



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

# Recommended Amendments to the International Protection Bill 2026

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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## Purpose

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This document aims to provide an overview to help shape recommended legislative amendments. This builds upon our existing positions, including our [Initial Analysis of the International Protection Bill](#), published at Stage two, and our analysis of the [International Protection Bill for the Joint Oireachtas Committee on Justice, Home Affairs and Migration](#).

Many deficiencies arise not from outright contradiction of EU law, but because the Bill as drafted does not comply with national and international human rights and equality law.

This may be due to selective or minimal transposition, excessive Ministerial discretion, and / or the absence of safeguards.

Amendments should therefore prioritise:

- statutory clarity;
- enforceable rights;
- proportionality; and
- operational independence of oversight mechanisms.

The Bill requires substantial amendment to ensure alignment with the EU Migration and Asylum Pact, the Constitution, the Charter of Fundamental Rights, the ECHR, and the EU Anti-Trafficking Directive (2024/1712).

### Disclaimer:

These proposed amendments are provided by the Irish Human Rights and Equality Commission as recommended policy and legislative drafting suggestions only. They have been prepared for discussion and consultation purposes and do not constitute formal legal drafting or legal advice. While every effort has been made to ensure accuracy and coherence, users of these draft amendments should exercise their own professional judgment and obtain independent legal advice as necessary.

## **Brief Overview**

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### **Legal Counselling**

The Minister for Justice says he will bring forth an amendment on legal counselling at Committee stage. This might not give enough time to debate this crucial issue.

- Insert statutory definitions of:
  - ‘legal counselling’;
  - who may provide it;
  - its relationship to legal advice, representation and ‘cultural mediation’;
- Provide minimum safeguards (independence, confidentiality, training).
- Clarify access to any electronic portal and interaction with legal representatives.

### **Detention (Adults and Children)**

The Bill creates numerous new mechanisms to deprive international protection applicants ("IPAs") of their liberty, despite the right to liberty being one of the most strongly protected rights in Irish law.

#### **Adults**

- Remove powers permitting arrest and detention of lawful residents.
- List alternatives to detention in all detention provisions.
- Require written detention orders stating reasons and why alternatives are insufficient.
- Provide for speedy judicial review of detention within Pact timelines.
- Remove or limit criminal sanctions arising from disability-related behaviour and for applicants with special reception needs, including victims of trafficking.

## **Children**

- Exempt minors from criminal liability.
- Prohibit the presence of children in adult detention settings (prisons, Garda stations).
- Provide statutory alternatives to detention for families.
- Where minors and UAMs are to be detained, specify suitable places such any such detention as a last resort
- Ensure that children in detention are monitored and supported.
- Insert:
  - presumption of minority;
  - age-assessment safeguards; and
  - monitoring and health-based prohibitions on detention.

## **Creation of New Offences**

- Review and amend offences that:
  - create a hostile environment for persons seeking asylum;
  - disproportionately affect vulnerable persons; and
  - impede or undermine the right to apply for asylum (Article 18 CFR).
- Remove or qualify offences relating to:
  - requirement to provide documents related to an IP application to An Garda Síochána or immigration officers; and
  - failure to cooperate where coercion, disability or trafficking may be involved.

- Insert explicit non-punishment protections for victims of trafficking.

## **Vulnerability Assessments**

- Amend to provide for:
  - assessment at later stages where vulnerabilities emerge; and
  - ongoing monitoring of persons with special reception needs.
- Ensure preliminary assessments do not constitute the entirety of Pact-required assessments.

## **Age Assessment**

- Constrain Ministerial discretion over who may conduct medical age assessments and / or examinations and what form they can take.
- Require medical assessments and or / examinations to be carried out:
  - by qualified medical professionals; and
  - in the least invasive way possible having regard to human rights including the right to privacy and bodily integrity
- Strengthen presumption of minority protections.

## **Service of Documents (Digital / Portal)**

- Amend to ensure:
  - service is effective only when reasonably accessible and received; and
  - persons with special reception needs can choose alternative methods.
- Prevent implicit withdrawal where electronic access is compromised.

## **Chief Inspector of Border Procedures**

## **Independence**

- Strengthen statutory guarantees of independence.
- Limit grounds and process for removal (Oireachtas resolution).
- Provide express authority to publish reports independently.
- Insert statutory provision for adequate funding via Oireachtas.

## **Functions and Scope**

- Extend remit to all screening, regardless of location.
- Clarify powers relating to:
  - complaints;
  - investigations including into deaths or incidents of serious harm; and
  - interaction with other oversight bodies.

## **Advisory Board to the Chief Inspector of Asylum Border Procedures**

- Ensure access to information and/or reports.
- Reinstate OPCAT/NPM representation.
- Add civil society representation.

## **Victims of Trafficking**

- Explicitly integrate early detection of trafficking into screening, health and vulnerability assessments.
- Align the Bill with the National Referral Mechanism under the Criminal Law (Sexual Offences and Human Trafficking) Act 2024 ('the 2024 Act').
- In addition to points above on detention and criminalisation, exempt presumed and identified victims from:



- compulsory travel to screening centres; and
  - criminal sanctions for non-compliance.
- Require specialist anti-trafficking training for frontline officials, including those working with children in the asylum process.
- Insert specific protections for child victims of trafficking.
- Exempt victims of trafficking from accelerated and border procedures.

## Detailed Overview

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### Legal Counselling

#### Overview

- Under the Pact, the State must provide legal counselling. It may also provide legal advice and assistance at first or 'administrative procedures' stage. The Bill does not provide for legal advice at administrative procedures stage, raising questions about effective access to justice<sup>1</sup> and what 'legal counselling' is.
- The Bill contains no definition of “legal counselling” or of who may act as a legal counsellor.
- Minister intends to add detail by later amendment.

#### Recommendations

- Insert statutory definitions clarifying:
  - what constitutes legal counselling;
  - who may provide it;
  - its relationship with legal advice, representation, and cultural mediation; and
  - applicable safeguards (confidentiality, independence, training).

#### Amendments

- Amend the Bill to include a definition of legal counselling:<sup>2</sup>

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<sup>1</sup> The State has provided free legal aid to ensure effective access to justice since the European Court of Human Rights decision in *Airey v Ireland* in 1979, some 46 years ago.

<sup>2</sup> Wording/definition taken from A16(2) APR. Note that the APR provides that this is what Legal Counselling “shall include” i.e. it can go beyond this however.

*Free legal counselling shall include the provision of:*

*(a) guidance on and an explanation of the administrative procedure including information on rights and obligations during that procedure;*

*(b) assistance on the lodging of the application and guidance on:*

*(i) the different procedures under which the application may be examined and the reasons for the application of those procedures;*

*(ii) the rules related to the admissibility of an application;*

*(iii) legal issues arising in the course of the procedure, including information on how to challenge a decision rejecting an application in accordance with (relevant sections of the Bill)*

- Amend the Bill, the Civil Legal Aid Act and all other relevant legislation to provide for free legal assistance and representation in the administrative procedure in accordance with national law.<sup>3</sup>
- Amend the Bill, the Civil Legal Aid Act and all other relevant legislation including Criminal Justice (Legal Aid) Acts if necessary to ensure that, where an applicant is held in detention or accused of an offence under this Bill, they have effective access to the necessary procedural guarantees, including but not limited to judicial review and the right to free legal assistance and representation.<sup>4</sup>

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<sup>3</sup> As provided for in both Recital 16 APR and A15(3) APR:

*Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.*

<sup>4</sup> Based on Recital 26 RCD:

*The detention of applicants pursuant to this Directive should only be ordered in writing by judicial or administrative authorities stating the reasons on which it is based, including in cases where the person is already detained when making the application for international protection. Where an applicant is held in detention, that applicant should have effective access to the necessary procedural guarantees, such as judicial review and the right to free legal assistance and representation, where applicable under this Directive.*

# Detention

## Overview

- The Bill provides for new powers of arrest without warrant and detention of IPAs even in situations where they are not accused of any criminal offence. This includes the detention of children. These detention provisions do not align with the State's traditionally strong protection for the right to liberty set out in the Constitution. They may be unlawful.
- These provisions result in the detention of children, disabled people and Victims of Trafficking among others with special reception needs.

## Detention of Adults

What the Bill Provides:

- Section 24(1) provides that, after applying for IP, where an IP applicant refuses or fails to comply with a direction to travel to a screening centre, a member of AGS or an immigration officer (hereafter collectively referred to as “an officer”) can arrest and detain the person for the purposes of verifying their identity or nationality.
- Section 24 allows arrest and detention (up to 2 days aggregate) for failure to comply with direction to attend screening. (24(6)).
- Detention is in screening centres, Garda stations, prisons, (24(4)(a) and 24 (5) and vehicles “where necessary” (24(4)(b)).

## Lawful residents

- Sections 22(4)–(5) and 24(3)(a) allow detention of persons with lawful residence where an officer believes attendance is required for public policy or national security.

- This criterion is vague and allows for creation of far-reaching powers, creating a risk that people resident in the State with immigration permission will be arrested without warrant and detained.

## **Recommendation**

- Remove provisions allowing arrest/detention of persons with lawful residence permission. This would mean that officers cannot direct people with lawful residence permission to attend screening centres on the vague grounds of national security or public policy.
- Such people may be lawfully resident in the State. They may be working, and unable to comply with a direction to attend screening centre without losing their jobs.

## **Amendments**

- Delete s.22(5) in its entirety:

~~*Where a member of An Garda Síochána, an immigration officer or an officer of the Minister has reasonable grounds for believing that it is in the interests of public policy or national security for an applicant to whom paragraph (a) or (b) of subsection (4<sup>5</sup>) applies to be subject to the obligation referred to in subsection (1), the member or officer may give the applicant a direction referred to in subsection (2).*~~

The amendment below gives officers the power to arrest and detain anyone who does not comply with a direction to attend screening centre. By removing 22(5) and reference to it in 24(3)(a), this now means that officers cannot arrest and detain people who are lawfully resident in the State on the grounds of public policy or national security.

- Amend section 24(3)(a) to remove reference to section 22(5):

*Subsection (2) shall not apply to—*

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<sup>5</sup> i.e. someone who holds “a valid registration certificate” under the Immigration Act 2004

- (a) *an applicant referred to in section 22(4) unless section 22(5) applies to the applicant, or*
- (b) *a minor.*

## **Disabled people**

- Sections 24(7)–(9) criminalise behaviour endangering one’s own safety.
- If this becomes law, behaviour resulting from mental ill health or disability may attract criminal sanctions.

## **Recommendations**

- Create exemptions for behaviour arising from disability or illness.
- If applied, this would mean that it would not be permissible to arrest and detain anyone with special reception needs under this section, e.g. a disabled person who endangers their own safety, a child or a pregnant woman who resists arrest.

## **Amendment**

- Insert new section 24(9A):

*Subsection (9) shall not apply to applicants with special reception needs.*

## **Alternatives to detention**

- Article 10(5) RCD requires alternatives to detention in national law.<sup>6</sup>
- The Bill does not set any out under section 24.<sup>7</sup>

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<sup>6</sup> “Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.”

## Recommendation

- Insert alternatives to detention applicable to all detention provisions, including section 24;<sup>8</sup>

## Amendment

- Insert new section 24 (14):

*24(14): For the purposes of this section, less coercive alternative measures to detention shall include regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place.<sup>9</sup>*

## Detention of Children

- The Bill provides for both the detention and *de facto* detention of children. Some of these provisions go further than required or allowed by the Pact. They may be unlawful.
- Section 24(11)–(12) provides for the detention of accompanied and unaccompanied minors in exceptional circumstances.
- The Bill does not, however, set out alternatives to detention for children or provide that children are only to be detained in suitable accommodation, monitored and supported.

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<sup>8</sup> The only alternatives to detention provided for in the Bill are set out at s.165, however, s.165(1) provides limits those alternatives to detention for the purposes of Chapter 2 of Part 9 (returns), i.e. the ‘Return border procedure’.

<sup>9</sup> Article 10(4) RCD:

*Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.*

## **Criminalised behaviour**

- Sections 24(7)–(9) make it an offence to endanger one's own safety or the safety of others and/or to obstruct or hinder an officer.
- The Bill does not exempt children from criminal liability for these offences.

## **Recommendation**

- Exempt minors and those with special reception needs from criminal liability under these provisions. If implemented, this would mean that it would not be permissible to arrest and detain anyone with special reception needs e.g. a disabled person who endangers their own safety or a child or pregnant woman who resists arrest under this section.

## **Amendment**

- As at 2(ii) above, insert new 24(9A):

*Subsection (9) shall not apply to applicants with special reception needs.*

## **Children detained with parents**

- Section 24(10) allows for children to accompany their parents or guardians in prisons and Garda stations.
- If or when children accompany their parents in such situations, the Bill requires officers to notify the Child and Family Agency, Tusla. This could result in the children being taken into care, contrary to the principle of family unity set out in the Pact.
- The Bill does not require that families be detained in suitable accommodation
- Children should never be placed in adult detention centres.

## **Recommendation**

- Ensure family alternatives to detention.



- Prohibit detention of children in adult detention settings.

### **Amendment**

- Amend 24(10) to ensure that children do not accompany their parents to prisons and Garda stations:

*(10) Where a person under the age of 18 years is in the custody of an applicant (whether the applicant is a parent or a person acting in loco parentis or any other person) and the applicant is detained under this section, the best interests of the children shall be a primary consideration. Such families are to be placed in accommodation suitable to protect and promote the best interests of the child in accordance with A.26(2) RCD, including respect for the principle of family unity. Where necessary, in the best interests of the child, a member of An Garda Síochána or an immigration officer shall notify the Child and Family Agency of the detention and its circumstances without delay.*

### **Children accompanied by parents and Unaccompanied Minors**

- The Bill empowers the Minister to prescribe places of detention. But the Bill gives no details about what or where these might be.
- The Bill provides no assurance that UAMs will be separated from adults in detention.
- The Bill provides no less coercive measures.
- The Bill provides for no monitoring or support for children in detention, as is called for in Art.13(1) RCD.

### **Recommendations**

- Specify appropriate detention facilities for minors and UAMs.
- List alternatives to detention

- Prohibit detention where it would put a child's physical or mental health at serious risk.
- Provide for monitoring and support of children in detention.

## Amendments

- Insert new 24(13)(c)(i) and (ii):<sup>10</sup>

(c)

*(i) Where a minor referred to in subsection (11) or (12) is detained, they shall be accommodated in facilities suitable for the housing of unaccompanied minors. Such facilities shall be provided with staff qualified to safeguard the rights of unaccompanied minors and attend to their needs.*

*(ii) Such a minor shall be accommodated separately from adults.*

- Insert new section 24(14):

*24(14): For the purposes of this section, less coercive alternative measures to detention shall include regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place.<sup>11</sup>*

- Insert new 24(15):<sup>12</sup>

*(a) Applicants with special reception needs shall not be detained where such detention would put their physical and mental health at serious risk.*

*(b) Where applicants with special reception needs are detained, their particular situation, including their physical and mental health, shall be regularly monitored*

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<sup>10</sup> 13(3) RCD

<sup>11</sup> Article 10(4) RCD: *Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.*

<sup>12</sup> 13(1) RCD

*and they shall be provided with timely and adequate support taking into account their particular situation, including their physical and mental health*

## **Transfer detention**

- Section 87(8) allows detention of persons by AGS, if believed to be over 18.<sup>13</sup>
- There are no age assessment safeguards, and it allows for detention up to five weeks.

## **Recommendations**

- Introduce presumption of minority.
- Provide statutory age assessment procedures, prior to transfer.

## **Amendment**

- Delete 87(8):

~~*If and for so long as the immigration officer or member of An Garda Síochána concerned has reasonable grounds for believing that the person subject to the transfer procedure is not under the age of 18 years, the provisions of subsections (1) and (3) shall apply as if he or she had attained the age of 18 years.*~~

- Insert new 87(8):

*(a) Where, for the purposes of 87(7), there is any doubt as to whether the person subject to the transfer procedure is under the age of 18, the immigration officer or member of An Garda Síochána shall, as soon as possible and in any event before the operation of subsections (1) and (3), refer the person for age assessment under s.52.*

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<sup>13</sup> No age assessment criteria apply other than AGS's subjective view of their "reasonable grounds".

*(b) Pending the results of any age assessment under s.52 that arises by operation of subsection (8)(a), the provisions of 24(13)(c), 24(14) and 24(15) as appropriate shall apply.*

## **Procedural guarantees**

- If people are to be detained, it is essential they have access to justice to challenge that detention.
- The Bill does not provide core guarantees set out in the Pact to protect liberty
- For example, Article 11(2) of the Reception Conditions Directive (“RCD”) requires that a detention order be in writing, that it give reasons for detention and an explanation given as to why no alternatives to detention were available. IPAs should have legal aid to challenge that order in court.
- The Bill provides for none of this.

## **Recommendation**

- Revise Bill to provide for written detention orders as required by the Pact.

## **Amendment**

- Insert new section 24(17):

*24(17): The detention of applicants under this section shall be ordered in writing by the courts or the Determining Authority. 14 The detention order shall state the reasons in fact and in law on which it is based as well as why less coercive alternative measures cannot be applied effectively*

## **Judicial review**

- Article 11(3) RCD requires speedy judicial review (15–21 days).

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<sup>14</sup> Art 11 RCD: *The detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based as well as why less coercive alternative measures cannot be applied effectively.*

- There is no provision for judicial review in Bill, which is an apparent breach of Art.11 RCD.

### **Recommendation**

- Insert judicial review mechanism within Pact timelines.

### **Amendment**

- Insert new section 24(16):

*24(16): Where detention under this section is ordered by the Determining Authority, applicants shall have the right to apply to the High Court for judicial review of the lawfulness of such detention. Such review shall be concluded as speedily as possible, taking into account the circumstances of each case, and no later than 15 days or, in exceptional situations, no later than 21 days from the launch of the relevant proceedings. 15*

## **Creation of New Offences**

### **Overview**

- The Bill creates multiple new offences applicable to IP applicants.
- IPAs have a right to apply to the State for international protection. Pending a decision, they are lawfully resident in the State.<sup>16</sup>
- The Bill as drafted risks creating a hostile environment for persons seeking international protection. It unnecessarily exposes them to significant criminal sanction at every stage of the process.

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<sup>15</sup> 11(3) RCD

<sup>16</sup> Per the High Court in *Landsberg and Breetzke v Minister for Transport and Ors*

- There is a potential conflict with EU Anti-Trafficking Directive (2024/1712), where these offences are applied to victims of trafficking.<sup>17</sup>
- There is a potential criminalisation of behaviour linked to disability, trauma, or coercion.<sup>18</sup>
- There are no exemptions for minors or persons with special reception needs.
- There is a criminalisation of failure to provide documents or device access (s.30(9))

## Recommendations

- Remove or limit offences that:
  - Disproportionately affect vulnerable groups
  - Undermine non-punishment principle for trafficking victims

## Amendments

- Delete 30(2)(a) and (b):<sup>19</sup>

*(2) A member of An Garda Síochána, an immigration officer or an officer of the Minister may search an applicant and any luggage belonging to the applicant or under the applicant's control with a view to ascertaining whether the applicant is carrying or conveying any documents where—*

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<sup>17</sup> They risk undermining the non-punishment and non-prosecution principles set out in the EU Anti-Trafficking Directive (2024/1712).

<sup>18</sup> The following is not an exhaustive list.

<sup>19</sup> We believe 30(2)© is sufficient: the member or officer has a reasonable suspicion that one or more than one of the following offences is being committed or that the applicant may have evidence of or relating to such an offence in the applicant's possession:

(i) an offence under subsection (9), section 65(6) or 148; (ii) an offence under section 2, 4 or 5 of the Criminal Law (Human Trafficking) Act 2008; (iii) an offence under section 6, 7 or 8 of the Criminal Justice (Smuggling of Persons) Act 2021.

~~(a) — it is reasonably necessary to do so for reasons of national security;~~

~~(b) — it is necessary and duly justified to do so for the purpose of examining an application for international protection, including for the purpose of informing the applicant of the procedure under which the application shall be examined under Part 5 or for the purpose of verifying the identity or nationality of the applicant, or~~

- Delete part of 30(3):

*A member of An Garda Síochána may examine and retain a document produced under subsection (1) or found during a search under subsection (2) for as long as the member reasonably believes it to be necessary for reasons of national security or reasonably believes it to be evidence of or relating to an offence referred to in subsection (2)(c).*

- Delete from 30(4):

*“reasonably believes the document to relate to matters of national security or”*

- Delete 30 (5) (a) and (b):

~~(a) the examination of an application for international protection under Part 5,~~

~~(b) the consideration of an appeal under Part 6, or~~

## **Vulnerability Assessments**

### **Overview**

- It is essential that IPAs are screened for vulnerability so that they can be provided with appropriate supports throughout the process. These people with special

reception needs include pregnant women, disabled people and victims of trafficking.

- The Pact requires continuous vulnerability assessment throughout the process. The Bill does not provide this.
- Section 28 provides for a preliminary vulnerability assessment (PVA) only.
- Section 28(6) provides that this PVA together with a health check<sup>20</sup> meets all the Pact's requirements. It does not.
- It makes no provision for later assessment or ongoing monitoring.

## **Recommendation**

- Provide for:
  - Subsequent or later vulnerability assessments
  - Continuous monitoring of and support for persons with special reception needs.

## **Amendment**

- Delete 28(6) in its entirety:

~~*A preliminary vulnerability assessment and a preliminary health assessment under section 27<sup>21</sup> may, where appropriate, form part of, or the entirety of, the assessment under Article 25 of the Reception Conditions Directive or Article 20 of the Asylum Procedures Regulation.*~~

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<sup>20</sup> The health check determines whether IPAs have urgent medical needs or if they have a contagious disease only.

<sup>21</sup> S.27 provides for preliminary health assessments of an IPA's health to determine whether (a) they require "urgent or acute care", or (b) they "have an illness which may pose a threat to public health, including an infectious disease". Such assessments only to be carried out on minors with parental consent or where a "qualified medical professional believes, on reasonable grounds, that it is necessary for the purposes of" determining whether the child has an illness that poses a threat to public health. Results of such health assessment are made available to the Minister and where applicable TARA.



- Insert new section 28(8) (or possibly separate section 28A headed ‘Further or Later Vulnerability Assessments’):

*Where special reception needs become apparent at a later stage in the procedure for international protection, an officer or agent of the Minister shall assess and address those needs.*

- Insert new section 28(9):

*Appropriate monitoring and support shall be provided to applicants assessed to have special reception needs taking into account their special reception needs throughout the duration of the procedure for international protection.<sup>22</sup>*

## **Age Assessment**

### **Overview**

- Minor applicants are afforded special procedural protections in the IP process. We are concerned that the age assessment process provided for in the Bill does not fully provide for this. In doing so, the Bill risks violating the human rights of children.<sup>23</sup>
- In particular, the Bill provides for medical examinations to determine age where a first step or initial age assessment is inconclusive.
- It provides that the Minister can decide what qualifications the “designated healthcare professionals” conducting medical assessments should have.<sup>24</sup>
- It also leaves to the Minister’s discretion to decide what medical means are “suitable” to conduct these (s.60(2)(a)).

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<sup>22</sup> Adapted from text of 25(1) RCD

<sup>23</sup> In particular their right to privacy, right to bodily integrity and right to private and family life

<sup>24</sup> S.60(2)(b)

- It prioritises the "need to achieve a desirable result" over the need to conduct medical assessments on children "in the least invasive" way possible.<sup>25</sup>

## Recommendation

- Amend to ensure:
  - the presumption of minority applies; and
  - removal of second stage medical age assessments.
- If the second stage medical age assessments are not removed, provide for safeguards ensuring independence and medical qualification standards.

## Amendments

This amendment allows for the removal from the Bill of a second stage medical examination.

- Amend 52(3) as follows (to remove the 'two stage process' AND to ensure that assessments are only done by qualified medical professionals:

*An age assessment including a further age assessment referred to in section 56 or 57 carried out in relation to an applicant—*

*(a) shall include a multi-disciplinary assessment that is carried out in accordance with section 53,*

~~*(b) may, as a last resort where an assessment referred to in paragraph (a) is inconclusive as to the age of an applicant, include a medical examination to determine age that is carried out in accordance with section 54,*~~

*(c) shall only be carried out by medically qualified persons with experience and expertise in age estimation =*

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<sup>25</sup> S.54(3)(b)

~~(i) with the necessary qualifications, training or experience as prescribed under section 60, and~~

(ii) who are independent of a representative organisation, if any, designated under section 43(1)(a) or appointed under section 43(1)(b) in respect of the applicant concerned, a provisional representative person appointed or designated in respect of the applicant concerned or a representative person appointed in respect of the applicant concerned,

and

~~(a) shall be carried out in accordance with regulations made under section 60.26~~

→ Amend 53(2) as follows (to remove the 'two stage process):

*Following a multi-disciplinary assessment carried out in relation to an applicant, the Determining Authority shall—*

*(a) where the result of the multi-disciplinary assessment undertaken in respect of the applicant is conclusive as to the applicant being a minor, determine, ~~subject to sections 56, 57 and 59,~~ that the applicant is a minor for the purposes of this Act,*

*(b) where the result of the multi-disciplinary assessment undertaken in respect of the applicant is conclusive as to the applicant not being a minor, determine, ~~subject to sections 56, 57 and 59,~~ that the applicant is not a minor for the purposes of this Act, or*

*(c) where the result of the multi-disciplinary assessment undertaken in respect of the applicant is not conclusive,*

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<sup>26</sup> These regulations are the ones that allow the Minister to determine what's medically appropriate, who's qualified and etc.

~~determine, subject to a medical examination to determine age that may be carried out in accordance with section 53 and subject sections 56, 57 and 59, that the applicant is presumed to be a minor for the purposes of this Act.~~

(3) *The Determining Authority shall, as soon as practicable following a multi-disciplinary assessment carried out in relation to an applicant, notify the applicant and if applicable, the applicant's parent, an adult responsible for the applicant, a provisional representative person designated or appointed in respect of the applicant or a representative person appointed in respect of the applicant—*

*(a) of a determination referred to in subsection (2)(a), (b) or (c), and*

*(b) of the applicant's right to request a further age assessment in accordance with section 56, in an age-appropriate manner and in a language that the applicant and, if applicable, the parent or person, understands or is reasonably supposed to understand.*

(4) *Without prejudice to the power of the Determining Authority to arrange for a further age assessment to be carried out in relation to an applicant under section 57, subject*

~~*to the right of an applicant to request a further age assessment under section 56 and subject to the age of the applicant being verified under section 59, a determination under subsection (2) shall be final.*~~

These amendments ensure there is no second stage medical assessment and ensure the presumption of minority is applied where the first stage is inconclusive.

- Amend 54(3) as follows (if the second stage of the two-stage process i.e. medical examinations is going to remain):

*A medical examination to determine an applicant's age shall be—*

- (a) performed with full respect for the applicant's dignity,*
- (b) ~~consistent with the need to achieve a reliable result, the least invasive examination possible,~~*
- (c) ~~performed in accordance with regulations made under section 60(2)(a), and~~<sup>27</sup>*
- (d) carried out by qualified medical professionals with experience and expertise in age estimation.<sup>28</sup> ~~a designated healthcare professional who has the training and qualifications as prescribed under section 60(2)(b).~~*

## **Service of Documents by Electronic Means**

### **Overview**

- Not everyone is able to access online or digital services equally. Some people may struggle or be unable to do so by reason of disability or age. If they do, they may face significant obstacles to applying for international protection in the State if this process is envisaged to be digital 'end to end'.
- The Bill provides that IPAs must register on the Department's digital portal. Once they do, the Department can serve critical legal documents on them via that portal.
- If for any reason they are unable to access those documents in time, their applications for IP can be deemed withdrawn

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<sup>27</sup> 60(2)(a) gives the Minister power to prescribe what a “suitable medical means of assessing age” is at a later stage. Too vague and uncertain.

<sup>28</sup> 25(3) APR

## **Recommendation**

- Amend section 4 to:
  - allow service by preferred method for persons with special reception needs; and
  - ensure fairness and alignment with fair procedures.

## **Amendment**

- Amend section 4 to provide that people with special reception needs be served by their preferred method, including by service on their legal representative advisor.

## **Chief Inspector of Border Procedures**

### **Independence**

#### **Overview**

- The independence clause contained in the Bill (“subject to this Part”) is notably weak.
- The expanded grounds for removal of the Chief Inspector pursuant to section 196 undermine the independence and autonomy of the Chief Inspector and do not compare favourably with similar provisions underpinning other independent statutory roles.
- There is no power to publish reports independently, inhibiting the ability of the Chief Inspector function to highlight issues arising with fundamental rights compliance.
- The Bill has been amended since the General Scheme so that there is no guarantee of sufficient funding for the Chief Inspector function.

## Recommendations and Amendments

Strengthen statutory independence clause in line with the standards provided for in OPCAT, EUFRA Guidelines and the Paris Principles, specifically:

- Amend section 194 of the Bill to insert the following additional wording, stating

*“the Chief Inspector shall be independent in the performance of his or her functions and be guided, in the performance of those functions, by best international practice, including under the EU Fundamental Rights Agency Guidelines, the Optional Protocol to the Convention Against Torture and the UN Paris Principles.”*

- Amend the Bill to limit the grounds of removal of the Chief Inspector and to require Oireachtas resolutions, specifically: Amend section 196 to remove the following clauses:

~~*“for stated reasons, including”*~~

~~*and (d): “the removal of the person from office would, in the opinion of the Government, be in the best interests of the State”.*~~

- Amend section 196 to remove the clause

~~*“may be removed from office by the Government”;*~~

- and to insert the following wording that the Chief Inspector can

*“only be removed where a resolution is passed by both Houses of the Oireachtas calling for his or her removal for stated misbehaviour”.*

- Permit independent publication of reports of the Chief Inspector to Oireachtas, specifically:
  - Amend the text of section 205(1) and replace it with the following provision:

*“the Chief Inspector shall, not later than 3 months after the end of each year, submit to each House of the Oireachtas an annual report on the performance of the Chief Inspector’s functions and on such other related matters during the previous year. The Chief Inspector may also lay before each such House such other reports with respect to those functions as he or she thinks fit.”*

- Remove section 205(2).
- Amend section 209(5) to insert the following text:

*“The Minister shall cause copies of this report to be laid before each House of the Oireachtas, not later than one month after submission.”*

- Provide funding of the Chief Inspector by way of Oireachtas appropriation, specifically:

- Amend Part 12 of the Bill to insert a new provision on funding, with the following text:

*“Such funds, as may be necessary for the proper functioning of the Chief Inspector, shall be paid out of moneys provided by the Oireachtas.”*

### **Scope and functions of Chief Inspector role**

- The Bill fails to address gaps in immigration detention oversight and OPCAT alignment.
- The Chief Inspector does not have a clear mandate or sufficiently delineated powers and functions to ensure the role’s effectiveness.
- There is a lack of procedural clarity in the Bill on the core functions of the Chief Inspector including complaints, investigations, deaths or serious harm. These shortcomings significantly undermine the power and overall function of the oversight mechanism.



## Recommendations and Amendments

- In relation to the functions of the Chief Inspector, the Bill should be amended at section 198(1) to reflect text in the Screening Regulation with the insertion of the following provision in place of section 198(1)(a):

*“(a) to monitor compliance with Union and international law, including the Charter, in particular as regards access to the asylum procedure, the principle of non-refoulement, the best interest of the child and the relevant rules on detention, including relevant provisions on detention in national law and instances of de facto detention, during the screening process and in designated asylum border facilities, in line with the independent monitoring mechanism provided for by the Screening Regulation and referred to in Article 43 of the Asylum Procedures Regulation.”*

- In relation to complaints and investigation mechanisms, sections 207, 208 and 209 should be expanded to provide for clear operational steps and process, including timelines, for handling and determination of complaints and investigations modelled on comparable provisions in other existing legislation that provides for statutory complaints and investigations functions.
- Section 209 should be amended to insert additional text requiring the Minister and the body responsible for the management of the designated asylum border facility to take all appropriate actions required in response to the identified breaches of fundamental rights.
- The Bill should be amended with the insertion of additional text at sections 207 to provide for circumstances where a formal investigation is determined to be necessary by the Chief Inspector in cases of incidents of death or serious harm, specifically insertion of the following additional text at section 207(6):

*“or in the case of incidents of death or serious harm in the Screening Process, Border Procedure or Return Border Procedure, the Chief Inspector shall undertake an investigation in accordance with this Part.”*

- The Bill should be enacted alongside full ratification of OPCAT.
- The Bill should ensure compliance with the EU’s Fundamental Rights Agency Guidelines.
- The Bill should provide for clear delineation of roles of the Chief Inspector with other oversight bodies, including in relation to deaths in custody.

### **Advisory Board**

- There was no prior consultation with IHREC in relation to appointment to the Advisory Board.
- There is no NPM or civil society representation provided for on the Advisory Board. Removal of NPM representation from Advisory Board is not consistent with Article 10 Screening Regulation.
- Overall independence deficits undermine the effective role of the Advisory Board.

### **Recommendations and Amendments**

- Amend the Bill to provide for the direct reporting of the Chief Inspector to the Advisory Board, specifically:
  - Amend section 201 to insert the following additional text:

*“the Chief Inspector shall furnish to the Advisory Board such information regarding the performance of his or her functions as required for the Board to fulfil its duties under this Part”.*
  - Amend the Bill to reinstate NPM representation on the Advisory Board and to provide for civil society representatives on the Board, specifically:

- Amend section 202 of the Bill to re-insert the following text:

*“(g) A person who operates as an independent National Preventative Mechanism under OPCAT.”*

- Amend section 202 of the Bill to insert the following:

*“(h) The Chief Executive of an NGO working in asylum and migration.”*

## **Victims of Trafficking**

- The Bill does not provide for early detection of victims of trafficking who are in the international protection process, or the referral to and/or access to specialist support and appropriate shelters/accommodation, including child victims.
- The Bill is not sufficiently sensitive to the specific needs of victims of trafficking who are in the international protection process.
- The Bill makes no reference to the National Referral Mechanism (‘NRM’), a statutory process due to be operationalised by July 2026 pursuant to the Criminal Law (Sexual Offences and Human Trafficking) Act 2024 (‘the 2024 Act’). The Bill provides no clear points of alignment at key stages of the procedures, including for potential child victims.<sup>29</sup>
- Overall, the Bill does not align with [EU Anti-Trafficking Directive \(2024/1712\)](#)<sup>30</sup> or provide for complementarity and coordination between the authorities involved in anti-trafficking activities and the asylum authorities as required by the Directive.

## **Screening and NRM**

- Screening procedures are not designed to ensure early trafficking detection.

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Directive 2024/1712 amends Directive 2011/36/EU.

- There are no clear referral pathways to the NRM, which is intended to be the statutory mechanism for victims to be formally identified and to access the specialist supports and accommodation the State is obliged to provide under the [EU Anti-Trafficking Directive \(2024/1712\)](#).<sup>31</sup>

## Recommendations and Amendments

- Amend sections 27 and 28 of the Bill to provide for explicit reference to detection of victims of trafficking and their referral into the NRM as a purpose of the preliminary health and vulnerability screening, therefore enabling alignment of the screening procedure with the NRM.
- Amend Section 2 for inclusion of relevant definitions cross-referenced with those contained in the Criminal Law (Human Trafficking) Act 2008 and the Criminal Law (Sexual Offences and Human Trafficking) Act 2024.
- Amend section 22 to exempt presumed and identified victims of trafficking from any legal obligation to travel to a screening centre and related the criminal penalties that apply when an applicant does not comply, specifically:
  - Amendment to section 22 with insertion of section 22(6)(f) to exempt a victim of trafficking from this obligation stating:

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<sup>31</sup> Article 11(4) of Directive 2024/1712 states: “Member States shall take the necessary measures to establish by laws, regulations or administrative provisions one or several mechanisms aimed at the early detection and identification of, assistance to and support for identified and presumed victims, in cooperation with relevant support organisations, and to appoint a focal point for the cross-border referral of victims. The tasks of the referral mechanisms operating in accordance with this paragraph shall include at least the following:

(a) establishing minimum standards for the detection and early identification of victims, and adapting the procedures for such detection and identification to the various forms of exploitation covered by this Directive;

(b) referring the victim to the most appropriate support and assistance;

(c) establishing cooperation arrangements or protocols with the asylum authorities to ensure that assistance, support and protection is provided to victims of trafficking who are also in need of international protection or who wish to apply for such protection, taking into account the victim’s individual circumstances.” Article 11a states: “Member States shall ensure complementarity and coordination between the authorities involved in anti-trafficking activities and the asylum authorities. Member States shall ensure that victims of trafficking are able to exercise their right to apply for international protection or equivalent national status, including when the victim is receiving assistance, support and protection as a presumed or identified victim of trafficking in human beings.”

*“(e) an applicant who is a presumed or identified victim of trafficking”.*

- Amendment to section 24 with insertion of section 24(3)(c) expressly exempting a victim of trafficking from arrest and detention pursuant to section 22, stating:

*“(c) a presumed or identified victim of trafficking”.*

- Provide alternative screening arrangements for presumed or identified victims of trafficking pursuant to section 23 that requires a victim-centred, gender-, disability- sensitive approach in line with the EU Anti-Trafficking Directive 2024/1712.<sup>32</sup>

## **Specialist Training**

- No trafficking-specific training requirements are included in the Bill despite multiple references to training and required expertise of relevant professionals and front-line staff in its provisions. The Bill therefore does not clearly align with Article 18b of the EU Anti-Trafficking Directive 2024/1712 which places specific obligations on States in respect of training of front-line staff in the detection, identification, support and protection of victims.<sup>33</sup>

## **Recommendations and Amendments**

- The Bill should be amended to insert express requirements for anti-trafficking training and awareness to adequately and meaningfully promote detection of victims of trafficking and their referral to support and accommodation, specifically:

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<sup>32</sup> Article 11(1) of the EU Anti-Trafficking Directive (2024/1712) mandates such an approach.

<sup>33</sup> Article 18b of the EU Anti-Trafficking Directive (2024/1712) requires Member States “to promote or offer regular and specialised training for professionals likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, court staff, assistance and support services, labour inspectors, social services and healthcare workers, aimed at enabling them to prevent and combat trafficking in human beings and to avoid secondary victimisation, and to detect, identify, assist, support and protect the victims. Such training shall be human-rights based, victim-centred, and gender-, disability- and child-sensitive.”

- Amendment to section 28(2) with the addition of the text in bold so it states:

*“(2) A preliminary vulnerability assessment shall be carried out by officers or agents of the Minister who have received specialised training in the conduct of such assessments **including in relation to detection, protection and support of victims of trafficking** and the officers or agents of the Minister may be assisted in the conduct of such assessments by healthcare professionals who have received specialised training in the conduct of such assessments and with whom or in respect of whom the Minister has entered into a contract for services.”*

- Amendment to section 91(6) with the addition of the text in bold at section 91(6)(a) to ensure staff of the Determining Authority have the relevant training:

*“(a) have the appropriate knowledge and have received training, including relevant training under Article 8 of the European Union Agency for Asylum Regulation, in the relevant standards applicable in the field of asylum and refugee law, **and in relation to the detection, protection and support of victims of trafficking.**”*

- Amendment to section 94(7) with the addition of the text in bold at section 91(6)(a) to ensure temporary additional staff of the Determining Authority have the relevant training:

*“(7) Where there is a disproportionate number of third-country nationals or stateless persons who make an application within the same period of time, making it unfeasible to conduct timely personal interviews of each applicant, the Determining Authority may be assisted temporarily by the staff of other authorities of the State who shall receive in advance the relevant training which shall include the elements listed in Article 8 of the European Union Agency for Asylum Regulation to conduct such interviews*

*or by the Asylum Agency in accordance with Article 5 of the Asylum Procedures Regulation **and training in relation to the detection, protection and support of victims of trafficking.***

- Amendment to section 94(8) with the addition of the text in bold at section 91(6)(a) to ensure that any person conducting the personal interview is adequately appraised of the risks associated with trafficking, stating:

*“(8) The Determining Authority shall ensure that the person conducting the interview is competent to take account of the personal and general circumstances surrounding the application, including the situation prevailing in the applicant’s country of origin, and the applicant’s cultural origin, age, gender, gender identity, sexual orientation, vulnerability and special procedural needs, **including their circumstances as a potential, presumed or identified victim of trafficking**”.*

## Child Victims

- The Bill has no express trafficking-specific detection, referral, or protections for child victims despite extensive provisions relating to children in the procedures and age assessment procedures for age disputed minors. This is notwithstanding the requirement for child-specific measures under the EU Anti-Trafficking Directive 2024/1712.<sup>34</sup>
- Related to this, there is no referral pathway for presumed or identified child victims of trafficking to be linked to any child-specific NRM.

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<sup>34</sup> Article 14: “Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child’s views, needs and concerns with a view to finding a durable solution for the child, including programmes to support their transition to emancipation and adulthood in order to avoid re-trafficking. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.”

## Recommendations and Amendments

→ The Bill should be amended to require relevant professionals and front-line staff engaging with children to have training and expertise in child trafficking, including specifically:

- Amendment of section 43(3)(f) with the insertion of text in bold to ensure any representative organisation has the requisite child trafficking knowledge and expertise:

*“(f) has sufficient internal governance and management arrangements in place to ensure that provisional representative persons and representative persons appointed by the representative organisation have the necessary qualifications, training and expertise to perform the functions of a provisional representative person or a representative person, as the case may be, **including in child trafficking and protection of children at risk.**”*

- Amendment of section 47(1) with the insertion of section 47(1)(k) in relation to the functions of any representative person to include:

*“(k) where applicable, to support the detection of any child victim of trafficking and facilitate their referral to age-appropriate identification process and specialist support and accommodation.”*

- Amendment at section 50(b) with insertion of the text in bold to ensure any regulations issue by the Minister on the professional standards of any representative organisation and related representative persons covers trafficking:

*“(b) make provision for the training of provisional representative persons and representative persons and the staff of representative organisations, including initial and continuous training concerning the rights and needs*



*of unaccompanied minors and any applicable child safeguarding standards, **including in relation to child trafficking***”,

- Amendment to section 60(1)(b) with the insertion of the text in bold relating to the multi-disciplinary assessment of age of unaccompanied minors, stating:

*“(b)the qualifications, training or experience required for persons who carry out each type of multi-disciplinary assessment under section 52(3)(c)(i) **including trafficking expertise and training**”.*

### **Accelerated and Asylum Border Procedures**

- The accelerated and asylum border procedures apply in a wide range of circumstances, failing to take adequate regard of the vulnerabilities and particular position of victims of trafficking. There is no express exemption for trafficking victims from these procedures.

### **Recommendations and Amendments**

- The Bill should be amended at section 115(1)(j) to ensure the reference to Eurostat data on international protection determinations does not lead to a victim of trafficking being put into the accelerated procedure. This takes account of the fact that countries considered ‘safe countries-of-origin’ may also be source countries for victims of trafficking.

- Amendment to section 115(1)(j) with the insertion of the text in bold, stating:

*“(j) the applicant is a national, or in the case of stateless persons, a former habitual resident, of a third country for which the proportion of decisions by the Determining Authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20 per cent or lower, unless the Determining Authority assesses that a significant change has occurred in the third country concerned since*

*the publication of the relevant Eurostat data or that the applicant belongs to a category of persons for whom the proportion of 20 per cent or lower cannot be considered to be representative for their protection needs, **or on the basis that the applicant is a presumed or identified victim of trafficking**, taking into account, inter alia, the significant differences between first instance and final decisions.”*

- The Bill should be amended at section 115(3) to expressly exempt victims of trafficking from accelerated procedures, specifically:

- Amendment to section 115(3) with the insertion of the text in bold:

*“(3) Where the Determining Authority considers that the examination of the application involves issues of fact or law that are too complex to be examined under an accelerated examination procedure **or that the application is by a presumed or identified victim of trafficking**, it may continue the examination on the merits in accordance with sections 110 and 112 and, where it does so, shall inform the applicant concerned accordingly of the change in the procedure.”*

- The Bill should be amended at section 122 in relation to the application of special procedures to applicants in need of special procedural guarantees to ensure that particular attention is paid to victims of trafficking alongside the other circumstances, specifically:

- Amendment to section 122 with the insertion of the text in bold:

*“Where the Determining Authority, including on the basis of the assessment of another relevant national authority, considers that the necessary support referred to in Article 21(1) of the Asylum Procedures Regulation cannot be provided within the framework of the accelerated examination procedure referred to in section 115 or the asylum border procedure referred to in section 117, paying particular attention to victims of torture, **victims of trafficking**, rape or other serious forms of*

*psychological, physical, sexual violence or gender-based violence, the Determining Authority shall not apply or shall cease to apply those procedures to the applicant.”*



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
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