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Strengthening the International Protection Bill 2026 from a Children's Rights Perspective

**Recommendations from the Ombudsman for
Children's Office**



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Executive Summary

The International Protection Bill 2026 does not provide sufficient safeguards for the rights of migrant children as required by international human rights law and the legislative framework of the EU Pact on Migration and Asylum.

The Ombudsman for Children's Office (OCO) has identified three priority areas which must be addressed by legislators as the Bill moves through the Oireachtas.

1. **Best interests of the child.** Ireland is obliged to ensure that the best interests of the child are treated as a primary consideration in all actions affecting children. This is not fully reflected in the Bill as drafted.
2. **Age assessment.** The consequences of an age assessment framework that is not human rights compliant could be extremely grave for affected children. Additional safeguards must be added, and the use of medical exams should be removed.
3. **Detention of children.** The immigration detention of a child is never in their best interest and is always a violation of their rights. The Bill must explicitly prohibit the immigration detention of children.

To strengthen safeguards and minimise the risk of real harm to children, the OCO recommends the amendments below. Please note that draft text for each amendment is provided in *italics* under the relevant section of this document.

- Amend **Section 2 (Interpretation)** to:
 - Mainstream the application of the best interests principle across all sections of the legislation relevant to children.
 - Set out a non-exhaustive list of factors that should be taken into account when assessing the best interests of accompanied and unaccompanied children.
- The OCO further recommends that guidance is published as part of the Pact Implementation Plan for relevant practitioners or officials required to assess the best interests of the child under any Section of the Bill. Section 7(1)(a) of the Ombudsman for Children Act 2002, which provides for the Ombudsman for Children to advise the Minister on the development and coordination of policy relating to children, can be utilised in the development of such guidelines.
- Amend **Section 52 (Age assessments)** to:
 - Specify that doubts about a young person's age must be serious and substantiated.
 - State that applicants will be given the benefit of the doubt and presumed to be minors during the age assessment process.
 - Reflect the minimum procedural safeguards established by the Moke Principle.
- Amend **Section 53 (Multi-disciplinary assessments)** to state that young people will be given the opportunity of having an interview as an additional non-medical method of assessing their age.
- Delete the following:
 - **Section 54 (Medical examination to determine age)** and **sub-section 52(3)(b)**.
 - **Section 55 (Age assessment in Member State other than the State)**.

- Amend **Section 56 (Request by applicant for further age assessment)** to increase the timeframe within which a young person can make an appeal from 10 to 30 working days.
- Delete **Section 60 (Regulations)**. The Minister should bring forward an amendment to Section 52 to detail which body is responsible for the age assessment process and the qualifications required by individuals carrying out multi-disciplinary assessments.
- Delete **Sections 24(11), 24(12), and 24(13)** and replace with a subsection that explicitly prohibits the immigration detention of children, unaccompanied or otherwise, during the screening procedure. Insert subsection which explicitly applies the presumption of minority for age-disputed people during the screening procedure.
- Delete **Sections 87(8), 161(7), 168(6)** and replace with subsections that apply the presumption of minority for age-disputed people during transfer, return, and return border procedures.
- Sufficient time must be given to the scrutiny of forthcoming amendments to **Section 126**, and those relating to the provisions of the Reception Conditions Directive, regarding restrictions on movement under the asylum border procedure. A new subsection should be inserted which explicitly states that children should retain general freedom of movement, to ensure they are not *de facto* detained, and that they retain their right to have special reception needs recognised.

Introduction

The Ombudsman for Children's Office (OCO) is an independent and statutory human rights body, established in 2004. 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.

Migrant children are amongst the most vulnerable children in the State. They face multiple barriers to the realisation of their rights. The implementation of the EU Pact on Migration and Asylum ("the Pact") will directly affect migrant children arriving in Ireland, whether they are seeking asylum or are migrating for other reasons.¹ It is crucial that 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).

As drafted, the International Protection Bill 2026 **increases the vulnerability of children** seeking asylum, especially those arriving unaccompanied, which is the opposite of what we should expect from new laws. It does not provide sufficient safeguards for the rights of migrant children as required by international human rights law and the Pact's legislative framework.

The OCO shares the concerns of the Irish Human Rights and Equality Commission (IHREC), the Children's Rights Alliance and the Civil Society Coalition on the EU Migration and Asylum Pact in regard to legal counselling, the independence of the Chief Inspector of Border Procedures, the preliminary nature of vulnerability assessments, the lack of clarity surrounding the independence of the representative service for unaccompanied minors and the absence of provisions relating to family reunification.

Due to the potential harm to children, we have focused our analysis of the legislation on three priority areas:

1. Best interests of the child
2. Age assessments
3. Detention of children

These areas require urgent attention during Committee Stage to strengthen safeguards and minimise the risk of real harm to children.

¹ The OCO has previously articulated serious concerns about Ireland's implementation of the Pact in written submissions on Ireland's [National Implementation Plan](#) and the [General Scheme of the International Protection Bill 2025](#), and in [our discussions with the Joint Committee on Justice, Home Affairs and Migration](#) during pre-legislative scrutiny.

Best interests of the child (throughout the Bill)

The best interests of the child is a foundational principle of the UN Convention on the Rights of the Child (UNCRC). It is vital to ensuring children's full and effective enjoyment of all their rights. Under Article 3 of the UNCRC, **Ireland must ensure that the best interests of the child are treated as a primary consideration in all actions affecting children.** This obligation is reinforced by Article 3(3) of the Treaty of the European Union and Article 24(2) of the Charter of Fundamental Rights of the EU.

While the OCO welcomes the application of the best interests principle to some aspects of the Bill, such as age assessments, screening procedures and reception facilities, this should be a primary consideration for all sections of the legislation relevant to children. Each legislative instrument of the Pact 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.² However, this is not fully reflected in the Bill.

Furthermore, the use of the principle throughout the legislation is inconsistent, with weaker formulations used in some instances. For example, Sections 10 and 12 allow the return of unaccompanied minors to other countries when it is "not contrary" to their best interests. The OCO is extremely concerned by the inversion of the best interests principle in relation to detention, which allows children to be detained when it is deemed to be in their "best interest". As noted in our analysis of these provisions (pages 7-8), the immigration detention of a child is **never** in their best interest and is always a violation of their rights.

A further concern is the absence of guidance on when a best interests assessment is to be conducted, who is responsible for conducting it and what an assessment entails, in respect of both accompanied and unaccompanied children. The development of processes for best interests assessments and the prioritisation of same within international protection processes and reception conditions is required under the Pact.³ The legislation does not include a list of factors that must be taken into account when considering the best interests of the child as part of procedures under the Bill. The inclusion of such a list is set out in several instruments of the Pact⁴ and is common practice in other areas of Irish law concerning children, such as the Adoption Act 2010, as amended.⁵ It is essential that anyone working with children in the international protection system is appropriately trained to assess their best interests.

² Article 26(1) of the Reception Conditions Directive (RCD)
Article 20(5) of the Qualification Regulation (QR)
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

³ Article 26 (1) RCD, Article 22(1) of the APR, Article 23(1) of the AMMR, Article 20(5) of the QR.

⁴ Article 26(1) of the RCD, Article 33(5) of the QR and Article 23(4) of the AMMR.

⁵ Section 9, Best interests of child and views of child, Adoption (Amendment) Act 2017:
<https://www.irishstatutebook.ie/eli/2017/act/19/section/9/enacted/en/html#sec9>.

Recommendations

- Amend Section 2 (Interpretation) to (1) mainstream the application of the best interests principle across all sections of the legislation relevant to children, and (2) set out a non-exhaustive list of factors that should be taken into account when assessing the best interests of accompanied and unaccompanied children.

*“In page 23, section 2, after subsection (2), to insert the following new subsection:
(3) (a) In the application and interpretation of this Act, the best interests of the child shall be a primary consideration in all matters affecting a person who is a minor or who is presumed to be a minor.*

(b) In determining for the purposes of subsection (a) what is in the best interests of the child, the following factors shall be taken into account:

- (i) the views of the child, having regard to the child’s age and maturity,*
- (ii) the child’s identity, including their age, gender, sexual orientation, nationality and religion,*
- (iii) safety, welfare and development needs,*
- (iv) preservation of family relationships,*
- (v) any particular vulnerabilities of the child, and*
- (vi) any other particular circumstances pertaining to the child concerned.”*

- The OCO further recommends that guidance is published as part of the Pact Implementation Plan for relevant practitioners or officials required to assess the best interests of the child under any Section of the Bill. Section 7(1)(a) of the 2002 Ombudsman for Children Act, which provides for the Ombudsman for Children to advise the Minister on the development and coordination of policy relating to children, can be utilised in the development of such guidelines.

Age assessments (Part 3, Chapter 3, Sections 51-60)

The OCO welcomes the following components of the age assessment process set out in the Bill:

- A clear statement that the best interests of the child shall be a primary consideration during the age assessment process (Section 51).
- The use of multi-disciplinary assessments, including a psycho-social assessment, to ascertain age (Section 53).
- The application of the presumption of minority if the age assessment process is inconclusive (Sections 53(2)(c) and 54(5)(c)).
- The option for an applicant to request a further age assessment (Section 56).

However, there are serious human rights concerns about this section of the legislation. Age assessment is a complex and sensitive process. **The consequences of an age assessment framework**

that is not human rights compliant could be extremely grave for affected children. Unaccompanied minors are the most likely cohort to be subject to age assessments. This is a vulnerable population with complex needs who require special protections. These children could be subjected to traumatic experiences during the process and, if incorrectly assessed, they face the loss of child-specific safeguards in the international protection process and the enjoyment of their rights under the UN Convention on the Rights of the Child.

The UN Committee on the Rights of the Child states that age assessments should be carried out in a scientific, safe, child and gender-sensitive and fair manner, respectful of the child's dignity and physical integrity. They should only be utilised as a measure of last resort when there are serious and substantiated doubts about a child's age. It is imperative that there be due process to determine a young person's age, as well as the opportunity to challenge the outcome through an independent appeals process. While that process is under way, the young person should be given the benefit of the doubt and treated as a child.⁶

The following sections are in urgent need of amendment to ensure that children are appropriately protected, and their rights respected in the age assessment process:

- **Section 51** provides no detail on the implementation of the best interests principle during the age assessment process. Please refer to our analysis on pages 2-3 for more information.
- **Section 52(1)** only requires the presence of "doubts" to initiate an age assessment: a higher threshold is needed. The Asylum Procedure Regulation (APR) provides that, given the vulnerability of unaccompanied minors, who are likely to lack identification or other documents, it is critical there are strong safeguards to ensure they are not subject to incorrect or unreasonable age assessment procedures.⁷
- **Section 52** is silent on whether benefit of the doubt and presumption of minority apply during the age assessment process. These are critical procedural and human rights safeguards that must apply, as stated by both the UN Committee on the Rights of the Child and the European Court of Human Rights.^{8 9}
- **Section 53** states that a multi-disciplinary assessment shall include a psycho-social assessment and other non-medical methods, such as visual assessment based on physical appearance or assessment of documentation. The use of multi-disciplinary assessments is in line with human rights standards. However, there is no opportunity for the young person to be interviewed. Unaccompanied children should be given the opportunity to interview, in line with their right to express their views in all matters affecting them (Article 12, UNCRC; Article 24, Charter of Fundamental Rights of the EU).

⁶ 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.

⁷ Recital 36, Asylum Procedure Regulation (APR).

⁸ 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.

⁹ Darboe and Camara v Italy, no. 5797/17; AC v France, no. 15457/20; FB v Belgium, no. 47836/21.

- **Section 53(3)** outlines how the outcome of a multi-disciplinary assessment will be communicated to an applicant. It is welcome that communication must be age-appropriate and in a language the applicant understands. However, the Moke Principle, which established minimum procedural safeguards for fair age assessments, requires additional measures, including clear communication before commencement about the nature of and reasons for the age assessment.¹⁰
- **Section 54** outlines medical exams which, the Bill states, may be used as a last resort when the initial assessment is inconclusive. While it is welcome that it is as a last resort, the OCO reiterates that **the use of medical exams to determine age is neither evidence-based nor human rights compliant**. The Committee on the Rights of the Child states that States should refrain from using medical methods, which may be inaccurate, have wide margins of error, can be traumatic and lead to unnecessary legal processes.¹¹ It cannot be overstated that unaccompanied children undergo unimaginable traumatic journeys to reach safety. Medical exams, often invasive in nature, can trigger feelings of fear, unsafety, and uncertainty given these children's vulnerability. Added to the ethical concerns, the accuracy of medical methods to determine age is inconclusive.¹²
- **Section 55** allows the State to rely on an age assessment carried out in another Member State. The OCO is concerned there is no way of safely guaranteeing that an age assessment undertaken in another Member State has been carried out in compliance with EU law and international children's rights standards.
- **Section 56** should specify a longer timeframe for a young person to submit a request for a further age assessment.
- **Section 60** gives extensive powers to the Minister to decide by regulation how age assessments will be conducted and who will carry them out. We welcome the proposal to consult with the Minister for Children, Disability and Equality in this respect, however this engagement should take place before the Bill is passed. The OCO is concerned by the absence of legislative scrutiny over critical details of the age assessment process.

Recommendations

To strengthen safeguards and minimise the risk of real harm to children, the Bill must be amended as follows:

- **Amend Section 52(1) (Age assessments) to specify that doubts must be serious and substantiated.**

"In page 57, line 2, to insert the following after "there are":

¹⁰ The Moke Principle is a legal principle from the court case [Moke v The Refugee Applications Commissioner](#) that established minimum procedural safeguards for fair age assessments.

¹¹ UN Committee on the Rights of the Child and UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 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.

¹² [Age Estimation Science Advisory Committee](#), Final Report, July 2025

“serious and substantiated”.”

- Amend Section 52 (Age assessments) to (1) state that applicants will be given the benefit of the doubt and presumed to be minors during the age assessment process and (2) reflect the minimum procedural safeguards established by the Moke Principle.

*“In page 58, section 52, after subsection (5), to insert the following new subsections:
(6) An applicant shall be presumed to be a minor until an age assessment determines otherwise.*

(7) The Determining Authority shall ensure that an applicant is informed, prior to the commencement of an age assessment, in an age-appropriate manner and in a language which the applicant may reasonably be supposed to understand, of

(a) the reasons for doubting their age,

(b) the structure and timeframe of the age assessment process, including their opportunity to respond.”

- Amend Section 53 (Multi-disciplinary assessments) to state that young people will be given the opportunity of having an interview as an additional non-medical method of assessing their age.

“In page 58, line 16, to insert the following after subsection (1)(b):

“(c) an interview, subject to the applicant’s agreement, and”.”

- Delete Section 54 (Medical examination to determine age) and sub-section 52(3)(b).

“In page 57, to delete subsection 52(3)(b)”.

“In page 59, to delete section 54.”

- Delete Section 55 (Age assessment in Member State other than the State).

“In page 61, to delete section 55.”

- Amend Section 56 (Request by applicant for further age assessment) to increase the timeframe within which a young person can make an appeal from 10 to 30 working days.

“In page 61, line 38, to substitute “10 working days” for “30 working days”.

- Delete Section 60 (Regulations). The Minister should bring forward an amendment to Section 52 to detail which body is responsible for the age assessment process and the qualifications required by individuals carrying out multi-disciplinary assessments.

“In page 63, to delete section 60.”

Detention of children (throughout the Bill)

The OCO welcomes the following components, relating to detention, set out in the Bill:

- Section 87(7), 161(6), and 168(5) which exempt minors from arrest and detention during transfer, return, and return border procedures.

The OCO is concerned that under section 24 of the legislation relating to the screening procedure, the immigration detention of children is allowed, for a maximum period of 12 hours, where it is in their 'best interest'. **However, the immigration detention of a child is never in their best interest and is always a violation of their rights.**¹³ Additionally, under sections 87, 161, and 168 which also refer to arrest and detention, the legislation relies on a presumption of adulthood, where there are 'reasonable grounds' to doubt the age of a person passing through the Irish international protection system. It is not set out in the legislation what constitutes 'reasonable grounds'. This creates the additional risk that a child, subject to the transfer, return, or return border procedures may be assumed to be an adult and subsequently arrested and detained.

This is a concerning development in the legislation. Whilst the Pact allows the immigration detention of children,¹⁴ Member States are given discretion to determine if children will be subject to detention in their national legislation.¹⁵ **This legislation, is an avoidable lowering of human rights standards in Ireland, which places vulnerable children, including those arriving in the State unaccompanied, at greater risk of harm.**

In line with international human rights law, as expressed by the UN Committee on the Rights of the Child and other UN Special Procedures, a child should never be detained because of either their or their parent's migration status.¹⁶ Our national legislation should reflect this obligation and explicitly prohibit the immigration detention of children. Similarly, the inversion of the presumption of minority under sections of the legislation relating to the transfer, return, return border procedures, places age-disputed children at risk of detention. This is contrary to international human rights standards, and best practice with regards unaccompanied and age-disputed children in migration contexts.¹⁷

The OCO is also concerned that restrictions on movement, under the asylum border procedure, set out in section 126, may amount to *de facto* detention. Sufficient time must be given to the scrutiny of any forthcoming amendments relating to restrictions on movement, to ensure that children's rights are fully respected, including but not limited to their right to education, healthcare and play, and any special reception needs recognised in accordance with Article 9 of the Reception Conditions Directive. Measures taken to restrict the movement of migrant and asylum-seeking children, must never amount to *de facto* detention.

¹³ 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.

¹⁴ Article 13 of the Reception Conditions Directive.

¹⁵ Article 10(4) of the Reception Conditions Directive.

¹⁶ 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.

¹⁷ 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, 31, and 61.

This legislation provides Ireland with an opportunity to set a higher standard for children's rights, at a time when these rights are under threat globally. Explicitly prohibiting the immigration detention of children, included for those for whom there is uncertainty about their age, would signal that Ireland is serious about its international human rights obligations, and act as a safeguard for some of the most vulnerable children in the State.

Recommendations

- Delete Sections 24(11), 24(12), and 24(13), and replace with a subsection that explicitly prohibits the immigration detention of children, unaccompanied or otherwise, during the screening procedure. Insert subsection which applies the presumption of minority for age-disputed people during the screening procedure.

On page 34 and 35, section 24, to delete subsections (11) (12) and (13) and insert the new subsection (11): "At no point during the screening procedure shall a minor, either unaccompanied or in the custody of an applicant (a parent or person acting in loco parentis), be subject to arrest without a warrant or detention."

Following this, insert into section 24, the new subsection (12): "For the purpose of this section, and subject to the conclusion of any age assessment, where the immigration officer or member of An Garda Síochána is uncertain as to whether or not the person is under 18 years of age, they shall consider such a person to be a minor".

- Delete Sections 87(8), 161(7), 168(6) and replace with subsections that apply the presumption of minority, for age-disputed people during transfer, return, and return border procedures.

On page 78, section 87, to delete subsection (8). On page 130, section 161, to delete subsection (7). On page 134, section 168, to delete subsection (6). To insert in their place, the new subsections 87(8), 161(7) and 168(6), each reading: "For the purpose of this section, and subject to the conclusion of any age assessment, where the immigration officer or member of An Garda Síochána is uncertain as to whether or not the person is under 18 years of age, they shall consider such a person to be a minor".

- Sufficient time must be given to the scrutiny of forthcoming amendments to Section 126, and those relating to the provisions of the Reception Conditions Directive, regarding restrictions on movement under the asylum border procedure. A new subsection should be inserted which explicitly states that children should retain general freedom of movement, to ensure they are not de facto detained, and that they retain their right to have special reception needs recognised.

On page 101, section 126, insert new subsection (5): "Measures taken to restrict the movement of children in the asylum border procedure must: (a) never amount to de facto

detention (b) comply with any special reception needs, as laid out in Article 9 of the Receptions Conditions Directive”.