POLICY STATEMENTS

Policy Statement on the right to family reunification under the International Protection Act 2015

Irish Human Rights and Equality Commission
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Coimisiún na hÉireann um Chearta
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Irish Human Rights and Equality Commission

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

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Abbreviations

AIDA	Asylum Information Database
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CRC	United Nations Convention on the Rights of the Child
CEDAW	United Nations Convention on the Elimination of Discrimination Against Women
CERD	United Nations Convention on the Elimination of Racial Discrimination
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EMN	European Migration Network
ESRI	Economic and Social Research Institute
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHREC	Irish Human Rights and Equality Commission
IOM	International Organisation for Migration
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Recommendations

The Commission makes the following recommendations on reforming the family reunification provisions within the International Protection Act 2015:

Review and reform of the family reunification provisions in the International Protection Act 2015

The Commission recommends that:

- the State undertakes an independent and comprehensive review of the current statutory and policy framework on family reunification to ensure that the law and policies comply with national and international human rights and equality standards.

- the review of the statutory and policy framework on family reunification should be underpinned by relevant human rights and equality standards.

- the State ensure the meaningful consultation with, and direct involvement of, international protection holders, including children, and their representative organisations, in the review of the family reunification provisions within the International Protection Act 2015; as well as in the development, implementation, monitoring, reporting, evaluation and review of the legislation, policies, practices and decisions concerning family reunification.

- the State applies the learning from Ireland's provision of temporary protection to Ukrainians to improve and streamline the practice and processes for refugees seeking international protection and family reunification in Ireland.

Amendments to the statutory definition of 'family'

The Commission recommends that:

- section 56(9) of the International Protection Act 2015 be amended to include a 'dependent member of the family' category, in recognition of the wider forms of family life and caring responsibilities.

- section 56(9) of the International Protection Act 2015 be amended to include guidance on the meaning of dependency.

- the State develop and publish detailed guidance on assessing dependency for the purposes of family reunification under the International Protection Act 2015.

Customary marriage and long-term partnerships

The Commission recommends that section 56(9) of the International Protection Act 2015 be amended to allow individuals who have entered into a customary marriage, or those who have established long-term partnerships, to apply for family reunification.

Marriage / civil partnership subsisting on the date of the application for international protection

The Commission recommends that section 56(9) of the International Protection Act 2015 be amended to ensure that spouses and civil partners are eligible for family reunification where the marriage or civil partnership subsisted on the date of the application for family reunification.

Marriage ceasing to subsist

The Commission recommends that sections 56(6) and 57(5) of the International Protection Act 2015 be amended to provide clarity on the meaning of a marriage ceasing to subsist.

Reunification with children over the age of 18

The Commission recommends that

- section 56(9)(d) of the International Protection Act 2015 be amended to provide that a sponsor can reunite with their child who is over the age of 18 if the child is dependent on the sponsor.

- the State ensures that a comprehensive review of the family reunification provisions within the International Protection Act 2015 includes consideration of the various barriers faced by unaccompanied and separated children to family reunification.

- the review should be should be informed by consultation with children to ensure a child rights perspective of the family reunification provisions within the International Protection Act 2015.

Best interests of the child and the child's right to be heard

The Commission recommends that

- the State should ensure that the review of the family reunification provisions within the International Protection Act 2015 includes consideration of whether the best interests of the child and the right of the child to be heard are adequately protected and given effect in the family reunification process.

- the State develop and publish guidance, drawing from national and international standards, on factors and circumstances to have regard to in determining the best interests of a child in family reunification decisions under the International Protection Act 2015.

- the State develop and publish guidance, drawing from national and international standards, on procedures and processes in place for a child's right to be heard in the family reunification process.

Reunification with parents

The Commission recommends that section 56(9)(c) of the International Protection Act 2015 be amended to provide that a child may reunite with parents who are in customary marriages or long-term partnerships.

Reunification with other family members

The Commission recommends that section 56(9)(c) of the International Protection Act 2015 be amended to provide that a child can apply for family reunification with a broader understanding of family members including grandparents, older siblings, older cousins and caregivers.

Children who 'age out'

The Commission recommends that

- section 56(9)(c) of the International Protection Act 2015 be amended to provide that an individual, who at the date of their application for international protection, is under the age of 18 years old can apply for family reunification under this subsection.

- section 56(9)(d) of the International Protection Act 2015 be amended to provide that a child of a sponsor, who at the date of their sponsor's application for international protection, is under the age of 18 years old can benefit from family reunification under this subsection.

Programme refugees

The Commission recommends that the International Protection Act 2015 be amended to clarify that the right to family reunification under the Act applies to programme refugees.

Naturalised refugees

The Commission recommends that

- the State develops and publishes accessible guidance on the operation of the duty to co-operate set out in sections 56(3) and 57(3) of the International Protection Act 2015.

- the State develops and publishes accessible guidance on the circumstances in which DNA testing will be required for family reunification applications under the International Protection Act 2015.

Time limit for family reunification applications

The Commission recommends that sections 56(8) and 57(7) of the International Protection Act 2015, which provide for the 12-month limitation within which applications for family reunification should be made, should be either repealed or amended. In the case of amendment, the Commission recommends that provision should be made to allow for an extension of time where good and sufficient reasons exist.

Timeframe for determination of an application

The Commission recommends that sections 56 and 57 of the International Protection Act 2015 be amended to provide for a timeframe, of no later than six months, for the Minister's decision to grant or refuse permission for family reunification.

Expiry date for permission

The Commission recommends that section that 56(5) of the International Protection Act 2015 be amended to provide for the extension of the expiry date where good and sufficient reasons exist.

Appeal mechanism

The Commission recommends that an independent appeals procedure for family reunification applications be introduced or added to the existing appeals mechanisms of the State to protect the right to an effective remedy.

Guidance on the family reunification process

The Commission recommends that the State develop and publish detailed accessible guidance, in consultation with international protection holders and their representative organisations, on the operation of the family reunification provisions under the International Protection Act 2015.

Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014 (the '2014 Act'). We have a statutory mandate to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality, and to make recommendations to the Government to strengthen, protect and uphold human rights and equality in the State.[1]

In our Strategy Statement 2022–2024, our strategic priority on 'Justice' sets out that we will propose changes to the International Protection legislation relating to family reunification.[2] In line with our commitment, we welcome the opportunity to make this submission on the need for review and reform of the statutory provisions for family reunification within the International Protection Act 2015.

[1] Section 10(2)(b) and (d) of the *Irish Human Rights and Equality Commission Act 2014*.
[2] IHREC, Strategy Statement 2022–2024 (2022) p. 13.

Review and reform of the family reunification provisions in the International Protection Act 2015

We have consistently identified deficiencies in the statutory framework for family reunification. The International Protection Act 2015 (the 'Act') has narrowed access to family reunification for beneficiaries of international protection.[3] We are of the view that the removal of the right of international protection beneficiaries to apply for family reunification with extended family members[4] and the introduction of a statutory time limit[5] for applications constitute retrogressive measures. The Act also excludes refugees who acquire citizenship by naturalisation from its purview.

In 2018, we called for legislative and policy changes to the right to family reunification in our policy paper, 'The right to family reunification for beneficiaries of international protection'.[6] We set out a series of recommended changes to the Act and to the Department of Justice's 'Policy Document on Non-EEA Family Reunification'[7] to facilitate safe and legal pathways to Ireland for family members of refugees in Ireland.[8]

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[3] Family reunification for beneficiaries of international protection is governed by sections 56–57 of the I*nternational Protection Act 2015*, which came into force on 31 December 2016. The right to family reunification was previously set out in section 18 of the *Refugee Act 1996*, which was repealed and replaced by the *International Protection Act 2015*. See our observations on the General Scheme of the International Protection Bill: IHREC, Recommendations on the General Scheme of the International Protection Bill 2015 (2015) pp. 15–18. See also: IHREC, The right to family reunification for beneficiaries of international protection (2018).

[4] Prior to the *International Act 2015*, refugees could apply, under the *Refugee Act 1996*, for family members, including grandparents, parents, brothers and sisters who were financial dependent on them to come to Ireland. However, the Act significantly narrows the people who refugees could apply to be reunited with to the following categories: -For adults: (i) his/her spouse or civil partner, providing the marriage or civil partnership was in force when he/she applied for international protection; (ii) his/her child, as long as they are under the age of 18 and unmarried at the time he/she applied for international protection. For children: his/her parents and brothers and sisters provided they are under the age of 18 and unmarried.

[5] The *International Protection Act 2015* requires family reunification applications to be made within 12 months of the grant of refugee or subsidiary protection status – a timeframe that is impossible for many refugees.

[6] The Commission's policy paper was in the context of the migration situation in Europe and the introduction of the Irish Refugee Protection Programme. Moreover, since the Act came into force on 31 December 2016, a number of operational issues arose in practice throughout the course of 2017. See IHREC, The right to family reunification for beneficiaries of international protection (2018).

[7] Family reunification applications made by non-EEA nationals (not including beneficiaries of international protection who fall under the *International Protection Act 2015*) are governed by the Department of Justice's 2016 '*Policy Document on Non-EEA Family Reunification*': Irish Naturalisation and Immigration Service, Policy Document on Non-EEA Family Reunification (2016).

[8] See list of recommendations from the policy paper in the Appendix.

Since our 2018 policy paper, we have continued to call for the State to expand and strengthen law and policies on family reunification.[9] In the context of the State's response to the war in Ukraine, we can see no objective rationale for the extension of more generous provisions for family reunification to holders of temporary protection than to beneficiaries of international protection.[10] We have called for the State to prevent the establishment of a two-tier system and to apply the learning from Ireland's provision of temporary protection to Ukrainians to improve and streamline the practice and processes for all refugees seeking international protection and family reunification in Ireland, whether from Europe, Africa, the Middle-East or elsewhere globally.[11] We also appeared as amicus curiae in the joint cases of MAM v. The Minister for Justice and Equality and KN v. The Minister for Justice and Equality, which concerned the right to family reunification for refugees who have been naturalised as Irish citizens.[12]

Following on from our 2018 policy paper and our subsequent policy and legal work, in this policy statement we reiterate our call for the State to reform the Act to strengthen and expand on the provisions for family reunification. Family reunification is a fundamental right for beneficiaries of international protection in Ireland and the current legislation is simply not fit for purpose. We consider that the Act is a retrogressive law, which simply fails to reflect the lived reality of family

[9] IHREC, Ireland and the Rights of the Child: Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports (2022) pp. 93–94; IHREC, Ireland and the International Covenant on Civil and Political Rights: Submission to the Human Rights Committee on Ireland's fifth periodic report (2022) p. 73; IHREC, Crisis in Afghanistan Underscores Need for Wider Family Reunification in Ireland's Refugee Policy (press release, 23 September 2021); IHREC, Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland (2020) p. 32; IHREC, Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report (2019) pp. 121–123; IHREC, Comments on Ireland's 16th National Report on the implementation of the European Social Charter (2019) pp. 44–45; IHREC, Submission to the Universal Periodic Review of the UN Human Rights Council: Second Cycle Mid-Term Review (2019) p. 12.

[10] The definition of 'family' as part of the family reunification provisions for those granted temporary protection following the invasion of Ukraine is wider than that provided for in section 56 of the 2015 Act. Article 2(4) of the Council Implementing Decision (EU) 2022/382 of 4 March 2022 defines family members as: (a) the spouse of a person, or the unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its national law relating to aliens; (b) the minor unmarried children of a person, or of his or her spouse, without distinction as to whether they were born in or out wedlock or adopted; (c) other close relatives who lived together as part of the family unit at the time of the circumstances surrounding the mass influx of displaced persons, and who were wholly or mainly dependent on a person referred.

[11] IHREC, Irish Human Rights and Equality Commission Statement on Ukraine (press release, 11 March 2022); IHREC, Ireland and the Rights of the Child: Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports (2022) pp. 95.

[12] In both cases, the then Minister for Justice and Equality refused applications for family reunification from persons granted refugee status under the *Refugee Act 1996* saying that, as the Applicants had both become naturalised Irish citizens, they were no longer entitled to "refugee" family reunification. See our written submissions to the Court of Appeal in 2018 and the Supreme Court in 2020.

ties, relationships and support networks that exist in practice.[13] Family reunification as a right is core to social inclusion, as it enables those who have fled persecution to resume a positive and fulfilling life here in Ireland in the company of their loved ones. Therefore, it is important that we take stock of the operation of the Act since 2016 to consider what changes are needed to better realise the right of refugees to family reunification. We call for the State to commit to undertake an independent and comprehensive review of the family reunification provisions[14] within the International Protection Act 2015 with the intention of strengthening and expanding the provisions within the Act.

A review of the family reunification legislative provisions is essential, as there is a range of administrative, legal, financial and logistical challenges that refugees face in bringing family members to Ireland.[15] Family reunification processes are often lengthy and can lack procedural safeguards.[16] Delays or a lack of access to family reunification may affect the physical and mental health of refugees, which impacts on their integration into Irish society.[17] International guidance calls for states to identify and remove barriers to family reunification.[18]. The narrow definition of

[13] IHREC, Irish Human Rights and Equality Commission and UNHCR call for government to facilitate family reunification for refugees (press release, 25 March 2021).

[14] Specifically, sections 56 and 57, but also any other provisions of the Act that affect access to and benefit from the statutory family reunification provisions such as section 24 which provides for an examination to determine the age of an unaccompanied person.

[15] See discussion in IHREC, The right to family reunification for beneficiaries of international protection (2018). See IHREC funded research: Nasc, Invisible people: The integration support needs of refugee families reunified in Ireland (2020). See also UNHCR, Realising Family Reunification – Travel assistance & related matters: Report on the UNHCR, IOM and Irish Red Cross Travel Assistance Programme (2020).

[16] United Nations General Assembly, Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31 (2 March 2022) paras. 38, 46. See further detail below about the issues arising from delays and timeframes associated with the family reunification processes in relation to: children who 'age out', time limit for family reunification applications, timeframe for determination of an application, and expiry date for permission.

[17] Research from interviews with 153 Syrians, who arrived in Ireland between 2015 and 2019, under the Irish Refugee Protection Programme showed the impact of family separation on refugees and the ability to integrate in a new environment. Family reunification was a significant concern for 43% of respondents. 18% of respondents connected their physical health with the stress of having family members in Syria or in a third country. Most respondents had some mental health challenges that were strongly linked to family separation amongst other factors such as isolation in Ireland and untreated trauma. Respondents described how family separation affected their mental health, concentration, ability to form social bonds, ability to work, and ability to learn new languages and skills. See IOM, Voices of Syrians: resettled refugees in Ireland (2021) pp. 2, 7, 19, 23.

[18] In circumstances where family reunification is frustrated by procedural obstacles, there may be a violation of the positive and procedural obligations of Article 8 ECHR: See IHREC's 2018 amicus curiae submission to the Court of Appeal in the cases of *MAM v. The Minister for Justice and Equality* and *KN v. The Minister for Justice and Equality*, para. 29(c); IHREC's 2020 amicus curiae submissions to the Supreme Court in the cases of *MAM v. The Minister for Justice and Equality* and *KN v. The Minister for Justice and Equality*, para. 22(d). See also United Nations General Assembly, Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31 (2 March 2022) para. 46.

family and the short statutory time limit that came into effect with the Act is preventing, and will continually prevent, many refugees in Ireland from reuniting safely with their loved ones. The Act effectively forces people in vulnerable circumstances into choosing between their own protection and that of their close family members.[19] Restrictions on family reunification, including lack of timely family reunification procedures, can contribute to adults and children choosing irregular ways to migrate, which places themselves at high risk.[20] Enhancing and strengthening family reunification law and policy encourages safe and regular migration pathways.[21] Family reunification law and policies should be accessible and effective, in order to facilitate family life, and any restrictions should be legitimate, necessary and proportionate.[22]

We note that the State has not opted into the EU Family Reunification Directive.[23] There are a number of Articles under the Directive that are more generous than the Act, which could positively affect Irish law in respect of family reunification for beneficiaries of international protection.[24] We are of the view that the review of the family reunification provisions within the

[19] Research has shown that restrictions on family reunification can impact the enjoyment of family life and life in Ireland as beneficiaries of international protection continue to face family separation and worry about family members facing persecution. Restrictions on who is eligible for family reunification can mean that family members who are eligible for family reunification have to stay to care for adult children and dependant relatives who fall outside the scope of the Act: see Nasc, Invisible people: The integration support needs of refugee families reunified in Ireland (2020) p. 44.

[20] United Nations Office of the High Commissioner for Human Rights, The Economic, Social and Cultural Rights of Migrants in an Irregular Situation (2014); Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, 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 (16 November 2017) para. 41.

[21] United Nations General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/285 (4 August 2016) paras. 37, 64, 123(d). See also Target 10.7 of the Sustainable Development Goals which set outs that States should "Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies".

[22] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, 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 (16 November 2017) para. 37.

[23] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. While the High Court has stated that an application for family reunification does not involve the implementation of EU law (*V.B. -v- The Minister for Justice and Equality & ors* [2019] IEHC 55, para. 70.), we note that Irish courts have interpreted family reunification provisions in Irish law in a manner which is consistent with the objectives of the Family Reunification Directive (*Hamza & Anor v. The Minister for Justice, Equality and Law Reform* [2010] IEHC 427 at 31-34. This High Court case concerned the *Refugee Act 1996*. This High Court judgment was subsequently upheld in the Supreme Court, see: [2013] IESC 9).

[24] Including: Article 5(4) which requires a decision to be made on an application for family reunification within 9 months, although it does permit extensions of this time limit in exceptional circumstances linked to the complexity of the application; Article 10(2) of the Directive concerns the scope of eligible family members, and provides that in addition to the nuclear family, "Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee"; Article 10(3) makes specific provision in respect of

Act should include consideration of opting into the Directive. However, any transposition of the Directive should not reduce the level of standards and protections already included in the Act.

While beneficiaries of international protection can also apply for family reunification with family members who fall outside of the scope of the Act under the 'Policy Document on non-EEA Family Reunification',[25] we are concerned about an absence of a legislative entitlement to family reunification with a wider range of family members, for beneficiaries of international protection. The reliance on discretion results in inconsistencies in decision-making and a lack of transparency.[26] Further, beneficiaries of international protection may not be able to satisfy the financial requirements in the Policy Document,[27] due to trauma or disability connected to the circumstances that led to them being granted international protection, or because of the lack of access to decent work.[28]

We note that the Private Members' Bill, the International Protection (Family Reunification) (Amendment) Bill proposes to amend the Act to provide for a refugee to apply for their family members, including a grandparent, parent, brother, sister, child, grandchild, ward, or guardian to enter and reside in the State. It also proposed to remove the 12 month time limit, and introduce a review mechanism.[29] This Bill has not been progressed in this Dáil term.[30] We are of the view that the provisions of this Bill should be considered in the State's review of the family reunification provisions within the Act and any potential legislative reform of the Act.

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unaccompanied minors; and Article 11 concerns the submission and examination of applications, providing in paragraph 2 that "where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking;

[25] *A, S and I v Minister for Justice* [2020] IESC 70, para. 124.

[26] IHREC, Comments on Ireland's 16th National Report on the implementation of the European Social Charter (2019) p. 44.

[27] Cumulative gross earnings figure of €40k over 3 years where the sponsor is an Irish citizen and a higher level where the sponsor is a non-EEA national. Social welfare payments are not reckonable as earnings for this purpose.

[28] While the Policy Document envisages departures from the strict requirements of the Policy Document in some cases, we are concerned about the procedures adopted and quality of the decisions. See Irish Naturalisation and Immigration Service, Policy Document on Non-EEA Family Reunification (2016) p. 15.

"1.12 While this document sets down guidelines for the processing of cases, it is intended that decision makers will retain the discretion to grant family reunification in cases that on the face of it do not appear to meet the requirements of the policy. This is to allow the system to deal with those rare cases that present an exceptional set of circumstances, normally humanitarian, that would suggest that the appropriate and proportionate decision should be positive."

[29] The *International Protection (Family Reunification) (Amendment) Bill* passed the Seanad in 2018, and was referred to the Select Committee on Justice in December 2021: see https://www.oireachtas.ie/en/bills/bill/2017/101/.

[30]. A money message is required for this Bill to go formal committee stage: see Joint Committee on Justice, Report on Scrutiny of the International Protection (Family Reunification) (Amendment) Bill 2017 [PMB] (2019) p. 7.

Our observations on the law and policies concerning family reunification are guided by a range of fundamental rights protected under national, European and international law,[31] including the:

- Right to family reunification;[32]
- Protection of the family and right to family life;[33]
- Right of the child to express their views;[34]
- Best interests of the child;[35]
- Non-discriminatory family reunification schemes;[36] and

[31] For a detailed overview of these rights, see IHREC, The right to family reunification for beneficiaries of international protection (2018) pp. 7–12.

[32] Article 41 of the Constitution; European Union, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification; Article 23 of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast); Article 8 of the European Convention on Human Rights; *Tanda-Muzinga v. France*, no. 2260/10, 10 July 2014; *Strand Lobben and Others v. Norway* [GC], no. 37283/13, 10 September 2019, para. 205; Article 19(6) of the Revised European Social Charter; Articles 10 and 22(2) of the Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6 (1 September 2005) paras. 81–83; Principle 9 of the Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations: United Nations Office of the High Commissioner for Human Rights and Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations (2018); Objective 5(i) of the Global Compact for Safe, Orderly and Regular Migration: United Nations General Assembly, Resolution 73/195: Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195 (11 January 2019); Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (1951).

[33] Article 41 of the Constitution, Articles 7 and 24 of the Charter of Fundamental Rights of the European Union; Article 8 of the European Convention on Human Rights; Articles 12 and 16(3) of the Universal Declaration of Human Rights; Articles 5, 8, 9 and 16 of the Convention on the Rights of the Child; Articles 17 and 23(1) of the International Covenant on Civil and Political Rights; Article 10(1) of the International Covenant on Economic, Social and Cultural Rights.

[34] Article 12 of the Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6 (1 September 2005) paras. 81–83; Principle 9 of the Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations: United Nations Office of the High Commissioner for Human Rights and Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations (2018).

[35] Article 3(1) of the Convention on the Rights of the Child; Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 (29 May 2013); Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6 (1 September 2005) paras. 81–83.

[36] Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R (5 December 2008) para. 26(e).

- Right to an effective remedy.[37]

We consider that these rights should underpin any review of the legislative and policy framework for family reunification. While we acknowledge that national and international standards recognise that states have discretion to determine who can enter a state and eligibility for family reunification,[38] we are of the view that further consideration is needed of the alignment of the legislative and policy framework with these national and international human rights standards. We are of the view that Article 8 of the European Convention on Human Rights ('ECHR') requires that applications for family reunification must take account of the special circumstances of a beneficiary of international protection and their families if they are to strike a fair balance between the applicant's interest,s on the one hand, and a State's own interest in controlling immigration, on the other.[39]

The Commission recommends that the State undertakes an independent and comprehensive review of the current statutory and policy framework on family reunification to ensure that the law and policies comply with national and international human rights and equality standards.

The Commission recommends that the review of the statutory and policy framework on family reunification should be underpinned by relevant human rights and equality standards.

[37] Article 47 of the Charter of Fundamental Rights of the European Union; Article 13 of the European Convention on Human Rights.

[38] In *S.H v Minister for Justice and Ors* and *A.J v Minister for Justice and Ors*, the High Court found that section 56 of the Act is a matter of policy choice by the legislature. Ferriter J held that there is no self-standing right to family reunification in EU law: *S.H v Minister for Justice and Ors* and *A.J v Minister for Justice and Ors* [2022] IEHC 392. The ECtHR has recognised that Article 8 of the ECHR does not impose on the Contracting State any general obligation to authorise family reunion in its territory: *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, Series A no. 94, para. 67; *Berisha v. Switzerland*, no. 948/12, 30 July 2013, para. 49.

[39]This means taking account of the fact that refugee family separation is usually involuntary, that reunification in the country of origin is not possible, and that arrival of the refugee's family members in the State in the only means by which family life can resume. The ECtHR have noted that the extent of the State's obligations will vary according to the particular circumstances of the person involved and the general interest; factors to be taken into account include the extent to which family life would effectively be ruptured, the extent of the ties of the persons concerned in the State, whether there are insurmountable obstacles in the way of the family living in the country of origin, and whether there are factors of immigration control or considerations of public order weighing in favour of exclusion: *Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, ECHR 2006-I, para. 39; *Antwi and Others v. Norway*, App No. 36940/10, 14 February 2012, paras. 88–89. See also IHREC's 2018 amicus curiae submission to the Court of Appeal in the cases of *MAM v. The Minister for Justice and Equality* and *KN v. The Minister for Justice and Equality*, paras. 23, 29(b) and IHREC's 2020 amicus curiae submissions to the Supreme Court in the cases of *MAM v. The Minister for Justice and Equality* and *KN v. The Minister for Justice and Equality*, para. 22(b).

The Commission recommends that the State ensure the meaningful consultation with, and direct involvement of, international protection holders, including children, and their representative organisations, in the review of the family reunification provisions within the International Protection Act 2015; as well as in the development, implementation, monitoring, reporting, evaluation and review of the legislation, policies, practices and decisions concerning family reunification.

The Commission recommends that the State applies the learning from Ireland's provision of temporary protection to Ukrainians to improve and streamline the practice and processes for refugees seeking international protection and family reunification in Ireland.

Amendments to the statutory definition of 'family'

Section 56(9) provides for the definition of 'member of the family' under the Act. The definition of family within the Act omitted the "dependent family member" category, which was contained in the Refugee Act 1996, and has therefore limited a protection beneficiary's rights to family reunification with the nuclear family.[40] We have called for the State to widen the definition of family members to recognise the diversity of family forms, in compliance with international human rights obligations.[41]

Various forms of family exist in different cultural, social and political systems; and this diversity should be recognised in family reunification processes.[42] Wider forms of family life have been recognised in EU law, the European Convention on Human Rights[43] and international law including:

- Parents of an adult sponsor;[44]
- Adult siblings;[45]

[40] Under the *Refugee Act 1996*, refugees could apply for extended family members, including grandparents, parents, brothers and sisters who were financially dependent on them to come to Ireland. Since the Act came into force in 2016, a refugee can only apply for family reunification for their spouse or civil partner [providing the marriage or civil partnership was in force when they applied for international protection] , their unmarried children under 18 [providing that the child is under the age of 18 and unmarried at the time they applied for international protection] or their parents and direct siblings if the refugee themselves is under 18 [providing that the siblings are under the age of 18 and unmarried]. While the right to family reunification was extended to siblings of a child refugee or adult with subsidiary protection status, siblings of adult protection applicants no longer come within the scope of the regime. Parents and adult children of adult protection applicants are also excluded from the scheme.

[41] IHREC, The right to family reunification for beneficiaries of international protection (2018) pp. 13–17.

[42] United Nations General Assembly, Resolution S-27/2: A world fit for children, A/RES/S-27/2 (11 October 2002) para. 15; Principle 9 of the Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations: United Nations Office of the High Commissioner for Human Rights and Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations (2018).

[43] The European Court of Human Rights ('ECtHR') have held that the existence or non-existence of family life within the meaning of Article 8 of the ECHR is "essentially a question of fact depending on the real existence in practice of close personal ties": *K. and T. v Finland* [GC], No. 25702/94, ECHR 2001-VII, para. 150. See also Council of Europe, Family reunification for refugee and migrant children: Standards and promising practices (2020) p. 25.

[44] Thirteen EU Member States (Bulgaria, Croatia, Czech Republic, Estonia, Finland, Greece, Hungary, Italy, Lithuania, Luxemburg, Slovakia, Slovenia, and Spain) provide for family reunification between an adult beneficiary of international protection and their parents under certain conditions including a shared household in the country of origin, a serious health condition, and an absence of other family to take care of them: see ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 14. See also United Nations General Assembly, Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31 (2 March 2022) para. 18.

[45] In Hungary, their legislation extends family reunification to dependent siblings: ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 14. See also United Nations General Assembly,

- Grandparents;[46]
- Grandchildren;[47]
- Uncles and aunts;[48]
- Nieces and nephews;[49]
- Carers.[50]

Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31 (2 March 2022) para. 18.

[46] *Marckx v Belgium*, No 6833/74, 13 June 1979, para. 45. In Hungary, their legislation extends family reunification to grandparents and grandchildren: ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 14.

[47] In Hungary, their legislation extends family reunification to grandchildren: ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 14.

[48] *Boyle v. the United Kingdom*, 28 February 1994, Series A no. 282-B, paras. 41–47.

[49] *Boyle v. the United Kingdom*, 28 February 1994, Series A no. 282-B, paras. 41–47.

[50] United Nations General Assembly, Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31 (2 March 2022) para. 18.

In broadening the definition of family, States and international bodies have prioritised dependency;[51] including emotional,[52] social,[53] psychosocial,[54] financial[55] and other ties and support[56].

The Court of Justice of the European Union ('CJEU') has held that, under the Family Reunification Directive, a family member can be considered dependent on a refugee where:

- they are not in a position to support themselves;
- it is ascertained that material support for them is actually provided by the refugee; or
- the refugee appears as the family member most able to provide the material support required.[57]

We consider that the State should introduce a statutory right, under the Act, for a beneficiary of international protection to reunify with a dependent family member, including a parent, grandparent, brother, sister, child, grandchild, uncle, aunt, cousin, nephew, niece, sister-in-law, brother-in-law, ward, guardian, or any person in the care of the beneficiary of international

[51] While the State has not opted into the EU Family Reunification Directive, we note that Article 4(2)(a) sets out that Member States may provide for family reunification for first-degree relatives in the direct ascending line of the sponsor or their spouse, where they are dependent on them and do not enjoy proper family support in the country of origin; and Article 10(2) sets out that Member States may provide for family reunification and for other family members, if they are dependent on the refugee: Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Croatia, Serbia, Slovenia and Spain provide for reunification with other relatives, where dependence can be proven or where family community was established in a way similar to the primary family: ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 14. Article 2(4)(c) of the Council Implementing Decision (EU) 2022/382 of 4 March 2022 provides that people displaced from Ukraine can reunify with other close relatives who lived together as part of the family unit at the time of the circumstances surrounding the mass influx of displaced persons, and who were wholly or mainly dependent on a person referred. See also UNHCR, Families together: Family reunification for refugees in the European Union (2018) p. 14; Council of Europe, Realising the right to family reunification of refugees in Europe: Issue paper published by the Council of Europe Commissioner for Human Rights (2017) p. 8.

[52] Council of Europe, Realising the right to family reunification of refugees in Europe: Issue paper published by the Council of Europe Commissioner for Human Rights (2017) p. 8.

[53] Council of Europe, Realising the right to family reunification of refugees in Europe: Issue paper published by the Council of Europe Commissioner for Human Rights (2017) p. 8.

[54] Committee on the Elimination of Discrimination against Women, General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38 (20 November 2020) para. 56(d).

[55] Committee on the Elimination of Discrimination against Women, General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38 (20 November 2020) para. 56(d); Council of Europe, Realising the right to family reunification of refugees in Europe: Issue paper published by the Council of Europe Commissioner for Human Rights (2017) p. 8.

[56] Council of Europe, Realising the right to family reunification of refugees in Europe: Issue paper published by the Council of Europe Commissioner for Human Rights (2017) p. 8.

[57] *TB v Bevándorlási és Menekültügyi Hivatal*, C-519/18, 12 December 2019, para. 55. See also ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 14.

protection. This may be achieved through a restoration of the dependent family member category in section 18(4) of the Refugee Act 1996.[58] However, while that was a discretionary scheme under the 1996 Act, we are of the view that this category should be included in the Act on a non-discretionary basis. Guidance on the meaning of dependency, drawing from international standards and international best practices, should be included in the Act, with further detail on assessing dependency provided in published guidance on the operation of the statutory family reunification scheme.[59] This guidance would provide important legislative clarity to beneficiaries of international protection on the scope of the family reunification provisions and on the eligibility criteria for family members.

The Commission recommends that section 56(9) of the International Protection Act 2015 be amended to include a 'dependent member of the family' category, in recognition of the wider forms of family life and caring responsibilities.

The Commission recommends that section 56(9) of the International Protection Act 2015 be amended to include guidance on the meaning of dependency.

The Commission recommends that the State develop and publish detailed guidance on assessing dependency for the purposes of family reunification under the International Protection Act 2015.

Customary marriage and long-term partnerships

Section 56(9) of the Act limits family reunification to the spouse or civil partner of the sponsor. We have called for the State to create a statutory right for those who have established long-term partnerships or customary marriages to apply for family reunification.[60] The Minister for Justice

[58] Section 18(4) of the *Refugee Act 1996* provided for a discretionary regime for dependent family members, which encompassed a much broader definition of family as follows: (a) The Minister may, at his or her discretion, grant permission to a dependent member of the family of a refugee to enter and reside in the State and such member shall be entitled to the rights and privileges specified in section 3 for such period as the refugee is entitled to remain in the State. (b) In paragraph (a), "dependent member of the family", in relation to a refugee, means any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee who is dependent on the refugee or is suffering from a mental or physical disability to such extent that it is not reasonable for him or her to maintain himself or herself fully.

[59] The CoE Commissioner for Human Rights calls for clear guidance on dependency to be included either in legislation or in public guidelines to enable refugees identify the family members eligible for family reunification: see Council of Europe, Realising the right to family reunification of refugees in Europe: Issue paper published by the Council of Europe Commissioner for Human Rights (2017) p. 8.

[60] IHREC, The right to family reunification for beneficiaries of international protection (2018).

has confirmed that there is no entitlement under the Act for de-facto partnerships.[61] The High Court dismissed a challenge to the constitutionality of excluding non-marital partners from eligibility under section 56, as it was a legitimate policy which the Oireachtas was entitled to make.[62] Bolger J held that it was lawful for the State to :

> "provide a non-statutory scheme for family reunification of non-marital partners, even where marital partners are permitted to avail of a less restrictive statutory scheme".[63]

We note that there may be difficulties for same-sex couples where laws and policies in their State mean they cannot marry or enter a civil partnership.[64] We note comments from the Minister for Justice in January 2022, that no application under section 56 of the Act for family reunification for a same-sex couple has been approved.[65] A number of European States allow a cohabiting partner to be reunified.[66] The European Court of Human Rights (the 'ECtHR') has identified relationships amounting to 'family life' in cases involving married couples, unmarried cohabitants, and same-sex couples.[67] The principles and guidelines on the human rights protection of migrants in vulnerable situations state that gendered, hetero-normative or other stereotyped or prejudicial assumptions should not influence the registration or reunification of family representatives.[68] The Council of Europe ('CoE') Commissioner for Human Rights has called for States to:

> "Accord family reunification rights to all spouses, where the term spouse is understood broadly to encompass not only legally recognised spouses and civil partners (including

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[61] Minister for Justice, Response to Parliamentary Question 1331: International Protection (19 January 2022).
[62] *O v Minister for Justice* [2022] IEHC 617.
[63] *O v Minister for Justice* [2022] IEHC 617, para. 46.
[64] Nasc, Invisible people: The integration support needs of refugee families reunified in Ireland (2020) p. 44.
[65] We note that the Department of Justice does not maintain records in a format that identifies whether or not an applicant for family reunification is in a same-sex marriage. However, the Department did a manual search of family reunification records. See Minister for Justice, Response to Parliamentary Question 1331: International Protection (19 January 2022).
[66] Bulgaria, Croatia, France, Greece, Netherlands, Portugal, Slovenia, Spain, Sweden, and the UK: see ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 12.
[67] *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, Series A no. 94, para. 62; *Keegan v. Ireland*, 26 May 1994, Series A no. 290, paras. 44–45; *Schalk and Kopf v. Austria*, no. 30141/04, ECHR 2010, paras. 94–95. With regard to unmarried partnerships, the ECtHR has established a non-exhaustive list of factors that might be taken into account in establishing the genuineness of a partnership relation: the cohabitation of the partners, the length of their relationship, the presence of children and other factors that demonstrate the commitment between the partners: *Al-Nashif v. Bulgaria*, No. 50963/99, 20 June 2002, para. 112. See also Council of Europe, Family reunification for refugee and migrant children: Standards and promising practices (2020) pp. 26–27.
[68] Principle 9 of the Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations: United Nations Office of the High Commissioner for Human Rights and Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations (2018).

same-sex spouses and civil partners), but also individuals who are engaged to be married, who have entered a customary marriage (also known as "common-law" marriage) or who have established long-term partnerships (including same-sex partners)".[69]

The Commission recommends that section 56(9) of the International Protection Act 2015 be amended to allow individuals who have entered into a customary marriage, or those who have established long-term partnerships, to apply for family reunification.

Marriage / civil partnership subsisting on the date of the application for international protection

Under section 56(9), family reunification is limited to the spouse / civil partner of a sponsor when the marriage / civil partnership is subsisting on the date the sponsor made an application for international protection in the State. We have called for the State to ensure spouses and civil partners are eligible for family reunification where the marriage or civil partnership subsisted on the date of the application for family reunification.[70] We note that the Supreme Court in A, S and I, held that the difference in treatment between spouses who married before an application for international protection and those who married subsequently is constitutional and compatible with the ECHR.[71] However, we remain concerned that there are considerable delays between the time a person applies for international protection and the time they are granted, and the consequence of this provision is that it would exclude marriages and civil partnerships that have formed during this period. In this regard, we note that the Family Reunification Directive does not draw a distinction between family relationships formed before and after a migrant arrived in an EU Member State.[72] While Ireland has not opted into the Directive, we are of the view that the State should be guided by its provisions in setting the standards for family reunification.

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[69] Council of Europe, Realising the right to family reunification of refugees in Europe: Issue paper published by the Council of Europe Commissioner for Human Rights (2017) p. 7.
[70] IHREC, The right to family reunification for beneficiaries of international protection (2018) pp. 25–26.
[71] *A, S and I v Minister for Justice* [2020] IESC 70. See also Emily Farrell, Family reunification for international protection beneficiaries (2022) 27(2) The Bar Review 47, p. 48.
[72] Article 2(d) of the Family Reunification Directive provides that "family reunification" means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry: Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. See also European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to asylum, borders and immigration (2020) pp. 183–184.

The Commission recommends that section 56(9) of the International Protection Act 2015 be amended to ensure that spouses and civil partners are eligible for family reunification where the marriage or civil partnership subsisted on the date of the application for family reunification.

Marriage ceasing to subsist

Sections 56(6) and 57(5) provide that a family reunification permission shall cease to be in force when a marriage or civil partnership has ceased to subsist. We consider that further clarity is need on the meaning of 'ceased to subsist' with regard to marriage; does it refer to formal dissolution of marriage or a de-facto separation. If it refers to de-facto separation, there may be concerns around compatibility with the constitutional protection afforded to the family, as some marriages may experience periods of separation before the parties can reconcile.

The Commission recommends that sections 56(6) and 57(5) of the International Protection Act 2015 be amended to provide clarity on the meaning of a marriage ceasing to subsist.

Reunification with children over the age of 18

Section 56(9)(d) provides for parents to reunite with a child who is under the age of 18 years old. We are concerned about the strict limitations in section 56(9)(d) around the age for a child to be eligible for reunification with their parent/s. However, a rigid restriction on age does not take account of the different circumstances of families such as the continued level of dependency a child may have on the parents after the child turns 18. The Family Reunification Directive sets out that States may provide for family reunification for the adult unmarried children of the sponsor when they are objectively unable to provide for their own needs on account of their state of health.[73] Sixteen of the 27 EU Member States provide for family reunification with dependent adult children.[74] The ECtHR has held, that for the relationship of a parent and child over 18 years old to be considered family life, there should be additional factors of dependency involving more

[73] Article 4(2)(b) of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.
[74] Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Greece, Hungary, Italy, Lithuania, Luxemburg, the Netherlands, Portugal, Slovakia, Slovenia, and Spain. Also, Türkiye and the United Kingdom. In the Netherlands, it is possible to reunite with the sponsor's young adult children (up to 25 years old) who are not in a relationship, without any specific dependency criterion other than that they must still belong to their parents' family. See ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 14. See also Council of Europe, Family reunification for refugee and migrant children: Standards and promising practices (2020) p. 43.

than the normal emotional ties [75] We note that under the 'Policy Document on non-EEA Family Reunification' family reunification with a child can be extended to the age of 23, where the child is in full time education and remains dependent on the parent.[76] We consider that there is no reason why this flexibility around dependency on a parent could not be replicated in the Act.

The Commission recommends that section 56(9)(d) of the International Protection Act 2015 be amended to provide that a sponsor can reunite with their child who is over the age of 18 if the child is dependent on the sponsor.

Family reunification for children

Section 56(9)(c) provides for family reunification for children under the age of 18 years with their parents or with their siblings who are under the age of 18 years. Research highlights the unique challenges faced by unaccompanied and separated children seeking family reunification in Ireland,[77] including the complex and lengthy application process,[78] limited access to tailored legal services and information,[79] the burdensome financial costs of arranging accommodation for family members in advance of their arrival[80], and the use of non-evidenced based age assessments[81]. We have called for the State to undertake a comprehensive review of the current statutory and policy framework on family reunification for unaccompanied and separated children, with a view to addressing the various barriers specific to this group and ensuring that children's best interests are

[75] *Emonet and Others v. Switzerland*, no. 39051/03, 13 December 2007, para. 35.
[76] Irish Naturalisation and Immigration Service, Policy Document on Non-EEA Family Reunification (2016) p. 36 (footnote 11).
[77] See ESRI / EMN, Approaches to unaccompanied minors following status determination in Ireland (2018); Nasc, Invisible people: The integration support needs of refugee families reunified in Ireland (2020).
[78] Legal professionals noted the particular complexity and necessity for legal support for refugee sponsors who had come to Ireland as unaccompanied children: Nasc, Invisible people: The integration support needs of refugee families reunified in Ireland (2020) p. 48.
[79] See ESRI / EMN, Approaches to unaccompanied minors following status determination in Ireland (2018) p. 86.
[80] Stakeholders working in roles relevant to family reunification noted how challenging it would be for a young person to find and pay for suitable accommodation with the result that it is seen as almost inevitable that family members will be presenting to homeless services on arrival: Nasc, Invisible people: The integration support needs of refugee families reunified in Ireland (2020) p. 71.
[81] See Irish Refugee Council, Asylum Information Database (AIDA) – Country report: Ireland (2022) pp. 54–56. Section 24 of the Act provides for age assessments for unaccompanied minors. However, concerns have been raised about whether the provisions of the 2015 Act in relation to age assessment are being fully observed. The use of medical age assessments is not prohibited under the CRC, however, it must be only one component of the age determination process: Committee on the Rights of the Child, General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6 (1 September 2005) para. 31. See also IHREC, Ireland and the Rights of the Child: Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports (2022) pp. 92–93; IHREC, Trafficking in Human Beings in Ireland: Evaluation of the Implementation of the EU Anti-Trafficking Directive (2022) pp. 129–130.

upheld within the process.[82] The family reunification process should be child-friendly[83] and applications by a child or a child's parent/s for family reunification should be dealt with in a positive, humane and expeditious manner.[84] Complex and lengthy processes for family reunification can lead to children avoiding or not engaging with child protection systems in states.[85]

The Committee on the Rights of the Child have recently recommended the State should:

> "Review its system of family reunification involving unaccompanied children, with a view to broadening the definition of "family member", simplifying application procedures and ensuring that the best interests of the child are a primary consideration in all related decisions."[86]

We call for the State to commit to implementing this recommendation through a comprehensive review and reform of the statutory basis for family reunification. We consider that there are a number of amendments that can be made to the legislation to ensure the Act aligns with the State's Ireland obligations under international human rights standards, in particular standards relating to the rights of the child.

The Commission recommends that the State ensures that a comprehensive review of the family reunification provisions within the International Protection Act 2015 includes consideration of the various barriers faced by unaccompanied and separated children to family reunification.

[82] See IHREC, Ireland and the Rights of the Child: Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports (2022) p. 94.
[83] United Nations General Assembly, Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31 (2 March 2022) para. 8.
[84] Article 10(1) of the Convention on the Rights of the Child; Principle 9 of the Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations: United Nations Office of the High Commissioner for Human Rights and Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations (2018). See also United Nations Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/38/41 (4 May 2018) para. 43.
[85] United Nations General Assembly, Report of the Special Rapporteurs on sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; and trafficking in persons, especially women and children, A/72/164 (18 July 2017) para. 53.
[86] Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Ireland, CRC/C/IRL/CO/5–6 (28 February 2023) para. 40(g).

The Commission recommends that the review should be should be informed by consultation with children to ensure a child rights perspective of the family reunification provisions within the International Protection Act 2015.

Best interests of the child and the child's right to be heard

We note that section 58(2) of the Act provides that the best interests of the child shall be a primary consideration in applying the family reunification provisions. We welcome this commitment to ensuring that the statutory family reunification process should be guided by the best interests of the child.[87] An assessment of a child's best interests should be conducted by an appropriately trained official and on the basis of child rights-based benchmarks.[88] In determining the best interests of a child, the Committee on the Rights of the Child has stated that the concept of a child's best interests is flexible and adaptable, and should be adjusted and defined on an individual basis according to the specific situation of the child, taking into account the child's personal context, individual characteristics, situation and needs.[89] The Committee recommends drawing up a non-exhaustive and non-hierarchical list of elements to be included in a best interests assessment. Such a list could include elements such as the child's views; the child's identity; preservation of the family environment and maintaining relations; care, protection and safety of the child; and situation of vulnerability.[90] In clarifying the concept of the best interests of a child, guidance should be published on the family reunification process that sets out the factors

[87] States must always apply the best interests principles when making decisions concerning family reunification: see Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, 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 (16 November 2017) para. 35. See also European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to the rights of the child (2022) p. 210.

[88] United Nations General Assembly, Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31 (2 March 2022) para. 48.

[89] Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 (29 May 2013) paras. 32, 48.

[90] Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 (29 May 2013) paras. 50–76. Guidance on the best interests assessment to be conducted for family reunification can also be drawn from the UNHCR's '*Best Interests Procedure Guidelines*': UNHCR, 2021 UNHCR best interests procedure guidelines: Assessing and determining the best interests of the child (2021) p. 160.

and circumstances to have regard to when determining the best interests of a child in family reunification applications.[91]

The family reunification procedures should recognise the right of a child to be heard in family reunification, and to have their views be given due weight in accordance with their age and maturity.[92] We are of the view that clear procedures and processes, which align with domestic and international standards, for listening to children need to be established so that there is a clear mechanism for hearing children's voices in family reunification applications. This means ensuring that appropriate procedures and expertise are in place to listen to the voice of the child in a child-appropriate format.

The Commission recommends that the State should ensure that the review of the family reunification provisions within the International Protection Act 2015 includes consideration of whether the best interests of the child and the right of the child to be heard are adequately protected and given effect in the family reunification process.

The Commission recommends that the State develop and publish guidance, drawing from national and international standards, on factors and circumstances to have regard to in determining the best interests of a child in family reunification decisions under the International Protection Act 2015.

The Commission recommends that the State develop and publish guidance, drawing from national and international standards, on procedures and processes in place for a child's right to be heard in the family reunification process.

Reunification with parents

Section 56(9)(c) provides for a child to reunite with their parents. We note the Supreme Court held that the word 'child' under this provision could only be a reference to a biological or adopted child

[91] ECRE identify the creation of specific guidelines on the involvement of children in family reunification procedures – in the light of the best interests principle – is an example of good practice; highlighting examples in Belgium and the Netherlands: ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p.8.
[92] Articles 3, 5, 9, 10, 12, 16 and 22 (2) of the Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment No. 12 (2009) The right of the child to be heard, CRC/C/GC/12, (20 July 2009) para.72. See also Principle 9 of the Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations: United Nations Office of the High Commissioner for Human Rights and Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations (2018).

of the sponsor.[93] However, we are of the view that this provision may not fully reflect the complexities in parental relationships, particularly for children of people in customary marriages or long-term partnerships. The UNHCR recommends that States should adopt a flexible approach to family reunification for children, including a recognition of the right of children to reunify with same-sex couples, common-law spouses, couples who have entered into a customary marriage, adoptive parents and other caregivers.[94]

The Commission recommends that section 56(9)(c) of the International Protection Act 2015 be amended to provide that a child may reunite with parents who are in customary marriages or long-term partnerships.

Reunification with other family members

Section 56(9)(c) provides that a child may only reunite with their parents or siblings who are under the age of 18. We are concerned, in particular, that restrictions on siblings over the age of 18 may have a "chilling effect on family reunification" for unaccompanied children, as parents may have to choose between whether to reunite with their child in Ireland and abandoning their adult child in another State, or not reunifying with their child in Ireland.[95] Legal and policy frameworks which prioritise immigration control over the rights and best interests of the child may result in an arbitrary or unlawful interference with a child's privacy and family life.[96] We consider that there needs to be a greater level of flexibility in the legislation to ensure that the statutory family reunification scheme does not interfere with the family unit.

We are of the view that restrictive provisions on family reunification, with reunification only provided for the parents and siblings under 18 years old of a child, does not reflect the complexities within other States where children may have been cared for by other family members, including grandparents, aunts and uncles, or older siblings.[97] We note that this is a more limited provision than the Family Reunification Directive which provides that States may

[93] In relation to the definition of 'child' under section 56(9)(d); Dunne J in *X v Minister for Justice* [2020] IESC 30.
[94] UNHCR, 2021 UNHCR best interests procedure guidelines: Assessing and determining the best interests of the child (2021) p. 136.
[95] Council of Europe, Family reunification for refugee and migrant children: Standards and promising practices (2020) p. 42.
[96] United Nations General Assembly, Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31 (2 March 2022) para. 39.
[97] ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 11.

provide for family reunification for an unaccompanied child with their legal guardian or any other member of their family, where there are no relatives in the direct ascending line, or where they cannot be traced.[98] It has been noted that in Europe family reunification for unaccompanied and separated children:

> "is rarely implemented in practice, owing to, among other reasons, the restricted concept of family (limited to close relatives only) which does not take into account the diversity in type and composition of families across regions."[99]

A number of EU Member States provide for reunification with a legal guardian or another member of the family responsible for them in cases where the parents are deceased or cannot be traced.[100] The Committee on the Rights of the Child has stated that the term family:

> "must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom".[101]

Therefore, we consider that the family reunification provisions for a child should take into account the diversity in family relationships.[102]

The Commission recommends that section 56(9)(c) of the International Protection Act 2015 be amended to provide that a child can apply for family reunification with a broader understanding of family members including grandparents, older siblings, older cousins and caregivers.

Children who 'age out'

Section 56(9)(c) provides that in order to benefit from the statutory right to reunify with parents and siblings, a sponsor must be under the age of 18 years at the time of their application for family

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[98] Article 10(3)(b) of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. See also ESRI / EMN, Approaches to unaccompanied minors following status determination in Ireland (2018) p. 83.
[99] United Nations General Assembly, Report of the Special Rapporteurs on sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; and trafficking in persons, especially women and children, A/72/164 (18 July 2017) para. 60.
[100] Bulgaria, Croatia, Malta, Poland, Portugal, Romania, and Spain. See ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 15. See also Council of Europe, Family reunification for refugee and migrant children: Standards and promising practices (2020) p. 43.
[101] Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 (29 May 2013) para. 59.
[102] United Nations General Assembly, Report of the Special Rapporteurs on sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; and trafficking in persons, especially women and children, A/72/164 (18 July 2017) para. 82(b).

reunification. We are concerned that due to delays in the international protection system, unaccompanied and separated children, who applied for international protection before turning 18, are turning 18 before receiving their status and are therefore unable to apply for family reunification with their parents.[103] We note the finding of the CJEU that, for the purposes of the Family Reunification Directive, an unaccompanied child who lodges an application for international protection before the age of 18 but reaches the age of majority before being granted international protection, must be regarded as a minor in assessing entitlements for family reunification.[104] The CoE Commissioner for Human Rights has recommended that as long as a person applies for family reunification before they turn 18 they should be treated as a child for the purposes of family reunification.[105]

Section 56(9)(d) provides that a child of a sponsor must be under the age of 18 years at the time their parent applies for family reunification in order for the child and parent to reunify under the Act. We are concerned that delays in the international protection system may affect the children of international protection applicants as they may turn 18 as they await their parent/s receiving their status. Refugees seeking to bring their children to Ireland have been refused on the basis that their children were aged over 18 by the time the refugee declaration was made and the family reunification application submitted.[106] However, we note that the CJEU, in interpreting the Family Reunification Directive, have held that a child of a sponsor will still be considered as a child even if they subsequently turn 18, as long as the sponsor applied for asylum before the child turned 18.[107]

The Commission recommends that section 56(9)(c) of the International Protection Act 2015 be amended to provide that an individual, who at the date of their application for international

[103] See IHREC, Ireland and the Rights of the Child: Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports (2022) p. 93.
[104] See Case C-550/16, *A and S v Staatssecretaris van Veiligheid en Justitie* [2018] EU:C:2018:248. As Ireland has not opted into the Family Reunification Directive, this judgment is not binding. See also See European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to the rights of the child (2022) p. 208.
[105] Council of Europe, Realising the right to family reunification of refugees in Europe: Issue paper published by the Council of Europe Commissioner for Human Rights (2017) p. 7.
[106] See for example, *S.H v Minister for Justice & Ors* and *A.J v Minister for Justice and Ors* [2022] IEHC 392.
[107] *Bundesrepublik Deutschland v. XC*, C-279/20, 1 August 2022, para. 54. See also ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 13; European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to the rights of the child (2022) p. 208.

protection, is under the age of 18 years old can apply for family reunification under this subsection.

The Commission recommends that section 56(9)(d) of the International Protection Act 2015 be amended to provide that a child of a sponsor, who at the date of their sponsor's application for international protection, is under the age of 18 years old can benefit from family reunification under this subsection.

Programme refugees

We have called for the State to clarify, in law, the rights of programme refugees to family reunification.[108] Guidance by Immigration Service Delivery indicates that you can apply for family reunification under the Act if you have received a current declaration as a:

- convention refugee;
- beneficiary of subsidiary protection; or
- programme refugee.[109]

However, it is not clear in the Act that the provisions on family reunification apply to programme refugees as sections 56 and 57 refer to a 'qualified person'. Section 2 interprets a 'qualified person' as meaning a Convention refugee or a beneficiary of subsidiary protection.[110] Section 59 – concerning programme refugees – states that the provisions of sections 53 to 55 of the Act apply to programme refugees as if they were a qualified person, but section 59 makes no mention of sections 56 and 57. However, we note in practice that the Department of Justice operates a policy whereby programme refuges can apply for family reunification under the eligibility requirements and criteria as set out in the Act.[111] We consider that this right to family reunification for

[108] IHREC, The right to family reunification for beneficiaries of international protection (2018) pp. 20–21.
[109] See https://www.irishimmigration.ie/coming-to-join-family-in-ireland/family-reunification-of-international-protection-holders/#Can-I-apply.
[110] Section 2 of the Act provides that a "qualified person" means a person who is either—(a) a refugee and in relation to whom a refugee declaration is in force, or (b) a person eligible for subsidiary protection and in relation to whom a subsidiary protection declaration is in force.
[111] Minister for Justice, Response to Parliamentary Question 704: Family Reunification (13 January 2021). See also EMN / ESRI, National statuses granted for protection reasons in Ireland (2020) p. 65.

programme refugees should be made explicit in the legislation to ensure clarity in the operation of the statutory family reunification process.

The Commission recommends that the International Protection Act 2015 be amended to clarify that the right to family reunification under the Act applies to programme refugees.

Naturalised refugees

We have called for the State to clarify the right to family reunification for refugees who acquire Irish citizenship, as the Act excludes refugees who acquire citizenship by naturalisation from its purview.[112] We have been amicus curiae in the joint cases of MAM and KN concerning the Minister for Justice's refusal to grant family reunification rights to naturalised refugees.[113] While this case concerned the Refugee Act 1996, our submissions on family reunification for naturalised citizens are of relevance to this Act.

In our submissions to the Court of Appeal and the Supreme Court, we put forward the view that naturalised refugees should enjoy the same right to family reunification as refugees who have not been naturalised and we recommended that naturalised refugees should not be excluded from the statutory family reunification regime following naturalisation.[114] We are of the view that the acquisition of citizenship does not extinguish a refugee's rights to family unity under Article 8 ECHR.[115] MacMenamin J in the Supreme Court held that the fact that the two individuals became

[112] IHREC, The right to family reunification for beneficiaries of international protection (2018) pp. 21–22.
[113] In both cases, the Minister for Justice and Equality refused family reunification applications from individuals, who had been granted refugee status under the Refugee Act 1996 and subsequently naturalised as Irish citizens, on the ground that they were no longer entitled to "refugee" family reunification since becoming Irish citizens. The Minister refused the individual at the centre of the 'MAM' case family reunification in respect of her husband, and the individual at the centre of the 'KN' case in respect of her adult daughter and two granddaughters.
[114] We are of the view that the Article 8 ECHR protects the family reunification rights of naturalised refugees just as it does those of refugees who retain the nationality of their country of origin, we also consider that the Minister's interpretation of the *Refugee Act 1996*, that naturalised citizens cannot apply for family reunification, may be potentially repugnant to Articles 40.1, 40.3 and 41 of the Constitution. See IHREC's 2018 amicus curiae submission to the Court of Appeal in the cases of *MAM v. The Minister for Justice and Equality* and *KN v. The Minister for Justice and Equality*, paras. 30, 52, 55; IHREC's 2020 amicus curiae submissions to the Supreme Court in the cases of *MAM v. The Minister for Justice and Equality* and *KN v. The Minister for Justice and Equality*, paras. 33. 51.
[115] IHREC's 2020 amicus curiae submissions to the Supreme Court in the cases of *MAM v. The Minister for Justice and Equality* and *KN v. The Minister for Justice and Equality*, para. 24.

naturalised citizens did not deprive them of the right to apply for family reunification under the Refugee Act 1996.[116]

We contend that to deny a refugee the right to family reunification post-naturalisation fails to acknowledge their past and their route to citizenship, their fear of being persecuted in a country to which they cannot return, and their continued separation from their family due to acquiring citizenship.[117] Further, the denial of family reunification has the potential to interfere with the enjoyment of the rights acquired by the refugee upon naturalisation.[118]

The Commission recommends that the International Protection Act 2015 be amended to ensure that the statutory right to family reunification applies to naturalised citizens.

Evidence to demonstrate family ties

Sections 56(3) and 57(3) of the Act require the applicant and the sponsor to co-operate with the Minister's investigation into an application for family reunification by providing all information relevant to the application. We recommended the State provide guidance on the operation of the duty to co-operate set out in sections 56(3) and 57(3).[119] The guidance should provide information on the types of evidence that may be offered to demonstrate family links. Particular attention should be given to the circumstances in which the Department of Justice will require an applicant for family reunification and their family members to submit to DNA testing.[120] Dunne J in the Supreme Court stated that due to concerns with the right to privacy, DNA testing should not be sought or requested as a matter of routine rather it should be limited to cases where there is 'serious doubt'.[121]

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[116] We note that MacMenamin J stated that the Supreme Court's "judgment says nothing about what is now contained in the Act of 2015 on these questions.": see *KN & Ors -v- Minister for Justice & Equality*, *MAM -v- Minister for Justice & Equality* [2020] IESC 32, para. 105.

[117] IHREC's 2020 amicus curiae submissions to the Supreme Court in the cases of *MAM v. The Minister for Justice and Equality* and *KN v. The Minister for Justice and Equality*, para. 25.

[118] IHREC's 2020 amicus curiae submissions to the Supreme Court in the cases of *MAM v. The Minister for Justice and Equality* and *KN v. The Minister for Justice and Equality*, para. 25.

[119] We also recommended that the applicant be afforded an opportunity to present information by means of an interview and should be entitled to be accompanied at such interview, for example, by their legal representative: IHREC, The right to family reunification for beneficiaries of international protection (2018) pp. 18–19.

[120] We consider that the Department's Policy Document is not sufficiently clear on the circumstances; the Policy Document sets out that "In certain cases where reasonable doubt exists, the parties may be asked to provide DNA evidence in support of the claimed relationship." See Irish Naturalisation and Immigration Service, Policy Document on Non-EEA Family Reunification (2016) p. 37. Guidance on circumstances where DNA may be requested can be drawn from the Supreme Court decision in *X v Minister for Justice* [2020] IESC 30, which concerned consent to DNA testing.

[121] *X v Minister for Justice* [2020] IESC 30, para. 115.

The Commission recommends that the State develops and publishes accessible guidance on the operation of the duty to co-operate set out in sections 56(3) and 57(3) of the International Protection Act 2015.

The Commission recommends that the State develops and publishes accessible guidance on the circumstances in which DNA testing will be required for family reunification applications under the International Protection Act 2015.

Time limit for family reunification applications

Sections 56(8) and 57(7) of the Act prescribes that an applicant must apply within 12 months of the grant of refugee status or subsidiary protection status. We have called for the State to repeal or amend the 12-month limit for applications for family reunification.[122] The Supreme Court in A, S and I held that this provision is constitutional and compatible with Article 8 ECHR.[123] Dunne J, in the Supreme Court, held that it was a matter of policy for the legislature and not an issue for the courts.[124] Further, we note that Dunne J held that the requirement under section 58(2) to ensure that the best interests of the child shall be a primary consideration does not require the Minister to disapply or extend the time limit.[125] However, we continue to have serious concerns about this timeframe, as the 12-month limit is impossible in practice for many refugees as there may be difficulty in tracing family members during situations of conflict and crisis, and applicants may have limited access to tailored legal services and information.[126] We note that the Minister for Justice has stated that:

> "every effort is made to facilitate applicants if an extension of time is requested to obtain original documentation, to make contact with family members, or where delays are experienced through no fault of the applicant."[127]

[122] IHREC, The right to family reunification for beneficiaries of international protection (2018) pp. 23–24.
[123] *A, S and I v Minister for Justice* [2020] IESC 70. See also Irish Refugee Council, Asylum Information Database (AIDA) – Country report: Ireland (2022) p. 126; Emily Farrell, Family reunification for international protection beneficiaries (2022) 27(2) The Bar Review 47, p. 48.
[124] *A, S and I v Minister for Justice* [2020] IESC 70, para. 124.
[125] *A, S and I v Minister for Justice* [2020] IESC 70, para. 123. See also Emily Farrell, Family reunification for international protection beneficiaries (2022) 27(2) The Bar Review 47, p. 49.
[126] We note criticism of the inflexibility of the legislation: Nasc, Invisible people: The integration support needs of refugee families reunified in Ireland (2020) p. 45.
[127] Minister for Justice, Response to Parliamentary Questions 710: Family Reunification (24 November 2020).

We consider that this flexibility should have a legislative basis to provide clarity to applicants for family reunification.

The Commission recommends that sections 56(8) and 57(7) of the International Protection Act 2015, which provide for the 12-month limitation within which applications for family reunification should be made, should be either repealed or amended. In the case of amendment, the Commission recommends that provision should be made to allow for an extension of time where good and sufficient reasons exist.

Timeframe for determination of an application

There is no provision in sections 56 or 57 specifying the timeframe in which the Minister must make their decision on the application. This is in contrast to Article 5(4) of the Family Reunification Directive, which provides that an applicant must be provided with written notification of the decision 'as soon as possible' and no later than nine months after the submission of the application.[128] While Article 5(4) provides for extension of this limit in exceptional circumstances, the delay must be linked to the complexity of the examination of the application rather than administrative capacity issues.[129] We note that France, Italy, Poland and Portugal have set time limits of between two to three months in their national legislations.[130] We are of the view that it is important for the legislation to include a specific timeframe on decisions to provide clarity to applicants.

The Commission recommends that sections 56 and 57 of the International Protection Act 2015 be amended to provide for a timeframe, of no later than six months, for the Minister's decision to grant or refuse permission for family reunification.

[128] Article 5(4) of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.
[129] Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification (2014).
[130] ECRE, Not there yet: Family reunification for beneficiaries of international protection (2023) p. 27.

Expiry date for permission

Section 56(5) provides that the Minister may impose an expiry date in respect of grants of family reunification.[131] We are concerned that this provision may cause difficulties for people granted permission to reunite with a family member, particularly in circumstances where other members of the family, who are not eligible under the Act, are applying under the Policy Document, and are awaiting the determination of their applications. These applications could be subject to delay, which means that the person granted permission may be unable or unwilling to travel within the timeframe specified by the Minister, as they want to wait until all members of the family can travel together.

The Commission recommends that section that 56(5) of the International Protection Act 2015 be amended to provide for the extension of the expiry date where good and sufficient reasons exist.

Appeal mechanism

We note that refusals of applications for family reunification under sections 56(7) and 57(6) of the Act may not be appealed.[132] While individuals may judicially review the decision-making process, we have previously expressed concern that judicial review may not be seen as an effective remedy.[133] Establishing an effective statutory appeals mechanism is key to ensuring that individuals can access an effective remedy, as guaranteed under national and international human rights law. We particularly note the rights of a child to an effective remedy; international guidance provides that a child should have a right to appeal a refusal of family reunification and the State should provide information to the child on their right to appeal.[134] Accordingly, the continued

[131] Section 56(5) sets out that "A permission given under subsection (4) shall cease to be in force if the person to whom it is given does not enter and reside in the State by a date specified by the Minister when giving the permission."
[132] IHREC, The right to family reunification for beneficiaries of international protection (2018) pp. 26–28.
[133] We considered that judicial review may not be regarded as an effective remedy as it is only possible to review the reasonableness of a decision through judicial review and there have been concerns around delays in hearing immigration cases in the superior courts in the past: IHREC, The right to family reunification for beneficiaries of international protection (2018) pp. 26–28.
[134] If family reunification is refused for a child or their family, the State should provide detailed information to the child, in a child-friendly and age-appropriate manner, on the reasons for refusal. See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, 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

failure of the State to provide for a statutory appeals mechanism for refusals of family reunification application means that our concerns on this area remain unaddressed.

The Commission recommends that an independent appeals procedure for family reunification applications be introduced or added to the existing appeals mechanisms of the State to protect the right to an effective remedy.

Guidance on the family reunification process

Throughout this paper, we have made a number of recommendations on the development and publication of guidance on the operation of the statutory family reunification scheme.[135] While the Department of Justice's webpage on the 'Family reunification of international protection holders'[136] and its 'Policy Document on non-EEA Family Reunification'[137] is a helpful guide to the family reunification process, we are of the view that comprehensive and accessible guidance on the operation of the family reunification process under the Act should also be developed and published. Detailed guidance focussed solely on the operation of the provisions including eligibility criteria and deadlines under the Act would provide clarity to international protection applicants on the family reunification application process.[138] The guidance should be provided in an age, disability, gender, linguistic and culturally appropriate manner.[139]

The Commission recommends that the State develop and publish detailed accessible guidance, in consultation with international protection holders and their representative organisations, on the operation of the family reunification provisions under the International Protection Act 2015.

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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 (16 November 2017) para. 36.

[135] Including guidance on: the meaning of dependency, the best interests of the child, the right of the child to be heard, the operation of the duty to co-operate set out in sections 56(3) and 57(3), and on the appeals mechanism.

[136] See https://www.irishimmigration.ie/coming-to-join-family-in-ireland/family-reunification-of-international-protection-holders/.

[137] We note that there is an absence of any specific provision for applications by beneficiaries of international protection in the Policy Document.

[138] United Nations General Assembly, Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31 (2 March 2022) para. 46.

[139] Council of Europe, Family reunification for refugee and migrant children: Standards and promising practices (2020) pp. 52, 56–57; United Nations General Assembly, Rights of the child and family reunification: Report of the United Nations High Commissioner for Human Rights, A/HRC/49/31 (2 March 2022) para. 50.

Appendix: Recommendations in the Commission's 2018 policy paper 'The right to family reunification for beneficiaries of international protection'

In our 2018 policy paper, 'The right to family reunification for beneficiaries of international protection', we recommended a number of amendments to the Act; including:

- Section 56(9) of the Act should be amended:
    - to define a member of family in sufficiently broad terms in order to ensure compliance with the States international human rights obligations. This may be achieved through a restoration of the dependent family member category set out in section 18(4) of the Refugee Act 1996 on a non-discretionary basis;
    - to allow individuals who have entered into a customary marriage, or those who have established long-term partnerships, to apply for family reunification;
    - to ensure that spouses and civil partners are eligible for family reunification where the marriage or civil partnership was subsisting on the date of the application for family reunification; and
    - to provide for the recognition of relations that are not formally registered civil partnerships or marriages;
- Sections 56(8) and 57(7) of the Act, which introduced a 12-month time limitation within which applications for family reunification should be made, should either be repealed or amended. In the case of amendment, we recommend that provision should be made to allow for an extension of time where good and sufficient reasons exist;
- The right of Programme Refugees to family reunification should be clarified in law
- Naturalised refugees should not be excluded from the statutory family reunification regime following naturalisation.

In addition, we recommended that the Department of Justice's 'Policy Document on Non-EEA Family Reunification' should be amended:

- to ensure that the description of dependency aligns with international standards;
- to provide guidance on the operation of the duty to co-operate set out in sections 56(3) and 57(3) of the Act;
- to afford applicants an opportunity to present information on family relationships at interview and facilitate the right to be accompanied at such interview, for example, by their legal representative;
- to provide information on the types of evidence that may be offered to demonstrate family links.

We also recommended that an independent appeals procedure should be introduced or added to the existing appeals mechanisms of the State in order to protect the right to an effective remedy.

Coimisiún na hÉireann um Chearta an Duine agus Comhionannas
Irish Human Rights and Equality Commission

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