

June 2025

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

Submission to the Committee on Justice, Home Affairs  
and Migration



ombudsman  
do leanaí  
for children

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## Introduction

The OCO is an independent and statutory human rights body, which was established in 2004 under the [Ombudsman for Children Act 2002](#) (2002 Act). Under the 2002 Act, as amended, the OCO has two core statutory functions:

- to promote the rights and welfare of children up to 18 years of age; and
- to examine and investigate complaints made by or for children about the administrative actions of public bodies, schools and voluntary hospitals that have, or may have, adversely affected a child.

The Ombudsman for Children's Office (OCO) welcomes the opportunity to provide observations on the [General Scheme of the International Protection Bill 2025](#) (General Scheme). Migrant children are amongst the most vulnerable children in the State who face multiple barriers to the realisation of their rights. In March, the OCO made a detailed submission to the Department of Justice, Home Affairs and Migration (Department) on the EU Pact on Migration and Asylum (Pact) and Ireland's National Implementation Plan (NIP).<sup>1</sup> In it we outlined how it is crucial that the implementation of the Pact takes due account of European and international children's rights standards that Ireland has an obligation to uphold. This means the State should set out explicitly how it intends to apply the legal instruments affecting children in line with Ireland's obligations under the [Charter of Fundamental Rights of the EU](#) (CFREU), the [UN Convention on the Rights of the Child](#) (UNCRC) and the [European Convention on Human Rights](#) (ECHR). This intention should also be set out clearly in the new International Protection Act.

The OCO notes the relatively short timeframe for written submissions for this large and complex piece of legislation. It is concerning that a number of placeholders for Heads are found throughout the General Scheme making it difficult to fully engage with its provisions, especially in relation to age assessments, legal advice and representation and alternatives to detention. The Oireachtas Committee on Justice must be given adequate time to examine draft provisions in these areas as part of its pre-legislative scrutiny of the General Scheme. Such provisions should not be introduced at a later stage of the legislative process.

The OCO reminds legislators of our mandate pursuant to section 7(1)(a) of the 2002 Act, which provides for the Ombudsman for Children to advise the Minister on the development and coordination of policy relating to children, and section 7(4) of the 2002 Act, which gives the Minister the power to request advice on any matter relating to the rights and welfare of children, including the probable effect on children of the implementation of proposals for legislation. We are happy and available to provide advice at any stage of the legislative process.

While the General Scheme includes some welcome measures to strengthen our system for family reunification and establish an independent monitoring mechanism on fundamental

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<sup>1</sup> Ombudsman for Children's Office (2025), [EU Pact on Migration and Asylum - Ireland's National Implementation Plan: Submission to the Department of Justice, Home Affairs and Migration](#).

rights, it signals a significant backslide on children's rights and human rights more broadly. As highlighted in a position paper by the European Network of Ombudspersons for Children (ENOC), the Pact's focus on rapid asylum and return procedures at borders might compromise the thoroughness of asylum assessments, leading to situations where individuals – including children - are deported before their claims are adequately considered. Accelerated procedures with more limited safeguards apply depending on the applicants' nationality, migration route or point of entry, making the right to appeal unrealistic for asylum seekers, including children, with the potential to compromise chances of a fair hearing and further threats to children's rights.<sup>2</sup> While we understand returns are part of an immigration system, the OCO is concerned that even now deportation orders are being carried out without any child rights impact assessment.<sup>3</sup> We have significant concerns that, if this legislation is enacted without sufficient safeguards for children's rights, it will increase the vulnerability of children seeking asylum, especially those arriving unaccompanied.

The repeal and replacement of the [International Protection Act 2015](#) (2015 Act) presents the State with the opportunity to ensure sufficient safeguards are in place and that our legal framework is in line with international human rights obligations. The Pact sets out the minimum standards that Member States must have in place, but it does not preclude Ireland from retaining or introducing any provisions that provide additional safeguards for human rights.

The International Protection Bill needs to be drafted with a view to ensuring that provisions relating to children incorporate the principles and provisions of the UNCRC and relevant international guidance. The publication of the General Scheme underlines why the OCO's new strategic priority is to drive the full and direct incorporation of the UNCRC into domestic law. This would mean taking the international obligations we have signed up to and giving them real force, making sure children's rights are fundamental in how we develop and design laws, policies and deliver public services for children.

The observations we provide are intended to strengthen the legislation to ensure children's rights are fully respected, protected and fulfilled.

## Child rights-based approach

In our submission to the Department on Ireland's NIP, the OCO recommended that the regulatory framework underpinning Ireland's NIP should apply the guarantees for children set out in the EU legislative instruments that make up the Pact.<sup>4</sup> It is welcome that Ireland's NIP states that it is "*anchored in the EU and the State's commitment to the delivery and protection of human rights*" in line with the CFREU, the ECHR, and the Convention Relating

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<sup>2</sup> European Network of Ombudspersons for Children (2025), [Ad-hoc Position Statement on the protection of children on the move at EU borders in light of the adoption of the EU Pact on Migration and Asylum](#).

<sup>3</sup> RTÉ News, [Principal says children distressed after 'two really popular boys' deported](#), 6 June 2025.

<sup>4</sup> Ombudsman for Children's Office (2025), [EU Pact on Migration and Asylum - Ireland's National Implementation Plan: Submission to the Department of Justice, Home Affairs and Migration](#).

to the Status of Refugees.<sup>5</sup> It also states that, “*The protection of fundamental rights will be at the forefront of Ireland’s implementation of the Pact.*”<sup>6</sup>

## Best interests of the child

Notwithstanding these statements, it is disappointing that the General Scheme is silent on the State’s obligation to uphold the best interests of the child as a primary consideration when applying the provisions of the EU legislative instruments. Each legislative instrument sets out explicitly that the best interests of the child must be a primary consideration for States when implementing the provisions therein that affect children, namely:

- Article 26(1) of the [Reception Conditions Directive](#) (RCD)
- Article 20(5) of the [Qualification Regulation](#)
- Article 22 of the [Asylum Procedure Regulation](#) (APR)
- Preamble paragraph 5 of the [Return Border Procedure Regulation](#)
- Article 23(1) of the [Asylum and Migration Management Regulation](#) (AMMR)
- Article 13(1) of the [Screening Regulation](#)
- Article 14(1) of the [Eurodac Regulation](#)

These provisions reflect the wider obligation to take the best interests of the child into account as a primary consideration in all matters affecting children, which is placed on the State by Article 3(3) of the Treaty of the European Union, Article 24(2) of the CFREU and Article 3 of the UNCRC.

The OCO welcomes that reference is made to the best interests of the child principle in certain sections of the General Scheme, some of which replicate pre-existing sections in the 2015 Act. We note however that, though provision is made for representatives appointed to unaccompanied children to ensure that the best interests of the child is taken into account in procedures carried out under the General Scheme (Heads 141(10)(a) and 141(12)(b)), no corresponding obligation to take into account the best interests of the child is placed on the officials who will be carrying out those procedures. The NIP refers to the requirement to assess and prioritise the best interests of the child at all stages of the procedure,<sup>7</sup> and the production of a best interests of the child report in the context of the AMMR procedures,<sup>8</sup> however no corresponding provisions are made for best interests assessments in the General Scheme. This is despite binding obligations placed on Ireland by the above listed legislative instruments to take the best interests of children into account.

We note that, though Head 141(10)(c) requires representatives appointed to unaccompanied children to “*assist the unaccompanied minor in providing information relevant to the assessment of the best interests of the child*”, no further reference is made in this Head or elsewhere in the General Scheme to a best interests assessment, including

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<sup>5</sup> Department of Justice (2025), [Brief on Ireland’s National Implementation Plan for the EU Migration and Asylum Pact](#), p. 2.

<sup>6</sup> Ibid., p. 8.

<sup>7</sup> Department of Justice (2025), [National Implementation Plan Ireland: Implementation of the Pact on Migration and Asylum](#), p. 99.

<sup>8</sup> Ibid., p. 92.

when a best interests assessment is to be conducted, who is responsible for conducting it and what an assessment entails. Furthermore, reference to a best interests assessment is absent in provisions applicable to children accompanied by their family. We also note the absence of a list of factors that must be taken into account when considering the best interests of the child as part of procedures under the General Scheme, in line with Article 26(2) of the RCD, Article 33(5) of the Qualification Regulation and Article 23(4) of the AMMR, and as is common practice in other areas of Irish law concerning children.<sup>9</sup>

We draw the Department's attention to our submission on the NIP and the reference made therein to, among other things, the European Commission's recommendations and operational checklist for implementation of the Pact, which require Member States to establish clear and early procedures for individual best interests assessments and prioritise these assessments in all procedures.<sup>10</sup>

## Recommendations

- *The General Scheme must include a requirement that the best interests of the child be a primary consideration in the implementation of the provisions of the General Scheme, whether as part of a section on general principles applicable to the Bill as a whole or included throughout the Bill in each section relevant to children, in line with EU law and European and international children's rights standards.*
- *The Department should clarify what a best interests assessment is for the purpose of the General Scheme, who is responsible for conducting such assessments and when they should be carried out, in respect of both accompanied and unaccompanied children.*
- *The General Scheme must include a non-exhaustive list of factors that should be taken into account when assessing the best interests of accompanied and unaccompanied children.*

## Views of the child

Articles 26(2)(d) of the RCD, 33(5) of the Qualification Regulation and 23(4)(d) of the AMMR, require the views of all children to be taken into account when assessing their best interests.

<sup>9</sup> See, for example: [Adoption Act 2010](#) (as amended), s 19(2); [Guardianship of Infants Act 1964](#) (as amended), s 31; [Child Care Act 1991](#) (as amended), s 24(2); [Health \(Assisted Human Reproduction\) Act 2024](#), s 66(3). See further: Committee on the Rights of the Child (2013), [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration](#), CRC/C/GC/14, paras. 50-51.

<sup>10</sup> European Commission (2024), [Recommendation on developing and strengthening integrated child protection systems in the best interest of the child](#), C(2024)2680 final, para. 55; European Commission (2024), [Commission Staff Working Document: Operational Checklist and List of Commission Implementing and Delegated Acts to be adopted for the Implementation of the Pact on Migration and Asylum](#), SWD(2024) 251 final, p. 22. See further: Ombudsman for Children's Office (2025), [EU Pact on Migration and Asylum - Ireland's National Implementation Plan: Submission to the Department of Justice, Home Affairs and Migration](#).

Articles 27(1) of the RCD, 23(2) of the APR and 33(5) of the Qualification Regulation, require the representative of unaccompanied children to take into account their views about their needs. Article 23(3) of the AMMR requires the unaccompanied child's representative to assist the child in the exercise of their right to be heard, throughout the procedure for determining the Member State responsible for them.

As is the case with the best interests of the child principle, these provisions reflect the wider obligation to take into account and give due weight to the views of the child in all matters affecting children, including as part of a best interests assessment, which is placed on the State by Article 3(3) of the Treaty of the European Union, Article 24(1) of the CFREU and Article 12 of the UNCRC.

The General Scheme is silent on the obligation to consider the views of children, including as part of best interests assessments, which is out of step with EU law. We welcome that Head 141(1)(b) reflects the duty placed by EU law on representatives appointed to unaccompanied minors to take their views about their needs into account. However, the General Scheme does not place a corresponding duty on officials carrying out the various procedures under the scheme to consider the views of children as part of a best interests assessment and is particularly silent on this matter when it comes to accompanied children.

## Recommendations

- ***The General Scheme must include a requirement for officials to take into account the views of accompanied and unaccompanied children and to give them due weight in the implementation of the provisions of the General Scheme.***

## Prohibition of detention (Heads 12, 45, 115 and 122)

In our submission on the NIP, we outlined that all forms of detention of children should be prohibited. In May 2024, the UN Committee on the Rights of the Child (UNCRC Committee) and other UN Special Procedures have called upon EU Member States to ban immigration detention of children, specifically in the context of the Pact.<sup>11</sup> They stressed that, *“migrant children should never be detained and should not be deprived of liberty for migration-related reasons, including due to their or their parents’ immigration status. Detention of migrant and asylum-seeking children because of their or their parents’ migration status is never in the best interests of a child and always a violation of children’s rights.”*<sup>12</sup> The UN Special

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<sup>11</sup> Office of the High Commissioner on Human Rights, [Child immigration detention must be prohibited following adoption of EU migration and asylum pact, UN experts say](#), 2 May 2024.

<sup>12</sup> Ibid.



Rapporteur on the human rights of migrants also recommended in 2024 that States should prohibit immigration detention of children and families in law, policy and practice.<sup>13</sup>

## Removal of safeguard from 2015 Act

Section 20(6) of the 2015 Act sets out an explicit prohibition of children from detention under the 2015 Act but in the General Scheme this is absent. Under Head 12 (arrest and detention for transfer to screening centre), Head 45 (detention of applicant for asylum and migration management), Head 115 (detention under the return border procedure) and Head 122 (detention of applicants), there is no explicit prohibition of the detention of children under the age of 18. Head 12(10) states that, *“Where a child under the age of 18 years is in the custody of any person (whether a parent or a person acting in loco parentis or any other person) and such person is detained under this section, the immigration officer or the member of An Garda Síochána concerned shall, without delay, notify the Child and Family Agency of the detention and of the circumstances thereof.”* This section is not found in the other Heads that refer to detention. There is also a lack of clarity as to what will happen to a child and the principles that will govern decisions made about a child in the event that the Child and Family Agency (Tusla) is notified. The absence of an explicit ban on the detention of children makes it legally possible, which is a significant concern for the OCO.

## Increased risk of detention and arrest of children when age is in doubt

In relation to unaccompanied children, the UNCRC Committee emphasises that unaccompanied or separated children face greater risks of detention and that, in application of Article 37 of the UNCRC and the principle of the best interests of the child, they should not, as a general rule, be detained.<sup>14</sup> Heads 12(9), 45(5)(b), and 86(8) state that, where an immigration officer or a member of An Garda Síochána *“has reasonable grounds for believing”* that a person *“is not under the age of 18 years”*, they may apply provisions on detention to that person *“as if he or she had attained the age of 18 years”*. It is not set out in the scheme what constitutes *“reasonable grounds”*. Inverting the presumption that a person is a child in cases where there is ambiguity as to the person’s age is contrary to international standards and generates a risk that a person under the age of 18 could be arrested and detained. While unaccompanied children are mostly likely to be impacted by this, children arriving with their families could also face a risk of detention and arrest where there is a doubt about their age.

## Potential for de-facto detention under the asylum border procedure

Part 12 of the General Scheme makes provision for the application of *“asylum border procedures”*. Head 105 gives the Minister discretion to apply the asylum border procedure where an application does not fulfil the conditions for entry to the State. Head 106

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<sup>13</sup> UN General Assembly (2024), [Report of the Special Rapporteur on the human rights of migrants, Gehad Madi: Children are children first and foremost: protecting child rights in migration contexts](#), A/79/213, para. 58(I).

<sup>14</sup> UN Committee on the Rights of the Child (2005), [General Comment No. 6 \(2005\) on the Treatment of unaccompanied and separated children outside their country of origin](#), CRC/GC/2005/6, para. 3 and 61.



mandates application of the asylum border procedure where applicants are deemed a national security risk, applicants are considered to have intentionally misled the authorities (such as by presenting false information, withholding relevant information or destroying identity documents), where there are reasonable grounds to consider applicants a danger to national security or public order or they had been forcibly expelled for these reasons before, or where applicants' country of origin has an EU-wide recognition rate of 20% or lower. While detention is not mandatory under the APR, detention may be applied in border procedures if deemed necessary and proportionate.

Head 110(1) exempts unaccompanied minors from the border procedure, unless there are reasonable grounds to consider the applicant a danger to national security or public order, or they had been forcibly expelled for these reasons before. However, Head 105 (conditions for applying the asylum border procedure) and Head 110 (exceptions to the asylum border procedure) are silent on children and families. The only reference to children is contained in Head 106 (mandatory application of the asylum border procedure) in circumstance where a person is held due to a national security threat, where subhead (2) states, *"the competent authority shall take appropriate measures to maintain as far as possible family unity in the asylum border procedure."*

We note that Ireland's NIP states that the Department will evaluate potential alternatives to detention for application in the border procedure, during screening, and during pre-return or deportation periods.<sup>15</sup> However, the Head on alternatives to detention is absent in the General Scheme. Additional safeguards are needed for children (accompanied and unaccompanied) to ensure detention or de-facto detention does not take place in the asylum border procedure.

## Recommendations

- ***Heads 12, 45, 115 and 122 should include the explicit prohibition of immigration-detention of children (accompanied or unaccompanied) in any circumstances, as called for by the UNCRC Committee and other UN Special Procedures as was the case in the 2015 Act.***
- ***The General Scheme should provide for clarity as to what will happen to a child who is in the custody of another person who has been detained pursuant to the Heads listed above and provide for decisions affecting a child in these circumstances to be made in accordance with their best interests and the principle of family unity.***
- ***Heads 12(9), 86(8), and 45(5) should either be deleted or, alternatively, replaced by a provision that makes express provision for the operation of a***

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<sup>15</sup> Department of Justice, Home Affairs and Migration (2025), [National Implementation Plan, Ireland: Implementation of the Pact on Migration and Asylum](#).

*presumption that a person is a child in cases where there is doubt as to the person's age.*

- *Insert a new Head on alternatives to detention and amend Head 106 and 107 to include a safeguard to ensure that the asylum border procedure is not implemented in such a way that results in de facto detention and provides for the freedom of movement of families with children whose applications are being examined while they reside in designated locations.*

## Presumption of adulthood (Heads 7, 12, 45 and 86)

Together with Heads 12(9), 45(5), and 86(8) discussed in the previous section on detention, Head 7(4) (taking of biometric data) provides that, where there is ambiguity as to an applicant's age, a presumption of adulthood is applied. The General Scheme does not make it clear whether or not an age assessment must be conducted in these circumstances where ambiguities arise as to a person's age. The OCO also notes that the express requirement in Article 14(1) of the Eurodac Regulation that Member States must apply the benefit of the doubt to children under 6, in cases where there is a doubt as to the child's age, is not reflected in the provisions of Head 7 in the General Scheme.

These provisions, and the absence of provision for the benefit of the doubt, pose risks to children who face breaches of their rights and loss of safeguards that have otherwise been put in place for children under the General Scheme, in cases where the authorities make an incorrect assumption about their age. The inversion of the presumption of minority would bring the General Scheme out of step with the European and international human rights standards that Ireland has signed up to and that the Department's NIP commits to upholding, including:

- Children's right to special protection as a refugee or asylum-seeker and to freedom from arbitrary detention under Article 22 and Article 37(b) of the UNCRC;
- The UNCRC Committee's General Comment No. 6 on the treatment of unaccompanied and separated children;<sup>16</sup>
- The UNCRC Committee's General Comment No. 23 on State obligations regarding the rights of children in the context of migration;<sup>17</sup>
- The UNCRC Committee's concluding observations following its review of Ireland in 2023, which stated that Ireland should ensure respect for the principle of the benefit of the doubt in cases of doubt as to a child's age;<sup>18</sup>

<sup>16</sup> Committee on the Rights of the Child (2005), [General Comment No. 6 \(2005\), Treatment of unaccompanied and separated children outside their country of origin](#), para. 31(i).

<sup>17</sup> Committee on the Rights of the Child and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2017), [Joint general comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 \(2017\) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#), CMW/C/GC/4-CRC/C/GC/23, para. 4.

<sup>18</sup> Committee on the Rights of the Child (2023), [Concluding observations on the combined fifth and sixth periodic reports of Ireland](#), CRC/C/IRL/CO/5-6, para. 40(e).

- Children’s right to respect for their private life under Article 8 of the ECHR and judgments of the European Court of Human Rights which state that the presumption of minority is an inherent element of this right;<sup>19</sup>
- The recommendation on human rights principles and guidelines on age assessment in the context of migration adopted by the Council of Europe Committee of Ministers;<sup>20</sup>
- The EU Agency for Asylum’s guidance on age assessment;<sup>21</sup>
- Article 13(2) of [Directive 2011/36/EU](#) (EU Anti-Trafficking Directive);
- Article 10(3) of the [Council of Europe Convention on Action against Trafficking in Human Beings](#).

The OCO had raised its concerns with similar provisions in the 2015 Act prior to its enactment.<sup>22</sup> Though these provisions mirror what is already expressed in parts of the 2015 Act, it is disappointing to see them reproduced in this General Scheme. It is at this point that we urge the State to apply the standards listed above and ensure the fullest possible protection to all children seeking asylum in Ireland.

## Recommendations

- *The General Scheme should make explicit provision in Heads 7, 12, 45 and 86 for the operation of a presumption that a person is a child when there is ambiguity as to a person’s age and for as long as such ambiguity persists.*
- *If provision is made for a presumption of adulthood, the General Scheme must first provide for age assessments to be conducted in line with international standards and safeguards relevant to age assessment, including that: a decision to initiate an age assessment must be clearly necessary, following serious and substantiated doubts; provision should be made for applicants to challenge such decisions by way of review; and applicants should be provided with child-friendly information on the remedies available to them.*

## Age assessments

Head 110(1)(b) set out the requirement to carry out an age assessment where there is doubt as to the applicant’s age, however the Head on age assessment that it refers to is absent from the General Scheme. The OCO is disappointed that the General Scheme is silent on the matter of age assessments, which precludes public scrutiny of the proposed age assessment

<sup>19</sup> [Darboe and Camara v Italy](#), no. 5797/17, [153-154].

<sup>20</sup> Council of Europe Committee of Ministers (2022), [Recommendation CM/Rec\(2022\)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration](#), Principle 2.

<sup>21</sup> European Asylum Support Office (2018), [EASO Practical Guide on age assessment: Second edition](#).

<sup>22</sup> Ombudsman for Children’s Office (2015), [Initial Observations of the Ombudsman for Children on the General Scheme of the International Protection Bill 2015](#), p. 9.

process, a process that has raised considerable human rights concern in the past. The Oireachtas Committee on Justice must be given adequate time to examine draft provisions on age assessment as part of its pre-legislative scrutiny of the General Scheme. Such provisions should not be introduced at a later stage of the legislative process.

The OCO has already set out its recommendations on age assessments of children in its submission on the NIP, which should inform the drafting of the Heads on age assessment, together with the following international and European children's rights standards:

- Children's right to have their best interests taken as a primary consideration, to preserve their identity, to respect for their views, and to special protection as a refugee or asylum-seeker under Article 3, 8, 12 and 22 of the UNCRC;
- The UNCRC Committee's General Comment No. 6 on the treatment of unaccompanied and separated children;
- The UNCRC Committee's General Comment No. 23 on State obligations regarding the rights of children in the context of migration;
- The UNCRC Committee's concluding observations following its review of Ireland in 2023;
- The UNCRC Committee's jurisprudence setting out safeguards that must be part of age assessment procedures;<sup>23</sup>
- Children's right to respect for their private life under Article 8 of the ECHR and judgments of the European Court of Human Rights on age assessment;<sup>24</sup>
- The recommendation on human rights principles and guidelines on age assessment in the context of migration adopted by the Council of Europe Committee of Ministers;
- The EU Agency for Asylum's guidance on age assessment;
- [Directive 2011/36/EU](#) (EU Anti-Trafficking Directive);
- [Council of Europe Convention on Action against Trafficking in Human Beings](#).

## Recommendations

- ***We urge the Department to include provisions on age assessment in a revised draft of the General Scheme prior to the Oireachtas Committee on Justice's pre-legislative scrutiny of the General Scheme.***
- ***The Heads on age assessment must be informed by international and European children's rights standards and the OCO's submission on the NIP.***

<sup>23</sup> See for example: Committee on the Rights of the Child (2019), [Communication No. 11/2017](#) (NBF v Spain), CRC/C/79/D/11/2017; Committee on the Rights of the Child (2019), [Communication No. 16/2017](#) (AL v Spain), CRC/C/81/D/16/2017; Committee on the Rights of the Child (2023), [Communication No. 130/2020](#) (SEMA v France), CRC/C/92/D/130/2020; Committee on the Rights of the Child (2024), [Communication No. 80/2019](#) (AM v Switzerland), CRC/C/96/D/80/2019.

<sup>24</sup> [Darboe and Camara v Italy](#), no. 5797/17; [AC v France](#), no. 15457/20; [FB v Belgium](#), no. 47836/21.

## **Special reception needs and special procedural guarantees (Heads 11, 19 and 31)**

Article 25 of the RCD requires the State to assess whether an applicant has special reception needs, as early as possible after an application for international protection is made (commonly referred to as a vulnerability assessment, or vulnerability checks in the case of the General Scheme). In this regard, Article 24 of the RCD requires the State to take into consideration the fact that children and unaccompanied children are more likely to have special reception needs. Article 25 of the RCD further provides that where special reception needs become apparent at a later stage in the procedure for international protection, Member States must assess and address those needs.

Similarly, the APR recognises certain applicants may be in need of special procedural guarantees due to their age and requires States to provide specific child-sensitive procedural safeguards and special reception conditions to children. Article 21 of the APR provides that applicants identified as being in need of special procedural guarantees are entitled to necessary support to benefit from the rights and comply with obligations throughout the international protection process. Article 20(1) of the ARPR requires the State to individually assess whether an applicant is in need of special procedural guarantees, with the assistance of an interpreter, where needed. It states that this assessment may be integrated into existing national procedures or the vulnerability assessment under Article 25 of the RCD. Article 20(2) requires this assessment to be initiated as early as possible after an application is made and information on any indications of special procedural guarantees required is to be made available to the authority responsible for determining an international protection application.

Head 19(1) makes provision for preliminary assessments to be conducted as part of the screening procedure to identify applicants with special needs under Article 25 of the RCD and Article 20 of the APR. Head 19(3) provides that applicants identified as having special reception needs shall receive timely and adequate support in adequate facilities and Head 19(4) states that children who are identified as having special reception needs shall be given such support in a child-friendly and age-appropriate manner by personnel trained and qualified to deal with children and in cooperation with Tusla. Similarly, Head 31(1) requires the Minister to provide necessary support to applicants identified as being in need of special procedural guarantees throughout the international protection process.

While we welcome these provisions, we note that there is no provision that provides for special reception needs and special procedural guarantees to be assessed after, or separate to, the screening procedure, in order to ensure that special reception needs and special procedural guarantees arising at a later stage are identified and addressed as required by Article 25 RCD. The OCO had previously highlighted that the full extent of the needs of

children seeking international protection may only become evident over time and that new vulnerabilities can arise for such children while awaiting a decision on their application.<sup>25</sup>

We also note that Head 11(3) exempts children whose parent or guardian holds a valid registration certificate under section 9 of the [Immigration Act 2004](#), and who make a *sur place* international protection application, from attending a screening centre to undergo screening, however it is unclear whether such children will be assessed for special reception needs or special procedural guarantees, as is their entitlement under Article 25 of the RCD and Article 20 APR. Though Head 11(5) gives the Minister discretion to make alternative arrangements to conduct assessments for such children, this falls short of an obligation to do so.

## Recommendations

- *The Department should make provision in the General Scheme for vulnerability assessments to be conducted after the screening procedure so as to allow for the identification of special reception needs and special procedural guarantees that may arise at a later stage of the international protection process.*
- *Vulnerability assessments should be carried out in respect of all children, both accompanied and unaccompanied, including children who are not subject to, or have not undergone, the screening procedure.*

## Unaccompanied children (Part 16)

It is positive to see that the General Scheme includes provisions that set out the responsibilities of the State towards unaccompanied children, following calls by the OCO and other organisations over many years for such recognition in law.

### Independent guardianship model

Head 141(1) provides that Tusla may designate one or more organisations to be representative organisations and Head 141(2) provides that Tusla can designate itself to be a representative organisation for the purpose of carrying out the functions under the General Scheme. In our submission to the Department on the NIP,<sup>26</sup> and previous OCO submissions on international protection legislation,<sup>27</sup> we recommended the introduction of a

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<sup>25</sup> Ombudsman for Children's Office (2020), [Department of Children, Equality, Disability, Integration and Youth: White Paper on international protection accommodation Submission by the Ombudsman for Children's Office](#), p. 6.

<sup>26</sup> Ombudsman for Children's Office (2025), [EU Pact on Migration and Asylum - Ireland's National Implementation Plan: Submission to the Department of Justice, Home Affairs and Migration](#).

<sup>27</sup> Ombudsman for Children's Office (2015), [Initial Observations of the Ombudsman for Children on the General Scheme of the International Protection Bill 2015](#), p. 6; Ombudsman for Children's Office (2008), [Advice of the Ombudsman for Children on the Immigration, Residence and Protection Bill 2008](#), p. 5.



professional and properly qualified representative/guardian model for unaccompanied children that is independent of Tusla and in line with international standards.<sup>28</sup>

## Recommendations

- *The OCO reiterates its recommendation that the General Scheme should provide for the designation of an independent organisation to act as a representative or guardian for unaccompanied children and that this should be distinct from the role played by Tusla and the child's social worker.*

### Interaction with the Child Care Act 1991

Head 141(7) provides that Tusla may provide child care services to an unaccompanied minor whether or not they are in the care of Tusla pursuant to a court order under the [Child Care Act 1991](#), as amended (the 1991 Act). Though this provision is welcome, the OCO believes that this provision can be strengthened in a number of ways to ensure that unaccompanied children receive services regardless of their care status and in line with Ireland's European and international human rights standards.

The provision leaves considerable discretion to Tusla to determine how the 1991 Act shall apply to unaccompanied children and whether or not to apply the provisions of the 1991 Act to unaccompanied children who are not the subject of a care order. Though the OCO is aware that the review of the 1991 Act is ongoing and reiterates its previous recommendations concerning unaccompanied children in relation to that review, we believe that the General Scheme presents an opportunity to clarify how unaccompanied children are to be treated as regards their care status.

In particular, we reiterate our concerns as previously expressed about the inappropriate use by Tusla of Section 5 of the 1991 Act for unaccompanied children. Among the concerns that we have with Section 5 is the lack of an entitlement to aftercare for unaccompanied children accommodated by Tusla under Section 5. It is the OCO's view that every unaccompanied child should have access to aftercare on account of being an unaccompanied child, regardless of their age or their care and immigration status. We note Tusla's previous statements that there is a need for the right to aftercare services for unaccompanied children,<sup>29</sup> and would welcome amendments to legislation in line with this. Another concern that we have with the use of Section 5 is that children are not entitled to an allocated social worker. This contrasts significantly with children taken into the care of Tusla under a care order who are entitled to an allocated social worker who, under section 18(3)(a) of the 1991 Act, has "the like control over the child as if it were his parent". It is not clear if the use of

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<sup>28</sup> See further: EU Agency for Fundamental Rights (2022), [Guardianship systems for unaccompanied children in the European Union: Developments since 2014](#); Separated Children in Europe Programme (2019), [Statement of Good Practice 5th revised edition](#).

<sup>29</sup> Houses of the Oireachtas, [Joint Committee on Children, Equality, Disability, Integration and Youth debate](#), 27 June 2023.



section 5 of the 1991 Act to accommodate unaccompanied children would meet the definition and standards required of a representative for the purpose of the Pact.

## Recommendations

- *Head 141(7) should be amended to provide that Tusla “must provide child care services to an unaccompanied minor ... whether or not the minor is in the care of the Agency pursuant to an order a court under the Child Care Acts 1991 to 2024.”*
- *The Committee on Justice should give consideration to amendments that will need to be made as part of the review of the 1991 Act in its work on the General Scheme’s provisions relating to unaccompanied children and work with the Committee on Children, Education and Disability in this regard. The OCO does not believe that section 5 of the 1991 Act in its current form should be used in respect of any unaccompanied child, regardless of their age.*

## Training and responsibility to lodge and register applications

A representative defined under EU law is required to have the necessary skills and expertise to safeguard the best interests of unaccompanied minors and their general wellbeing so that they can benefit from the rights, and comply with the obligations, set out in the EU legislative instruments that come within the Pact. To effectively represent and assist unaccompanied minors in the various procedures set out under those instruments, to safeguard their best interests, and to ensure that unaccompanied children in their care have timely access to a secure immigration status that is reflective of their circumstances, it is vital that representatives have the necessary understanding of the immigration and asylum system. The EU Agency for Asylum and EU Fundamental Rights Agency have underlined the need for guardians or representatives to be qualified and equipped to deal with the wide variety of laws and procedures that regulate asylum, migration and other issues they may need to deal with.<sup>30</sup>

Representatives of unaccompanied minors will not only require knowledge of the procedures set out under the General Scheme but will require an understanding of the immigration system as a whole and the impact that a child’s immigration status has on their access to services. For example, once unaccompanied children receive permission to remain in the State whether as a refugee, through relocation or through another immigration permission, children aged 16 and 17 are currently legally obliged to register with Immigration Service Delivery<sup>31</sup> and an unaccompanied child’s representative should have the necessary knowledge to assist the child to navigate these requirements. Reports have

<sup>30</sup> EU Agency for Asylum and EU Fundamental Rights Agency (2024), [Practical Tool for Guardians: Transnational procedures in the framework of international protection](#), p. 7.

<sup>31</sup> [Immigration Act 2004](#) (as amended), s 9. We note that Head (e)(ii) intends to amend the Immigration Act 2004 to require the registration of children from the age of 6.

documented however that unaccompanied children do not always obtain a timely, appropriate immigration status in Ireland due to a range of factors, including delayed submission of applications for international protection or other immigration permission on their behalf, delayed registration, failure to register due to lack of awareness among children and their social workers, or receipt of an incorrect immigration stamp, which has knock-on effects on children's access to education, services and citizenship down the line, among other areas of their lives.<sup>32</sup>

Head 26(1) only provides for persons aged 18 and over to make an application for international protection on their own behalf; a child, whether accompanied or unaccompanied, is not entitled to register and lodge an application for international protection on their own behalf under the General Scheme. Instead, Head 26(1)(a)(ii) provides that an adult aged 18 and over responsible for the care of a child may apply for international protection on behalf of the child. However, the General Scheme is ambiguous as to who is responsible for making an application on behalf of an unaccompanied child. Head 141(10)(g) states that a representative appointed to an unaccompanied minor shall either assist with the registration and lodging of the application or register and lodge the application on behalf of the unaccompanied minor. While we understand that the inclusion of the term 'assist' mirrors the language used in Article 23 of the APR, it is not clear what assistance may mean in the context of the General Scheme, given that Irish law does not permit children to lodge or register applications on their own behalf.

## Recommendations

- ***Head 141(11) should be amended to include a requirement that persons appointed as representatives under Head 141(5) shall receive initial and continuous appropriate training concerning the procedures under the General Scheme as well as the domestic legal and administrative migration and asylum framework relevant to children.***
- ***Head 141 should be clear and explicit as to the person or organisation that is responsible for lodging and registering an application on behalf of an unaccompanied child, short of granting children the entitlement to make an application on their own behalf under the General Scheme.***

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<sup>32</sup> Immigrant Council of Ireland and Irish Refugee Council (2022), [NGO Report to the UN Committee on the Rights of the Child: The Republic of Ireland's Implementation of the UNCRC](#); S. Arnold (2020), [Pathways to Irish Citizenship: Separated, Stateless, Asylum Seeking and Undocumented Children](#); S. Groarke and S. Arnold (2018), [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#); K. Mannion (2016), [Child Migration Matters](#).

## Legal assistance, advice, counselling and representation (Heads 17, 77 and 122)

Head 17(1)(c) refers to the right to legal counselling and the possibility to obtain self-funded legal advice. Head 77(8) refers to access to legal representation and Head 122(14)(a)-(b) refers to the entitlement to consult a legal representative and to seek legal assistance and legal representation. However, the Head that they refer to is absent from the General Scheme. Furthermore, that absent Head is referred to differently in the General Scheme, for example “*legal counselling/ representation*” under Head 41(2)(g), and “*free legal assistance, representation and counselling*” under Head 77(8) and “*legal representation*” under Head 122(14)(a). While legal assistance is defined under Head 2 as legal aid or legal advice as set out in the [Civil Legal Aid Act 1995](#), a definition for legal counselling is not provided under Head 2.

As outlined in our submission on the NIP, it is not clear under Article 16 of the APR what qualifies as free legal counselling. This is important as the APR states that applicants can only access free legal counselling when lodging an asylum claim, with free legal assistance only provided for under appeal. Given the fundamental importance of access to legal assistance, advice and counselling for both adults and children, it is very concerning to not have clarity on how the General Scheme will provide for this important aspect of the international protection process.

We note that the NIP states that the Department is currently analysing how to restructure the provision of legal aid to fulfil the State’s obligations under the Pact measures in relation to legal counselling, legal assistance and legal representation, which may require changes to civil legal aid legislation.<sup>33</sup> It states that the legislation is complex with many interconnected legal instruments and will require an in-depth analysis to identify where changes will be required, and that the Department is consulting with stakeholders on the appropriate approach to be taken.

The provisions for access to legal assistance, advice and counselling are not clearly laid out in the General Scheme, making it difficult to provide a comprehensive analysis. Nevertheless, it is important to emphasise that ensuring free, quality legal advice and representation for migrant, asylum-seeking and refugee children is in their best interests, especially if we consider the complexity of the asylum procedure, its restrictive nature and the tight deadlines imposed.<sup>34</sup> The UNCRC Committee emphasises that unaccompanied children

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<sup>33</sup> Department of Justice, Home Affairs and Migration (2025), [National Implementation Plan, Ireland: Implementation of the Pact on Migration and Asylum](#).

<sup>34</sup> See also: UN Committee on the Rights of the Child (2017), [Joint general comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 \(2017\) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#), CMW/C/GC/4-CRC/C/GC/23, paras. 16 and 17(f); and [Joint General Comment No. 3 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 \(2017\) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration](#), CMW/C/GC/3-CRC/C/GC/22, para. 32(c).

should, in all cases, be given access, free of charge, to a qualified legal representative, including where the application for refugee status is processed under the normal procedures for adults.<sup>35</sup> The Council of Europe Guidelines on child-friendly justice provide that children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties.<sup>36</sup> They should also have access to free legal aid, under the same or more lenient conditions as adults.

Head 17(4) provides that information should be provided in a child friendly and age-appropriate manner. While this is welcome, in our submission on the NIP, we recommended that professionals and lawyers representing children should be trained in and knowledgeable on children's rights, receive ongoing and in-depth training, and be capable of communicating with children at their level of understanding.

## Recommendations

- *The General Scheme must ensure that free legal counselling equates with free legal advice to safeguard children's rights during the asylum application process.*
- *The General Scheme should provide the legal basis to ensure that the administrative and appeal procedures be informed at all times by the right of the child to have his/her interests taken into account as a primary consideration.*
- *The General Scheme must ensure that children accompanied by their family will not be deported while waiting for an appeal decision as this is contrary to their best interests.*
- *The General Scheme should provide that professionals be trained in child friendly practice, and his/her role should include providing information regarding access to legal advice and support in a child friendly way and with the support of interpreter services.*

## Independent monitoring mechanism (Part 15)

### Definition of fundamental rights

Part 15 sets out the Provisions for the Chief Inspector of Asylum Border Procedures which aims to fulfil the Pact's requirement for an independent mechanism to monitor compliance with fundamental rights. It refers to the Constitution, CFREU and the ECHR when defining

<sup>35</sup> UN Committee on the Rights of the Child (2005), [General Comment No. 6 \(2005\) on the Treatment of unaccompanied and separated children outside their country of origin](#), CRC/GC/2005/6, para. 69.

<sup>36</sup> Council of Europe (2010), [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), paras. 37-39.

fundamental rights. It does not refer to children's rights, but we note that the NIP states that the Independent Monitoring Mechanism should have responsibility for monitoring compliance with the best interest of the child principle. In the UNCRC Committee's General Comment No. 14, it states that the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognised in the UNCRC and the holistic development of the child.<sup>37</sup>

Article 24 of the CFREU enshrines children's right to protection and care, their right to express their views and their right to have their best interests taken as a primary consideration in all actions and decisions taken by public or private institutions. The explanations relating to the CFREU states that Article 24 is based on the UNCRC.<sup>38</sup> The legislative instruments that make up the Pact also refer throughout to the UNCRC as the basis for provisions concerning the rights of the child. The OCO suggests that there is an opportunity to strengthen the General Scheme from a children's rights perspective by including direct reference to the UNCRC in Head 123.

## Remit of Chief Inspectorate

We note that the Chief Inspectorate's remit only covers the asylum border procedures and not all activities provided for in the General Scheme, in particular screening procedures. Although Ireland cannot opt-in to the Schengen border measures in the Pact, particularly the Screening Regulation, we understand that it is intended that Irish legislation will align with them.<sup>39</sup> Ireland's NIP states that, *"The Minister for Justice intends to establish an independent fundamental rights monitoring mechanism, as provided for in the Screening Regulation and the Asylum Procedure Regulation. The monitoring body will have responsibility for covering all activities undertaken by the MS in implementing the Screening Regulation and will have the power to issue annual recommendations."*<sup>40</sup> It is important that this is reflected in the General Scheme to ensure fundamental rights are protected in the screening procedures.

## Advisory Board to the Chief Inspectorate

Head 128 provides for the establishment of an Advisory Board to the Chief Inspector and Head 129(2)(b) lists the Ombudsman for Children as a member. It is welcome that the Department have considered the UN High Commissioner for Refugees (UNHCR) guidance on the design and development of a potential model, including recommendations for the establishment of an advisory board to operate concurrently with the mechanism and to support the mechanism's functioning and independence, as referenced in page 108 of the

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<sup>37</sup> UN Committee on the Rights of the Child (2013), [General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration](#), CRC/C/GC/14, para. 4. The Committee expects States to interpret development as a "holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development" (General Comment No. 5, para. 12).

<sup>38</sup> Official Journal of the European Union, [Explanations relating to the Charter of Fundamental Rights](#), 2007/C 303/02, *Explanation on Article 24 — The rights of the child*.

<sup>39</sup> Department of Justice, Home Affairs and Migration (2025), [National Implementation Plan, Ireland: Implementation of the Pact on Migration and Asylum](#).

<sup>40</sup> Ibid.

NIP. The OCO would welcome engagement with the Department to understand how this will work in practice, considering our current remit and powers, as well as any resource requirements.

## Recommendations

- *The General Scheme should be amended to expand the Chef Inspectorate remit to cover screening procedures as well as the asylum border procedure.*
- *Head 123 should include in its definition on fundamental rights a reference to the UNCRC, giving practical effect to the interpretation and implementation of Article 24 of the CFREU.*
- *The Department should seek the views and expertise of national human rights-monitoring mechanisms, NGOs, and academics in relation to the establishment of the monitoring mechanism, as advised in the EU Fundamental Rights Agency's practical guidance,<sup>41</sup> and should engage with named Advisory Board Members to assess the scope of their remit as set out in the General Scheme.*

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<sup>41</sup> EU Agency for Fundamental Rights (2024), [\*Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms\*](#).