as regard access to the asylum procedure, the principle of non-refoulement and the best interests of the child. So that should be explicitly replicated in the legislation here. Also the chief inspectorate must have the power to refer cases for the initiation of civil or criminal justice proceedings for failure to respect or enforce fundamental rights. That is an obligation under the screening regulation which is not currently replicated in the general scheme of the International Protection Bill so it would be important to include that.

If I may come back to one point on legal counselling. Article 15 of the asylum procedures regulation and Article 16 look at legal counselling and representation. There is a number of aspects to it but it includes tailored information and that is information regarding the process that a person may go into. So in the new scheme a person may go into a border procedure, inadmissibility proceedings or general procedure. That requires communication and I would say in confidentiality as well in terms of with a legal representative to ensure that person is able to disclose the information they need to, to also help identify which is the appropriate procedure. We are very clear it is replicated in the Commission's implementation plan that if you have full legal assistance and representation in your current domestic system to retain that. So it is really critical that there is early legal advice. That is going to be of benefit to all in the process because it will enable and make sure that the right decision is made as early on as possible, the person is correctly informed and feels they are able to disclose their protection needs in an efficient manner as well. That would be really key.

Senator Robbie Gallagher: I extend a thank you to all the witnesses who attended this afternoon and thank them for their presentations. I have some questions for Dr. Skuce on

deportation orders generally. Dr. Skuce has outlined that people do not have access to medical care from the date a deportation order is issued. If Mr. X or Ms Y is issued a deportation order today, what happens from there on? Is it up to an individual to leave the country at that point? In Dr. Skuce's experience, how long does that process take?

Dr. Angela Skuce: I do not know if it is up to them. I think it is. That is not my area of expertise. Where we come across it is in our GP clinics, in the national transit centre, where people are moved. So people are sometimes moved from their accommodation to the transit centre and they stay there awaiting deportation, and then in our other clinics in town where people voluntarily come in to us. Our GPs have seen people who are four, five and six months in the transit centre awaiting deportation. What happens when people are finally given a date, where they are removed from the country, they are transferred from there to one of the prisons. They wait there for two or three days and then they are put on a flight.

Senator Robbie Gallagher: Does anyone else want to make a comment?

Mr. Nick Henderson: Just to note that this can also affect children. In the case of a child or family who are subject to a deportation order, my understanding is that the medical card can be cut for the child. Also, importantly, the daily expenses allowance both for the parent and the child would cease. This is also in the context of there being no other supports to the family and no child benefit. One point we have made to the Minister and the Department is around voluntary return. As an organisation, we are not against voluntary return. Our concern around the payment that was being touted to people was that this was being floated in front of people while they were still in the process. Voluntary return is a really important part of the process, at the end of the process. Colleagues can correct me if I am wrong but a key issue here is that a person is given notice of an intention to deport and if they do not, within five days, accept that notice, they would remove themselves from the possibility of assisted voluntary return. Somebody has a very short window of time in very pressurised moment to consider their opportunities. Bearing in mind that when somebody receives a deportation order they will receive a lifetime ban from the European Union as well.

Senator Robbie Gallagher: Why would somebody not leave in a situation like the one Mr. Henderson is describing? Why would somebody ignore the notice and stay on?

Mr. Nick Henderson: In our experience of working with people in that situation, somebody may still believe they are at risk in their country. We are working with people in this situation who have been through a very fast process, have struggled to get access to legal advice, have received a negative decision and simply remain very scared of the idea of going back to their country. The second issue is that people may not be able to be documented by their country. There can be issues around a person's country refusing to take that person or requiring a difficult or technical documentation process so the person can be returned. I return to that point of the five days. They have a five-day window in which they have the option of pursuing voluntary return as opposed to forced deportation, which in our experience, given everything we all have said, is a very pressurised period. Somebody may need to get access to support, advice, counselling and that can be very challenging.

Dr. Angela Skuce: I will add to that by saying that our experience really supports that. The vast majority of people on deportation orders who our GPs see have significant psychological problems. They may have suicidal ideation or mental health crises where they have to be

referred to the emergency department. Many of them are prescribed medication and they are all referred for counselling because they require it due to the thought of being returned home. They feel it is not safe for them.

Senator Robbie Gallagher: Even after the initial five-day period, they would have a right to appeal that decision?

Mr. Nick Henderson: No. A person has a decision from the International Protection Office, then they have a statutory right to one appeal and that is currently to the International Protection Appeals Tribunal. That appeal will be, under the Bill, to what is described as the second instance body, though that name may change. Under the Bill, that will very likely be an appeal on the papers only. If they are unsuccessful in that decision, they will receive a return order. We are talking about the future Bill, not the current one. They will receive a return order and will be required to return to their country. Under the current system, when a person receives a negative appeal decision they do not get a second right of appeal but are given the opportunity to ventilate any other reasons they may be allowed to stay through what is called a permission to remain process. However, a very low number of people are successful in that process. Then a person would receive a notice of intention to deport.

Senator Robbie Gallagher: Finally, regarding the deporting order and the country of origin refusing to take that individual, where does that leave them in that situation?

Mr. Nick Henderson: I am speaking to this relatively second hand but it may be that the Department of justice has to negotiate or advocate for that person to the embassy of that country for the person to be documented. It may be that the person has to engage with the embassy of that country to be documented. If the embassy of that country is in London, it may have to somehow communicate with Dublin. There are various issues there. I do not have a proper and accurate number of people who fall within that category. What I am saying is based on our casework experience over the last decade.

An Cathaoirleach: Do any other members wish to come in? No. I will ask a few questions. I thank our guests for being here. Meetings like this always take place in a context. Tusla being here this week as opposed to last week would probably have created a very different conversation, although a number of members did raise concern about the capacity of Tusla to ensure the care and safety of all children under its remit, particularly with the potential increased obligations of this new legislation. Obviously, the death of a young Ukrainian man in the days after that meeting has put our discussion into stark contrast. Ms Ward may be best placed to answer this. I ask about the concerns around the capacity and the pressures this legislation could potentially put on Tusla and other State agencies to ensure the safety of the people who are entrusted to those agencies.

Ms Tanya Ward: Because the legislation is vague and does not specify exactly what the accommodation options are for unaccompanied minors, and because it says Tusla is responsible for the representative service at this point, given the current numbers I would expect that Tusla is struggling with those numbers. How it has being trying to manage the numbers of young people coming in is that the social workers have been trying to do the assessments. Tusla has been talking to the IPO about it doing the age assessments, because the need to do those assessments that has put additional pressure on the social work team for newly arrived children seeking protection. Tusla has been accommodating some young people under what is called

section 5, instead of the other aspects of the childcare Acts. Section 5 relates to the obligation to provide housing and accommodation. It is a very important feature because sometimes young people find themselves without accommodation. Tusla will provide them temporarily with accommodation and try to assess and work out where their families are to reunify them. Therefore, that is very important.

I expect that if Tusla has to provide the representative service, it will be under pressure. I have not spoken to Tusla about this but I expect it will be. I know it believes this work should be done by an independent service because it is effectively the corporate guardian for unaccompanied minors. We are suggesting that the new guardian ad litem service that the Department of children is establishing could be the best vehicle for that because it will provide guardians *ad litem* for children in the childcare courts. That might be the best possible option here. That would free Tusla up to focus on the quality of care it is providing to unaccompanied minors. As the draft legislation does not specify what the accommodation or care options are for unaccompanied minors - the pact deals with that - we would expect that it would fall back to the childcare Acts. At present Tusla uses either section 4, 5 or 17 of the Acts to accommodate unaccompanied minors. This would remain the same but when it comes to section 5, which only provides for accommodation, we would like to see other rights and entitlements emerging. We could create a presumption that all unaccompanied minors are in care. This is what the Ombudsman for Children has recommended also. We would also like to see an entitlement to aftercare because it is like a cliff at present. Many young people who arrive are 17 and at present the care system does not include a right to aftercare. This means that when they turn 18 they get access to accommodation, supports for education and an aftercare worker. Even Tusla says it sees very vulnerable 17-year-olds for whom turning 18 is like a cliff edge. They go off into the general homeless services if they get status or they go into the direct provision system. We would like to see the law change in this regard.

An Cathaoirleach: I have another question on Ms Ward's own experience. We had a discussion last week on children going missing or being unaccounted for. The debate was premised in the context of teenagers, by and large. In light of the recent horrific news, many people would find it staggering that a ten-year-old child could be missing and unaccounted for and that the wider population would not be aware of this. As a father, it is mind-boggling that a child in care goes missing and it is dealt with behind the scenes. Is this a regular occurrence?

Ms Tanya Ward: When children go missing, a missing person alert goes out. Tusla records a child as going missing if it has been more than 15 minutes. The majority of children who go missing in the care system appear very quickly. A missing child alert does go out to the Garda and we often see it on social media. We see the stakeholders putting out a missing child alert in the hope of seeing the child located. The bigger issue is with children whom Tusla is unable to identify. The real focus needs to be on prevention. When migrant or refugee children go missing, the reason can be that they have arrived on our island because it is a way in and they are trying to unify with a family member, perhaps in the UK. This often happens. Tusla and the Garda try to locate the family member and sometimes there is contact. It is very hard if Tusla is unable to get a social worker in the UK to go directly to verify that the child is with a family member.

An Cathaoirleach: Is a distinction made in terms of age? I can guess that if the ten-year-old child of anyone in this room went missing, people would hear about it. Is there a double

standard for children in State care? Yes, the Garda is notified and there might be a system but there is not the same natural panic that I suspect would be warranted.

Ms Tanya Ward: I have not seen that, to be honest. I see missing child alerts all the time. We need to look at a review of the story to see what happened. Did the alerts go out quickly enough for this ten-year-old child? What I pick up from the media is that the care team had contact with the child but in the meantime the child fell into some form of harm. A review is very important to look at the timelines. I do not think there is a double standard but I think it is more difficult for the Garda to locate children who leave the jurisdiction. This concerns me because they could come to some form of harm or exploitation. It will always be in the best interests of those children to stay here in the care of Tusla. The best thing to do is for Tusla social workers and residential care workers to develop a good relationship with these young people so they are not exploited by other adults or misinformed. If they want to reunify with a family member in another country, they should be doing it with the support of Tusla and not without it.

An Cathaoirleach: As no other members are indicating for a first round I will bring in Senator Ruane for a second round of four minutes.

Senator Lynn Ruane: I have been sitting here thinking about the fact we do not really know what the places of detention are, what they look like, and whether places of detention such as the prison system will be used. I am specifically thinking about health and the fact that the contract for health services in places of detention is with the Prison Service and the Department of justice. It does not necessarily involve those with the unique understanding that Safetynet has in providing to the most vulnerable groups health services that are culturally responsive, understand and are trauma informed. It is a very particular type of health intervention. Are the witnesses concerned that the likes of Safetynet would not have access to places of detention for health intervention because it would be something similar to what is in the Irish prison system? This is a concern with regard to this cohort. In general, the HSE and social inclusion services should have access to prisons. It is something that came to mind.

Mr. Henderson mentioned the second instance body. I am wondering about the advisory board and the second instance body. Does the scheme have sufficient provisions for them to work together or collaboratively in any way? Would it threaten the independence of the board? How will they interact with each other? Will Mr. Henderson give more insight into their roles?

Mr. Nick Henderson: My understanding is that as far as we know the second instance body will not have an advisory board. The inspector of the board of procedure has that advisory board. We refer to and rely on the submission of the human rights commission on the second instance inspectorate. It has significant concerns, to the degree that it would have to consider whether it will participate in the mechanism. In our submission we noted there was no NGO on the advisory board. This goes to the point on our experience as organisations. It would be healthy for the board to have the participation of an organisation and a representative with lived experience. There are also issues with the relationship with other monitoring bodies. We also recommend the Bill should align with the inspection of places of detention Bill. While on first view the chief inspector is apparently one of the critical safeguards for human rights within the pacts, the devil is in the detail. It is very important that we scrutinise the detail and ensure it is soundly managed and has sufficient independence. A key part of this is the advisory board. This would need to be closely scrutinised.

Ms Nicola Perry: What places of detention are and what they may or may not look like has been referenced several times by committee members today. The detail is not there for us to understand what it really looks like. The situation at present is that people are moved to a prison setting immediately prior to deportation. Would Safetynet be able to access that location to provide healthcare at that time? There would have to be a complete rethink of the system. There would be capacity issues. If it were not an organisation such as ours and it fell into mainstream health services, there would be significant problems because the reason an organisation such as Safetynet exists and is funded by mainstream healthcare, the HSE and the Department of Health is that we can provide services that are culturally appropriate and trauma informed. We are cognisant of the huge variety in the groups we work with. We do this because it is difficult to do through mainstream healthcare services because we are dealing with the marginalised. Even outside of this, if it were not in a prison setting, it would bring its own problems and capacities. The Prison Service is stretched to capacity. Speaking from personal work experience, I know that if there was a significant increase in this cohort, I do not know how they would manage that.

In terms of detention centres and accommodation centres, we still have issues, whether it is ourselves or someone else, trying to provide healthcare. We have issues around location, accessibility and whether sites are fit for purpose. When people are put into places, not only is there no health promotion, there is health disimprovement. We have had direct experience of patients being put into rooms that have no windows, ventilation or natural light and in which there is mould. People can leave those centres less healthy than when they arrived and had no intrinsic health problems.

I do not know what legal counselling is either, like many other people in this room, but if it is something along the lines of a generic pick-up and catch-all, for that to work with a homogenous group would be a stretch of the imagination. I do not see how it would have any chance of working with groups of people from different cultural backgrounds, with different languages or cultural norms. For example, our counselling service alone in the past 12 months saw 36 different nationalities. That is just one example of one small organisation.

Deputy Paula Butterly: This is more a listening exercise for me rather than anything else, but I thank all of the witnesses for their contributions. I have some comments rather than questions. While I firmly believe that we have to accelerate the processing of applicants coming into the country, there are three takeaways for me which require further consideration and which seem to be a common thread through all of the opening statements.

First and foremost is the issue of the best interests of the child. We should reconsider and re-examine what exactly we intend by that, particularly when it comes to unaccompanied minors while they are under our care within State. In the event, for whatever reason, we believe they do not have the right to reside in the State any longer, our duty of care continues until they achieve safe passage to their final country of destination or origin.

It is clear that nobody knows what legal counselling means or what it is supposed to entail. We should go back to the drawing board and determine what it means and the implications involved.

I concur with Senator Ruane on the question of medical cards. I firmly believe that we continue to have a duty of care towards applicants until such a time as they are no longer within

the boundaries of this State. Even if they have not been approved and have to leave the State, the most humane thing would be to ensure that they receive all of the appropriate care and medical attention that they need until they are no longer in the State. I would be reflecting on that as well.

Dr. Angela Skuce: I thank the Deputy for that. The issue of access to medical legal reports is another crucial one.

Deputy Paula Butterly: Yes, indeed.

Dr. Angela Skuce: As things stand, people do not have access to that. The Istanbul Protocol is basically a UN document or manual for the appropriate investigation and documentation of torture and other cruel or inhuman treatment. The Bill just mentions an examination by a registered medical practitioner. It does not say what that examination constitutes and it does not give any qualifications other than a registered medical practitioner. To carry out an Istanbul Protocol-compliant examination, one has to have special training, and it takes a lot of resources. At the moment, there is probably a one-year waiting list. We have met many people who, because of psychological trauma, are not able to give a clear account of what has happened to them. It is beyond the capabilities of the vast majority of doctors to say whether a scar is consistent with what they have said or with something else. There needs to be a recognition of the need for hugely increased resources and appropriately trained people. People should be entitled to an appropriate and timely medical examination before their application is heard.

Ms Fiona Hurley: In relation to the health piece, it is also really important to note that during the screening procedure, the type of access to medical care is quite circumscribed. When someone comes into the State and is in the screening procedure, access is to acute medical care or care for illnesses that may pose a threat to public health. If the medical practitioner does not see that initially, he or she can decide that there does not need to be any further medical inspection done for the duration of the screening process. It is quite possible that someone could come in through the screening process and the medical practitioner could miss something. The person might not feel comfortable disclosing it, particularly if it is a mental health issue, and may then not get treatment for the duration of that screening process.

Deputy Gary Gannon: Is it appropriate to seek context from the Department in terms of how the Bill was formulated? Having listened to the witnesses' testimony, I would like to understand the context in which we have come to this point.

An Cathaoirleach: The Deputy can ask the Department for clarification on any matters relating to the Bill. The officials may defer to the Minister.

Deputy Gary Gannon: On legal counselling and access to justice, the pact explicitly allows member states to offer free legal advice and representation at first instance, which Ireland already does. Why has the Department decided, according to the testimonies of the witnesses today and last week, to roll back on that right and create this undefined concept of legal counselling? That clearly weakens the applicants' access to justice and is potentially also in breach of Article 47 of the charter. In what context was that decision made?

Ms Tracy O'Keeffe: There is no intention that there would be, and the Bill will not provide for, any reduction in the legal advice and legal aid services that the Legal Aid Board provides to international protection applicants under the Civil Legal Aid Act 1995. Those services are

going to continue. Legal counselling will be an additional service that will be made available to applicants. It is not intended to replace legal advice or legal aid; it is an additional service that will be made available. In terms of where it is envisaged to fit in, under the procedures regulations the pact refers to three different concepts related to what are generally called legal services. It talks about legal counselling, legal assistance and legal representation. The last two of those are encompassed by the existing services that the Legal Aid Board offers. Legal counselling is an additional service that will be of most benefit to applicants at the outset of the application process when they have just arrived and need information about how the process works and in broad terms, the legal framework that their application will be assessed under. There is no intention that there would be a reduction in the number of services that the Legal Aid Board provides.

Deputy Gary Gannon: I want to move on to the proposed chief inspector of the asylum border procedures who is, under the terms of the Bill, going to be appointed, and potentially removed, by a Minister. In creating that position, does the Department feel that it is in accordance with the minimum standards of the EU Agency for Fundamental Rights for independence?

Ms Tracy O'Keeffe: We looked at issues around the appointment, removal and establishment of that office very carefully during the drafting, in consultation with the Office of the Attorney General. We are looking at those carefully during the drafting process in consultation with the Office of the Attorney General. Regard has been had to the Fundamental Rights Agency's guidance. The Department has engaged with it, but that is something we are examining carefully in the drafting process on an ongoing basis.

Deputy Gary Gannon: That makes it difficult in the pre-legislative scrutiny phase to obtain any understanding from Ms O'Keeffe and the Department. I thank Ms O'Keeffe for what she offered, but what I have outlined makes it impossible for the committee.

On collection of biometric data from children potentially as young as six, is the Department confident that this is in accordance with the rights of the child?

Ms Tracy O'Keeffe: The change to the minimum age is required under the 2024 Eurodac regulation, which specifically provides for the age to be reduced to six.

An Cathaoirleach: We will have time for another round. The Deputy might want to use his time now.

Deputy Gary Gannon: I am interested in whether any of the witnesses would like to respond on that. It seems to be new information that was not in the written submissions from the witnesses. Would anyone like to respond?

Ms Patricia Brazil: I will reply on behalf of the Bar Council on the issue of legal counselling and access to legal assistance. It is important to recognise that what is envisaged in this proposed legislation is a fundamentally different procedure. It is not a diminution of or reduction in the standards of legal assistance. We are introducing new procedures so there is no equivalent within the current system. Members will see, on page 13 of the submission we prepared for the committee, that we tried to draft a kind of chart of all the different categories of legal assistance - legal advice, cultural mediators - and the different stages at which they will apply. For example, it appears there is no provision made for legal representation during the

screening procedure. There is no equivalent of that at the moment. However, the point is to look at the new system being brought in by this, where legal assistance will be provided and at which points. As the graph makes clear, it is very fragmented and difficult to understand. We submit that it needs to be brought into a consistent, clearly signposted framework with the provision of effective legal representation at every stage of the process.

Ms Fiona Hurley: As a practical measure, the resourcing needed to ensure the Legal Aid Board can actually provide legal advice and representation by June to deal with these expedited timeframes has not yet been provided. We are seeing situations where people who come to our offices cannot get access to solicitors. They are finding it really difficult. The Cork office of the Legal Aid Board is struggling to deal with the number of cases coming to it and to find practitioners through the private panel. Our question is how we are looking at resourcing it in order that people can access those rights to legal representation and advice in June 2026, when such truncated timelines will be seen and access to representation will be more important than ever.

Mr. Nick Henderson: From a practical perspective, the Irish Refugee Council has a law centre that opened in 2012. It has predominantly focused its time and resources on early legal advice. Put simply, that is the idea that putting in time and quality legal representation early in the process is hugely beneficial, to the applicants who get proper assistance in putting forward their applications and to the decision-makers, because the first instance decision-makers then have, in so far as is possible, a full and complete picture of people's applications. I dare say it benefits the taxpayer as well because it means better decisions are made earlier.

Second, we ran a small conference on the concept of legal counselling and legal advice in May from which a paper emerged with ideas about the practical implementation of legal advice for people under the pact. We would be happy to share that with the committee.

One of our shared concerns is that the die could be cast on someone's application very quickly under the pact. That already happens to a certain extent, in that when people apply for asylum today they complete a questionnaire. The better and fuller the advice people can receive and the earlier in the process, the better it is for everyone.

An Cathaoirleach: I will take a second round. This should not need to be said, but I will say it. The vast majority of people seeking international protection adhere to the rules as expected of them and do not engage in any form of criminality. In fact, they contribute significantly and positively to our communities for the duration of the international protection application process. I am sure our guests will agree that the small minority who do not adhere to that framework create problems for the rest and allow people to create a narrative of criminality or a system that is dysfunctional. In particular, we have situations such as the one in the past 24 hours whereby someone who is subject to a deportation order was charged with a serious crime.

I am sure every member of the committee agrees that we want to have a framework that ensures if people come, as is their right, to this State and seek international protection they are treated with dignity and respect for the duration of the period they are in the system; that they are given access to the supports they need; and that the system that will adjudicate on their applications is fair, human rights compliant and deals with all the potential issues that may arise. We get to the point where a deportation order is issued, which means there has been an

initial application and an appeal stage. Most lay people would believe that to be the point at which people leave the State. There is some confusion about what precisely it means for someone to be issued with a deportation order and remain in the State. How does that happen? What processes take place subsequent to a deportation order being issued? Do any of our guests have experience or knowledge of what it means? Perhaps Mr. Henderson can answer that question?

Mr. Nick Henderson: Once someone receives a deportation order, there is a severe limitation on what they can do in the country. As I said earlier, their daily expenses allowance would be immediately removed, as would their medical card, as we heard. Their requirement for accommodation would be severely reduced as they would be asked to leave their previous residence and directed to another location. As already stated, one of the things the Government could emphasise, not in the way it has, which is by putting large amounts of money in front of very vulnerable people in the middle of the asylum process, is voluntary return, but by giving people more time to consider and accept voluntary return at the end of the process. That could assist people to return to their countries at the end of an asylum process.

Three pillars of the process are needed for there to be sound removal, return and deportation decisions. One is that people should receive a sound international protection process and we have had concerns that people in the international protection process may not receive a sound decision, particularly since November 2022, as applications for asylum are already well established within days of people's arrival. I refer to the fact that they have to complete the questionnaire on arrival. Many are being rushed through to decision and often have difficulty accessing legal advice. We understand that there will be a group of people who are required to return to their country through forced deportation. The greater emphasis on voluntary return in the way that I have outlined is essential. We are also deeply concerned about the idea of schoolchildren being taken from their place of residence as they prepare for school to a deportation flight. That strikes me as wrong, and I think many people in Ireland would see it as wrong. We have the deepest concern for the welfare and well-being of the child. The incident that occurred yesterday is in the hands of the Garda. We also have the deepest concern for the welfare of people in the international protection process who have experienced increased racism and hatred and who, in the last two years, have been observing multiple fires at locations where a proposed centre would open.

An Cathaoirleach: I thank Mr. Henderson. If members indicate, I will allow them in. In the context of the general scheme we are dealing with, will the Department officials explain what will happen after this Bill is enacted? What will be the outworking as regards when a deportation order is issued *vis-à-vis* the current situation that Mr. Henderson outlined?

Ms Tracy O'Keeffe: Under the general scheme, and in the Bill as it has been drafted, the system in relation to deportations and returns will change quite a bit. At the moment, when somebody receives their first decision, that is the decision they receive from the Minister, with the International Protection Office having examined the application. In the future process, a return decision will be issued together with that first-instance decision. If the person is refused refugee status or subsidiary protection, a return decision will be issued in most cases.

In relation to concerns about *refoulement*, that is provided for throughout the process and there is a specific prohibition on a return decision being issued where *refoulement* is a concern. I need to make that clear. At the appeals stage to what is described in the general scheme as

the second-instance body - we are examining some possibilities for a better name for the body and that name will not be what is in the published Bill - the return decision can be appealed to the proposed second-instance body, either by itself or with the substantive decision, in relation to the international protection application. That is-----

An Cathaoirleach: I am sorry to interject there, but will Ms O'Keeffe explain how the second-instance body will be different from the International Protection Appeals Tribunal system that is currently in place?

Ms Tracy O'Keeffe: There will be quite a few similarities but the biggest difference will be that the return decisions would also be available. At the moment, a deportation order cannot be appealed to IPAT. That is not part of its remit and it cannot be appealed to it.

An Cathaoirleach: As no other members have indicated yet, I will ask some broad questions that any of our guests can touch on. I will encompass them in some of the concerns that I and others have raised about the approach in the general scheme of the international protection Bill. One concern it that this is obviously based entirely on an EU framework the previous Government signed up to. I would be interested to hear if our guests have any views as to whether this is the best framework. We will be signing up to it wholesale, across a range of different areas that place substantive obligations on this State and future governments. Further to that, do any of our guests have views on the capacity of the State to actually meet what we are committing to in this legislation within the timeframe that is expected, in particular for staffing, timeframes for decision-making and different processes of the system? Do any of our guests have concerns with regard to this legislation and the EU asylum and migration pact and how that would interact with the fact that we are members of a common travel area? As we heard last week, the common travel area has a substantive impact on migration into and out of the State but is distinct from the EU procedures we are signing up to? I would welcome comments on any of those matters.

Mr. Nick Henderson: On the European Union approach, the rationale for having a common European asylum system is that there is a common set of rules and processes across the European Union. The reason is that if member states take an individual approach, there is very likely to be, and we may already be seeing this, a rush to the bottom. Our concern is not necessarily that there is a single uniform approach across the European Union, which I think is important. Our concern is that, rather than that approach aiming for the ceiling and having a common set of rights and entitlements, there would be a rush to the floor. The alternative is that we would see an even more chaotic picture than it possibly already is, and we may already be seeing this in countries like Poland which is stopping the processing of applications.

Ms Maria Hennessy: On the EU pact, the UNHCR would see it as a need for international co-operation and responsibility sharing when it comes to mixed migration movement specifically. There are concerns within the pact as well, which we have addressed in our observations with the general scheme, and more generally. Having co-operation across states is important, as is ensuring that there is responsibility sharing. Some positive aspects are the codifying of solidarity under EU law for the first time under the asylum migration and management regulation. There are also some positive aspects within the scheme in Ireland that will be new, such as the audio recording of interviews for reunification including dependent family members as well.

One point I really wanted to emphasise is capacity and resourcing. Under the new pact, there will be a need for contingency planning to be done at the national level and this will also be monitored by both the EUAA and the Commission. There will be an annual migration report published. As part of that, we really need to look at what is in place in terms of resources at the national level.

One point of concern we have, as set out in the national implementation plan, is that the modelling looks at approximately 65% of people going into the border procedure. The border procedure is just one of the processes that is in place. There is a regular procedure, which is aimed to be within six months. The way the border procedure is set out in the asylum procedures regulation is really not to be the main procedure as such. The definition of the screening centre location in the general scheme raises the question, along with the national implementation plan, that we would be looking at a higher proportion of people going into the border procedure than was previously envisaged. I will give the committee an example. If we look at the adequate capacity that is required for the border procedure, in the EU framework this is based on a model that would result in a figure of approximately 464 places in the Irish system, if we look at the modelling. It is important to look not only at the legislation but, after that, at how the national implementation plan will work. I see, with the contingency planning and framework, that there is space there in terms of ensuring there is resourcing.

On the common travel area, there is within the general scheme - and it is also in the EU legislation - the safe third country concept. That will form part of the process if a person, for example, has links to a safe third country. That is in the general scheme under the admissibility procedure. It would then be up to the Government, for example, to designate a location, as it currently has in place - the United Kingdom. There is an impact on the common travel area as well in relation to that.

Ms Tanya Ward: On the area of unaccompanied minors, we support what the pact says about them. It is probably one of the strongest sections overall of the pact. It does have very important safeguards, including setting out the kind of accommodation care options young people should get and the fact that they should have an independent representative to support them through the process.

In terms of the pressure it puts on the Government, it is already under pressure because of the numbers of people seeking protection at this time. Of course, it is still a fraction of the number other countries are receiving now. Obviously, we are in this phase of significant movement across Europe for different reasons, including conflict and climate change.

We led a stakeholder engagement on behalf of Tusla in 2023 and 2024. One of our key recommendations on separate children was the appointment of an independent guardian for them. We very much welcome that this is part of the draft general scheme and the pact. We would like to see something more. We think the Government could go one step further and perhaps look at the current guardianship service it is going to establish and see it perhaps as an arm of that service. This would allow Tusla then to focus on the care and quality of accommodation that young people receive.

An Cathaoirleach: Do the witnesses from the Bar of Ireland have anything to add, particularly in terms of their understanding of the capacity to live up to the obligations we are potentially legislating for under the general scheme?

Ms Siobhan Clabby: In terms of capacity, it raises a very important access to justice issue. This is set out in our submission. I may not be directly answering the Cathaoirleach's question, but an important point to make is that, at the moment, under head 67(2) of the current draft of the general scheme, there are five days to put in an appeal. Head 69 says that the second-instance body, SIB, "shall make" its determination without an oral hearing. In terms of capacity and access to justice, it is impossible to be able to take full instructions in this context. This area is extremely complex and niche, and ongoing considerations arise from case law and developments in countries of origin, which require extensive research, as well as actually being able to speak to someone who is going through this process. It is unworkable to do that within five days. It has already been set out in our submission that we have advocated for a 20-working day period to be able to do that.

There is a good reason for this. Under the current system in place at IPAT, there are two appeal periods. There are ten working days for those subjected to the safe country designation. They are likely to be on the papers. There are then 15 working days for those subjected to the substantive procedure. Those are extremely tight timeframes and it raises real concerns regarding having the capacity for legal representatives to be able to do a good service for their clients in these very difficult circumstances.

Dr. Angela Skuce: I will make a comment on our capacity to provide medical examinations to all incoming applicants within the three-week period. As a country, we definitely do not have capacity for that, either in the private sector or with State employees. We are struggling as a country to provide adequate primary care and secondary care to protection applicants. As far as I am aware, Safetynet is the only organisation funded to provide medical examination and screening to recently arrived protection applicants. It is a very limited examination, with a focus on picking up infectious diseases. We see between 2,000 and 3,000 people a year. We definitely do not have the capacity at the moment to provide a medical exam to 20,000 or 30,000 people.

A lot of the people we see ask for a copy of their medical record and we give it to them. People are entitled to it. We know that the reason they are asking for it is to use it at their hearing for their application. We are very concerned about this because it is not a medical legal report. It is just a record of GP consultations, so we have started stamping them with that information because we are very concerned that the tribunals might be making decisions that are perhaps not appropriate because they may have inappropriate or inadequate information. To even be able to fulfil what is in the proposed legislation, Ireland would need to start recruiting and training doctors now, for sure. Good luck with that.

An Cathaoirleach: On that note, I again thank all our witnesses for taking the time to contribute to the debate on the general scheme, here in person and through the submission of their deliberations and opening statements. I propose that we publish the opening statements on the committee's website. Is that agreed? Agreed. I thank everybody. On behalf of the committee, I thank all the witnesses for their input. We have a number of housekeeping matters to deal with. I propose we go into private session. Is that agreed? Agreed.

The joint committee went into private session at 4.55 p.m. and adjourned at 5.20 p.m. until 3 p.m. on Tuesday, 4 November 2025.