Coalition on the EU Migration Pact

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

September 2025

Executive Summary:

The Pact's Legislative Acts:

1) Asylum Procedure Regulation (APR)
2) Asylum Migration Management Regulation (AMMR)
3) Recast (revised) Eurodac Regulation
4) Crisis and Force Majeure Regulation (FMR)
5) Qualification Regulation (QR)
6) Recast Reception Conditions Directive (RRCD)
7) Resettlement Framework Regulation
8) Regulation creating EU Agency for Asylum
9) Return Border Procedure Regulation [*Ireland not opting in but replicating in Irish law*]
10) Screening Regulation [*Ireland not opting in but replicating in Irish law*]

Introduction:

The Coalition on the EU Migration Pact comprises civil society organisations which share the mission of advancing human rights by supporting and working with international protection applicants and refugees.

Many members of the coalition opposed the Pact. It comprises an erosion of refugee rights and involves a shift towards deterrence and externalisation.

Our analysis of the General Scheme of the International Protection Bill 2025 confirms this position. In this detailed submission we identify various issues, including inaccurate transposition of the Pact regulations, omissions of vitally important sections such as legal counselling, and a trend towards a process with fewer safeguards. Some of these are summarised below.

This submission is not final. As the Bill progresses through the legislative process, the Coalition will continue to analyse and make submissions on the text.

Inaccurate and incomplete transposition of the text of the Pact regulations:

Throughout the Heads of Bill, important text from the Pact regulations has not been transposed. Regulations have direct effect on member states. However, failure to transpose text creates gaps between EU standards and national practice, resulting in legal uncertainty for applicants, practitioners, and decision-makers. This increases the likelihood of litigation.

Crucially, many of the elements that have not been transposed appear to be important safeguards for applicants. For example,

- Head 150 on Designation and Partial Designation of Safe Third Countries discussed below.
- Head 17(5) on the access of organisations and persons providing advice and counselling to applicants during screening.
- Head 48(3)(a): A.13 APR sets out the competency requirements of staff and those interviewing applicants, which is not included in the Heads.

Gaps in the Heads of Bill:

There are significant omissions in the Heads of Bill, and placeholder Heads- with no detail- are provided in place of important aspects of the protection process. These include:

- The three Heads covering Alternatives to Detention, Conditions of Detention and Guarantees for Detained Applicants.
- Little or no reference to reception conditions and the Recast Reception Conditions Directive (RRCD), including no mention of standards and inspections of reception centres, or provision for reception capacity and contingency planning.
- No detail on age assessment. The Bill should ensure a rights-based approach to age assessment is in place, reflecting international best practice and underpinned by the best interest of the child. Unaccompanied and age disputed young people who seek international protection are unquestionably among the most vulnerable applicants in the process. There are enormous consequences for a young person if they are deemed an adult. All age disputed unaccompanied minors should be excluded from the border procedure.
- No definition of legal counselling or indication of who might provide it (discussed below).

These are of critical importance to the protection process. Pre-legislative scrutiny risks being undermined if significant parts of the Bill only emerge later in the process.

Protections for vulnerable groups:

There is an ethical and moral responsibility, and duty of care, to appropriately support the most vulnerable and at-risk applicants applying for international protection in the EU and Ireland.

The need to vulnerability-proof the international protection process and reception systems is reflected in the Recast Reception Conditions Directive (RRCD) and the Asylum Procedure Regulation (APR), which aim to ensure common minimum standards in asylum systems across the EU.

There are a number of key provisions and safeguards contained in these Directives relating to applicants with special reception needs or special procedural guarantees that must be transposed in the new Bill. These safeguards and provisions inform commentary and recommendations on the General Scheme of the International Protection (IP) Bill 2025. For example, Head 19 does not directly transpose Article 25 of the RRCD with the effect of that the Head contains less protections for vulnerable applicants. A vulnerability assessment to comply with Article 25 of the RRCD should be an ongoing process and one that considers factors that become apparent at a later stage in the protection process, rather than limited to a preliminary vulnerability check.

Greater clarity on who is defined as vulnerable and the process around both the procedural and reception vulnerability assessment is required.

Assessments should be conducted by an adequately resourced, multidisciplinary team with appropriate specialised training.

Legal advice and legal counselling:

Though only given a placeholder in the General Scheme, it is the view of the Coalition that a right of access for every applicant to legal advice and representation during the administrative (first instance) procedure through legal aid is the key safeguard for ensuring the legislation is implemented properly

and adhered to, that applicants' rights are upheld, that their applications are fully considered, and that they are not returned to persecution.

Frontloading access to quality legal advice is proven to strengthen the quality of decisions, take pressure off the international protection system and the Courts by reducing the need for recourse to appeals and judicial review through the full articulation of claims at an early stage. Early access to legal aid will improve efficiency within the system by enabling quicker identification of applicant's protection needs.

It is worth noting that any rollback on access to a legal aid is a decision of this government, not the EU - Building Block 9 of the European Commission Implementation Plan states "*if the Member State is already providing free legal assistance and representation also during the administrative phase for all procedures, adjustments to their systems are not necessary*".

In person appeals withdrawn (Head 69):

The Coalition sought an opinion from Colin Smith SC and Aoife Doonan BL on the wording of Head 69(2) of the 2025 IP Bill and whether it is compatible with the right to an effective remedy under EU law. While there is not an absolute obligation to hold an oral hearing in all proceedings, the EU and national jurisprudence indicates that there are certain situations that may necessitate an oral hearing being held and that the obligation depends on the specific circumstances of the case.

The opinion sets out: *"The jurisprudence of the CJEU, and in particular the judgment in Sacko, emphasises the importance of the principle of effectiveness and the need for the appellate court or tribunal to carry out a full and ex nunc examination of both facts and points of law. This includes an oral hearing if the appellate court or tribunal considers that this is necessary in order to carry out the full and ex nunc examination required"*.

The justification for the withdrawal of de facto oral hearings is that an applicant has had an oral hearing at first instance. This conflates two different parts of the protection process, the substantive interview and an appeal hearing. This Head, as it stands, does not fall in line with EU or national jurisprudence and should be amended.

Suspensive Effect of an Appeal (Head 68)

The Coalition is fundamentally opposed to the concept of non-suspensive appeals. To prevent refoulement, appeals must have suspensive effect. The five-day window to request suspension is not an adequate safeguard.

Additionally, it is extremely challenging for applicants to access effective remedies when subjected to a Return Order. It is particularly concerning that applicants for international protection, whose applications are implicitly withdrawn, will not have the Return Orders suspended.

Design of the Second Instance Body (Part 11)

There are various examples in the Heads of Bill where the Minister, and the Director of the Second Instance Body (SIB), who is appointed by the Minister, have significant and decisive powers that could be considered to undermine the SIB's independence, including the power to prescribe procedures for appeals (Head 67(7)); the power to set hearing dates (Head 77); and the power of appointment (Head 98(4)).

Border procedure (Part 12)

The General Scheme introduces the concept of a border procedure into Irish legislation. This is a profound departure from our existing protection system, with restrictions on movement applied to those subject to the Border Procedure. While Head 110 (2)(a) exempts applicants with special procedural needs, special reception needs and medical needs from the accelerated and border procedures in certain circumstances, it is crucial that the appropriate safeguards are in place to identify such individuals.

As an additional safeguard, it is also vital that applicants have an opportunity to appeal a referral to the accelerated or border procedures: Given both its practical function as an administrative act and its potential impact on the procedures that follow, individuals should be granted the right to appeal or review the screening outcome (Head 13(3)), which determines the procedure an applicant will enter, with the opportunity to access legal counselling.

The Coalition is concerned about the potentially high number of applicants who will be processed in the Border Procedure. The General Scheme does not directly transpose Article 43(1) APR, with the consequence that a greater number of applicants may be subject to the Border Procedure, along with the restrictions of movement and alternatives to detention that may entail. The wording in Head 11(1) and Head 105 open the possibility of litigation.

Design of the Chief Inspector of Asylum Border Procedures (Part 15):

While a monitoring mechanism is a welcome inclusion in the Pact regulations, the Coalition is concerned that the powers conferred on the Chief Inspectorate are more limited than those envisioned in the Pact. Article 10(2) of the Screening Regulation, which the State is replicating in Irish law, states that the monitoring mechanism should: "*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**...*" The exclusion of this article from the scope of powers in these Heads severely limits the Inspectorate's ability to meaningfully monitor fundamental rights compliance in the Border Procedures.

There are unclear parameters of the Chief Inspector regarding its relationship with other monitoring bodies, such as those on the Advisory Board, which can lead to unnecessary duplication of work and the potential for responsibilities to be overlooked. The independence of agencies on the Advisory Board must not be compromised. This Bill must also align with the Inspection of Places of Detention Bill.

We also recommend that a designated NGO be a member of the Advisory Board and that the Chief Inspector have the power to receive and investigate complaints and reports from NGOs, other relevant agencies, and members of the public, as is the case with HIQA.

Detention Part 14

While Head 115 states that detention may be imposed as a last resort, the Coalition is concerned that the Head introduces the concept of detention in the Irish protection process. Detention must only be used as a measure of last resort, when proportionate and necessary.

Individuals should only be detained as a measure of last resort and where this is necessary, particularly in respect of applicants who are vulnerable and have special reception needs, detention in the general prison population is not appropriate.

It is recommended that the State utilises its discretion pursuant to Article 4 Recast Reception Conditions Directive 2024 to establish an express exception from detention in respect of minors, both accompanied and unaccompanied. No child should ever be placed in detention as per the UN Committee on the Rights of the Child which states that detention cannot be justified solely on basis of the child being unaccompanied or separated or on their migratory or residence status, or lack thereof.

Expansion of Garda Powers

The Coalition is concerned about the warrantless powers of arrest and detention proposed in the Bill, granted to both members of An Garda Siochana and immigration officers, such as in Heads 45(1), 12 and 86(4a). These Heads conflate policing and immigration duties, which the Commission on the Future of Policing, in 2018, recommended should be separate. Such police powers must align with human rights law and standards. Interferences with rights to liberty and freedom of movement, privacy and bodily integrity must be prescribed by law, necessary in a democratic society and proportionate to a legitimate aim.

Furthermore, it is unclear what recourse an applicant would have to complain about the conduct of an immigration officer in relation to the use of search, arrest and detention powers. This is in contrast to the conduct Gardai, of which Fiosrú has oversight.

Safe county of origin and safe third country designation process (Head 149 and Head 150)

The Bill introduces a new power to designate a country as a partially safe, both as a safe country of origin and as a safe third country. While the Pact allows member states to do this, it does not obligate them to do so.

Moreover, protections in existing law, including that a person would be readmitted to the third country, and that they must have a sufficient connection to it, have been not copied from existing law.

We are gravely concerned that the text allows for the expanded use of both the safe country and safe third country concepts, both of which externalise refugee protection beyond member states and the EU.

Contents

Part 1: Preliminary

Head/subhead	Recommendation / action
Head 2 (Interpretation)	"**Cultural Mediator**" - The role of Cultural Mediator should be defined in line with international best standards, e.g: "*a person who is fluent in at least two languages and is familiar with at least two cultures and who is using these skills and knowledge to facilitate communication between two or more parties and promote mutual understanding.*"[1] Cultural Mediators should have clearly defined roles, responsibilities, minimum qualification and restrictions. The definition as outlined in the Heads is ambiguous and insufficient. **"Legal counselling"** - Legal counselling as per the APR explicitly includes services that fall under the traditional and general usage of the term "legal assistance", including legal guidance, legal support, legal advice and explanation from a legal professional towards a client. Recital 14 APR includes legal consultation before lodging the application, and before and in preparation for interview. **Suggested definition of Legal Counselling**: the provision of legal advice and guidance by a lawyer on procedural and substantive issues related to an asylum application during the administrative procedure, including assistance with the lodging of the application, support during the preparation for the first-instance interview and guidance on any legal issues arising throughout the procedure.

[1] Standards on Cultural Mediation in Protection, https://reliefweb.int/report/world/standards-cultural-mediation-protection

Part 2: Arrivals and Screening

Heads/subheads	Recommendations/actions
General Comment	It is unclear at which point a person becomes an 'applicant'. This is in contrast to Sections 2, 13, and 15 of the International Protection Act 2015. This is required to establish what rights, entitlements, and obligations a person is subject to, and at what point. The explanatory note in the under Head 17(1)(b) states: "*It is considered unnecessary to provide information on the right to apply for international protection in the Irish context given that those who are subject to screening will have already made an application for international protection.*" This suggests that a person becomes an applicant *before* entering the screening procedure, however it remains unclear at which point this status is conferred upon them.
Head 4 – Service of Documents	Service of documents should take into account IT literacy of newly arriving international protection applicants, as well as practical challenges such as obtaining a new SIM card upon arrival and accessing internet services.
Head 9: Management of Biometric Data	There should be full compliance with EU data protection law, including the Law Enforcement Directive, and particular care should be taken in processing the data of children. Insert: as per Article 8 Screening Regulation, the State "*shall also ensure that only duly authorised staff of the screening authorities responsible for the identification or verification of identity and the security check have access to the data, systems and databases*."
Head 8: Use of reasonable force in certain circumstances:	**Head 7(4):** Where a person states that they are under the age of 18 years, the benefit of the doubt shall apply. Where required, an age assessment shall take place before a person is subject to coercion to obtain biometric data. Immigration officers, officers of the Minister and members of An Garda Síochána should receive ongoing training on the benefit of the doubt in these cases.
Head 10: Designation of Screening Centres	**H10**: That the screening process, particularly those aspects which include obtaining sensitive data- such as related to health, vulnerability, or details of an applicant's case- takes place in a confidential setting, which respects the privacy and dignity of the applicant. Currently, similar processes such as those which occur in the International Protection Office, take place with no privacy and applicants relaying sensitive information within earshot of staff and other applicants.

	H10: That, as per Article 8(8) Screening Regulation, the Minister "*shall ensure that all persons subject to the screening are accorded a standard of living which guarantees their subsistence, protects their physical and mental health and respects their rights under the Charter*".
Head 11 (1)	**H11(1):** Deviates from Article 5(1) Screening Regulation, which only envisages screening applying to those "*who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399* ***and*** *who:* *(a) are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air, except third-country nationals for whom the Member State concerned is not required to take the biometric data pursuant to Article 22(1) and (4) of Regulation (EU) 2024/1358 for reasons other than their age; or* *(b) are disembarked in the territory of a Member State following a search and rescue operation.* This Head applies screening to *all* international protection applicants, with certain exceptions as outlined in subheads (3) and (4). This will have the consequent effect of applying alternatives to detention, and the border procedure to a much wider range of applicants than set out in the Screening Regulation and Asylum Procedures Directive.
Head 12: Arrest and detention for the purposes of transfer to a Screening Centre	**12(1)**: As noted elsewhere in this submission. This coalition is concerned about the warrantless powers of arrest and detention proposed in the bill, granted to both members of An Garda Siochana and immigration officers. Such police powers must align with human rights law and standards. Interferences with rights to liberty and freedom of movement, privacy and bodily integrity must be prescribed by law, necessary in a democratic society and proportionate to a legitimate aim. Furthermore, it is unclear what avenue an applicant has to complain about the conduct of an immigration officer in relation to the use of search, arrest and detention powers. This is in contrast to the conduct Gardai, of which the Office of the Police Ombudsman has oversight. **12(1):** Include: shall be employed only as a measure of last resort, where necessary and proportionate. **Head 12(3):** when an arrest is made under Head 12(1) and a person is brought to a Garda station, they should be informed why they were arrested and the S.I. No. 119/1987 - Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Siochana Stations) Regulations, 1987 must apply to ensure the respect of fundamental rights and dignity of the person while in custody. **12(5):** Where a person is detained for the duration of screening, that person shall have access to *free legal representation.*

	12(9): Where a person states that they are under the age of 18 years, the benefit of the doubt shall apply. Where an age assessment has not occurred, it shall take place before a person is arrested and detained, or without undue delay after arrest. **H12**: The Chief Inspector should be notified when an arrest is made for the purposes outlined in Head 12.
Head 13: Purpose and application of Screening	**H13(3)**: The Screening Process and Screening Form record key personal details that will, in accordance with Heads 63, 105 and 106, influence the decision on which asylum procedure is applied, and which may later affect credibility assessments. Despite not being classified as an official decision, given both its practical function as an administrative act and its potential impact on the procedures that follow, individuals should be granted the right to appeal or review the screening outcome, with the opportunity to access legal counselling. **H13(4):** As with Head 11(1), this head significantly broadens the scope of the Screening process as outlined in the screening Regulation. This Head applies screening to all international protection applicants, with certain exceptions as outlined in Head 11 (3) and (4). This will have the consequent effect of applying alternatives to detention, and the border procedure to a much wider range of applicants than set out in the Screening Regulation and Asylum Procedures Directive.
Head 15(2) Screening Authority	**H15(2):** Article 11(3) Screening Regulation does not envisage Cultural Mediators as assisting with "any procedure," but that "*cultural mediation services [may] be available to facilitate access to the procedure for international protection*". This head includes a much broader definition, and one that is not appropriate to the procedures outline in the screening process. Cultural Mediators should not take the place of legal advisors or be tasked with communicating points of law. The latter should only be communicated through an appropriately trained interpreter with knowledge of relevant terms. Since the introduction of Cultural Mediators to the International Protection Process in November 2022, civil society organisations have raised concerns as to their actual and perceived role, level of independence, code of conduct and level of training and oversight.[2] The term 'cultural mediator' implies cultural competency and cultural literacy both of the determining authority, and the applicant. In our experience this has not been the case. In the context of assisting

[2] https://www.thejournal.ie/asylum-seeker-interpretation-cultural-mediators-6294998-Feb2024/

	applicants with the questionnaire application process, applicants have expressed concerns around the impartiality and confidentiality of cultural mediators, particularly when from the same country of origin as the applicant. Coalition members have consistently come across errors in transcription by Cultural Mediators including incorrectly noting nationality, marital status, and reasons for applying for protection. Given the vital importance of the Screening Procedure for determining the appropriate asylum procedure, such errors would have significant consequences. Likewise, in our experience, Cultural Mediators are not adept at, and should not be tasked with, the identification of vulnerabilities.
Head 17 Provision of Information	**H17**: Article 11(b) Screening Regulation states that applicants should receive information on "*the right to apply for international protection and the applicable rules on making an application for international protection, where applicable in the circumstances specified in Article 30 of Regulation (EU) 2024/1348, and, for those third-country nationals having made an application for international protection, the obligations and the consequences of non-compliance laid down in Articles 17 and 18 of Regulation (EU) 2024/1351.*" This information should be communicated to applicants at this point, or at an earlier point, as appropriate. **H17:** To ensure that the A.8 Asylum Procedures Directive general guarantees for applicants are delivered in practice, information regarding the right of access to legal counselling must be readily available and highlighted to applicants from the outset of the procedure. Any information provided on access to legal advice should be provided in a variety of languages. The legal assistance application form should also be translated and accessible by the applicant. **H17(1)(c)**: As per Article 11(c) Screening Regulation, applications shall also be informed of "*the possibility to contact and be contacted by the organisations and persons referred to in Article 8(6)*", those being "*Organisations and persons providing advice and counselling*." **H17(1)**: At this point, applicants should be made aware of the Chief Inspector of Asylum Border Procedures, the complaint mechanism and available remedies, in a language they understand. **H17(3)**: Given the large volume of information to be passed onto the applicant, and the importance and potential consequences of this information not being communicated correctly- including implicit withdrawal of an application- it is vital that this information is provided

	by a properly trained and resourced staff and is made available in multiple accessible formats, including easy-read and plain language formats. **H17(4):** the applicant should have an explicit right to an interpreter at this point, in case the applicant's literacy levels are basic or below basic, or in case clarification is sought orally by the applicant. Re interpretation services throughout the Bill the following recommendations are made: ▪ Accreditation of Interpreters: Best practice guidelines are produced for a professional interpretation service ▪ Formal Training: Completion of a specialised legal interpreting program covering legal terminology, procedures, and ethical considerations. ▪ Language Proficiency: Demonstrated fluency in both the source and target languages, including legal terminology and cultural nuances. ▪ Professional Conduct: Adherence to a strict code of ethics, ensuring confidentiality, impartiality, and accuracy. ▪ Assessment & Certification: Passing an accreditation exam or assessment that evaluates interpreting skills in legal contexts, including consecutive and simultaneous interpreting. **H17(5)**: as per Article 8(6) Screening Regulation "*Organisations and persons providing advice and counselling shall have effective access to third-country nationals during the screening.*" It will be necessary to strengthen this provision, and to ensure adequate confidential spaces and interpreting services.
Head 18: Preliminary health checks	**H18(5):** Results of a health check should be treated as confidential and only shared with other bodies with the consent of the applicant. Refusal to share their health data should not impact credibility (as suggested by the explanatory memorandum for this Head), and the applicant should be notified of same. The uptake of services related to health and vulnerability should not be linked to credibility. **H18(6):** Should include: It shall be performed in a way that respects the individual's dignity.

	H18: Insert new provision that the Minister shall establish a panel of registered medical practitioners who, in the opinion of the Minister, possess the qualifications and experience necessary for the performance of the functions of a nominated registered medical practitioner under the Bill. This is provided for in Section 23(3) of the International Protection Act 2015.
Head 19: Preliminary vulnerability checks	**19:** Preliminary Vulnerability Check appears to be less substantive than a Vulnerability Assessment. A check rather than an assessment, and not the robust, ongoing assessment tool as laid out in Article 25 of Recast Reception Conditions Directive (RRCD). **H19(1):** Assessments should be conducted by a multidisciplinary team with appropriate specialised training. 'Specialised personnel' should be required to carry out appropriate and ongoing training in the identification of vulnerabilities, and that, as per Article 8(9) Screening Regulation, "*national child protection authorities and national authorities in charge of detecting and identifying victims of trafficking in human beings or equivalent mechanisms shall also be involved in those checks, where appropriate.*" **H19(1):** Should refer to categories of applicants eligible for consideration for special reception needs as laid out in Article 24 of RRCD. This head also requires clear definition of the type, nature and scope of any special reception needs or special procedural guarantees applicants deemed vulnerable may be entitled to receive. At the present time, an applicant receives a letter that they have been assessed as vulnerable but no change in reception conditions/ case processing. **H19(2):** Amend as follows: For the purpose of that vulnerability check, <u>including the training of specialised personnel</u>, the screening authority may be assisted by non-governmental organisations and, where relevant, by registered medical personnel or personnel of other competent authorities. **H19(1):** Should require the 'informed consent' of the applicant. **H19(5):** Deletion of the phrase "or the entirety", as vulnerability check and health check under Head 18 are not equivalent to a vulnerability assessment as per Article 25 of RRCD. **H19(6):** Refusal to undergo a vulnerability check should not have implications for credibility of an asylum claim. This would contradict Article 25(5) of RRCD, which states assessment will be "*without*

	prejudice" to the assessment of protection claim. There are valid reasons a person may refuse to undergo a vulnerability check, such as post-traumatic stress disorder, or an initial distrust of authorities in the State. Many vulnerabilities require the establishment of trust before disclosure, which may not be possible within the 7 days allocated to the screening process. Uptake of services related to health and vulnerability should not be linked to credibility. **H(19)**: Article 25, Section 1, Paragraph 5-6 of RRCD outlines the vulnerability assessment should be an ongoing process and consider factors that "*become apparent at a later stage in the procedure*", not limited to a preliminary check at the start of the process. A vulnerability assessment to comply with Article 25 of the RRCD should be an ongoing process and one that considers factors that become apparent at a later stage in the procedure, rather than limited to a preliminary vulnerability check.
Head 21: Identification or verification of identity	*Placeholder head* Clear assessment guidelines should be put in place and the substantive basis for any findings are provided to applicants.
Head 22: Security check	*Placeholder head* Clear assessment guidelines should be put in place and the substantive basis for any findings are provided to applicants. Where an applicant is deemed a threat to national security or public order, they should have the opportunity to appeal this decision with the benefit of legal advice.
Head 23: Examination of persons during Screening	**H23 (1)(b):** A warrant should be required before a person, or their belongings are searched. As noted elsewhere in this submission – Heads 12(1), 45(1), and 86(4) – this Coalition is concerned at the warrantless powers conferred on Gardai and immigration officers. An applicant should not be searched before a preliminary vulnerability assessment, under Head 19, has taken place. Where this is not the case, the authorities should give primary consideration to signs or statements made by the applicant which indicate a vulnerability. Given the possible violations of the right to respect for private life laid down in Article 7 of the EU Charter, the Chief Inspector should be notified when an applicant or their belongings are searched. **23(1)(c):** As stated in the explanatory memorandum "*it is proposed to introduce provisions regarding the retention of any documents seized during the search."* Where documents are to be retained, a search warrant should be required.

	23(2)(a): Confers power to immigration officers, an officer of the Minister or members of An Garda Síochána to require a person to provide assistance or relevant passwords where they are conducting a search of electronic devices. At a minimum, a warrant should be required to compel a person to provide assistance or relevant passwords where they are conducting a search of electronic devices. For comparison, see Section 48(5)(b)(i) of the Criminal Justice (Theft and Fraud Offences) Act 2001 and Section 7(4)(b)(i) of Criminal Justice Offences Relating to Information Systems Act 2017. The Garda Powers Bill (the General Scheme of which was published in 2021), proposed to expand the power to compel passwords as part of the general power to search someone under a search warrant (see Head 16). Members of this Coalition have raised concerns and made recommendations with respect to that Bill, namely that safeguards are required to ensure Gardai (or in these Heads as the case may be, an immigration officer) would only be accessing the relevant documents. **23(2)(b):** As per the explanatory note, this subhead seeks to introduce an offence for failure to produce documents as directed, by an immigration officer, an officer of the Minister, or a member of An Garda Síochána, and failing to provide assistance with the search as set out in subhead (2)(a). This subhead grants the State power to charge an applicant for failing to produce a broad range of documents, which may not be relevant to an international protection application or which an applicant may reasonably believe is not relevant to same. It is unclear what policy need this subhead is intended to respond to. While there is a duty on applicants to evidence their identity and claims, where possible, we are concerned at the broad powers granted by this subhead.
Head 24: Screening Form	**H(24)(4):** Recital 32 Screening Regulation states that *"the person subject to the screening should have the possibility to indicate to the screening authorities that the information contained in the form is incorrect. Any such indication should be recorded in the screening form without delaying the completion of the screening*." **H(24)(6):** Where an applicant "disputes the accuracy of any information contained in the form" the form should be amended, rather than "noted". As noted above under H(19)(2) mistakes in registering applicants' details are common. These mistakes can follow an applicant through the process, slowing down the protection process, affecting credibility and access to services.

	Applicants may require legal assistance in respect of these provisions.
Head 25: Termination of Screening	**H(25)(4):** The completion of preliminary health and vulnerability checks under Heads 18 & 19 within the 7-day limit, with informed consent and undertaken by specialist trained personnel, should be a mandatory requirement of the Screening Procedure. In the event these essential health and vulnerability checks are not completed within the 7 day period, then this failure should lead to applicants being deemed Exceptions to the Asylum Border Procedure under Head 110 (1). Where screening in a screening centre has terminated before health or preliminary vulnerability checks (Heads 18 & 19) have been completed, there should be a duty on the Minister to complete those procedures, with the consent of the applicant, within 21 days. The assessment should be completed by the same suitably trained and qualified professionals as in the screening procedure. Without prejudice to recommendation under H19(5), above, this is particularly important if Heads 18 and 19 form all or part of the assessment provided for in Article 25 of the Reception Conditions Directive and Article 20 of the Asylum Procedures (assessments of special reception and procedural needs).

Part 3: Application for International Protection

Heads/subheads	Recommendation/Action
Head 26: Application for International Protection	Pre-application legal advice must be accessible to ensure that the applicant is fully informed of what it means to seek international protection, and this is the appropriate route for them. Art. 16 APR envisages legal counselling incl. on assistance on the lodging of an application under Art. 28 APR which is within 21 days but the making, registering and lodging of an application can be combined under Art. 28(7) APR. Retain or introduce higher standards than the minimum baseline afforded by the APR, including free legal assistance at first instance rather than legal counselling alone (APR Recital 16), in accordance with national law. This is also recommended as an approach to take under Building Block 9 of the Commission Implementation Plan which clearly states that 'if the Member State is already providing free legal assistance and representation also during the administrative phase for all procedures adjustments to their systems are not necessary.
Head 31: Special Procedural Guarantees	For clarity of transposition, the Bill should set out in full detail A.20 APR on the Assessment of the need for special procedural guarantees: ***Assessment of the need for special procedural guarantees*** *1. The competent authorities shall individually assess whether the applicant is in need of special procedural guarantees, with the assistance of an interpreter, where needed. That assessment may be integrated into existing national procedures or into the assessment referred to in Article 25 of Directive (EU) 2024/1346 and need not take the form of an administrative procedure. Where required by national law, the assessment may be made available, and the results of the assessment may be transmitted, to the determining authority, subject to the applicant's consent.* *2. The assessment referred to in paragraph 1 shall be initiated as early as possible after an application is made by identifying whether an applicant presents first indications that he or she might require special procedural guarantees. That identification shall be based on visible signs, the applicant's statements or behaviour, or any relevant documents. In the case of minors, statements of the parents, of the adult responsible for him or her whether by the law or practice of the Member State concerned or of the representative of the applicant shall also be taken into account. The competent authorities shall, when registering the application, include information on any such first*

	indications in the applicant's file, and they shall make that information available to the determining authority. *3. The assessment referred to in paragraph 1 shall be continued after the application is lodged, taking into account any information in the applicant's file. The assessment referred to in paragraph 1 shall be concluded as soon as possible and, in any event, within 30 days. It shall be reviewed in the event of any relevant changes in the applicant's circumstances or where the need for special procedural guarantees becomes apparent after the assessment has been completed.* *4. The competent authority may refer the applicant, subject to his or her prior consent, to the appropriate medical practitioner or psychologist or to another professional for advice on the applicant's need for special procedural guarantees, prioritising cases where there are indications that applicants might have been victims of torture, rape or another serious form of psychological, physical, sexual or gender-based violence and that that could adversely affect their ability to participate effectively in the procedure. Where the applicant consents to be referred in accordance with this subparagraph, such consent shall be deemed to include consent to the transmission of the results of the referral to the competent authority.* *The advice provided pursuant to the first subparagraph shall be taken into account by the determining authority when deciding on the type of special procedural guarantees which can be provided to the applicant. Where applicable and without prejudice to the medical examination, the assessment referred to in paragraph 1 may be integrated with the medical examinations referred to in Articles 24 and 25.* *5. The relevant staff of the competent authorities and any medical practitioner, psychologist or other professional giving advice on the need for special procedural guarantees shall receive training to enable them to detect signs of vulnerability on the part of an applicant who might need special procedural guarantees and address those needs when identified.* 'Necessary support' for applicants with special procedural guarantees (Art. 21 APR) may include more time spent with legal advisers/legal counsellors to benefit from their rights under the Asylum Procedures Regulation.
Head 32: Subsequent Applications	31.1 Article 55 (4) APR requires: "*The preliminary examination shall be carried out on the basis of written submissions or a personal interview in accordance with the basic principles and guarantees provided for in Chapter II*".

	This has been omitted from the Bill and should be included. 31 (2) The presumption in 32 (2) (a) that the preliminary examination shall be carried out on the basis of written submissions, and only with a personal interview if deemed necessary by the Minister undermines the protections set out in Article 11: *1. Without prejudice to Article 38(1) and Article 55(4), before a decision is taken by the determining authority on the inadmissibility of an application in accordance with Article 38, the applicant shall be given the opportunity of a personal interview on admissibility (the 'admissibility interview').* *2. In the admissibility interview, the applicant shall be given an opportunity to provide reasons as to why the inadmissibility grounds provided for in Article 38 would not be applicable to him or her.* Possibilities under national law should be used to extend the right to remain to subsequent applications in all cases, or to allow applicants to remain, in order to ensure that people are not deported before having access to a fair hearing.
Head 33: Admissibility Procedure	Article 38 APR requires that assessment of admissibility must be *"in accordance with the basic principles and guarantees provided for in Chapter II".* These protections have been omitted from Head 33 and should be amended to include them. Recital (48) APR underlines that *"Member States retain the right to assess the merits of an application even if the conditions for regarding it as inadmissible are met, in particular when they are compelled to do so pursuant to their national obligations"*. This right should be set out clearly in the Bill, and both first instance decision-makers and the SIB should be empowered to make such decisions.
Head 34: Protection of Identity of applicant	Head 34 is intended to reflect the Confidentiality principle under Article 7 of the APR. Head 34 is limited to the Minister, SIB and "authorities". This Head should be read in conjunction with Head 143 which creates an offence (similar to that in the International Protection Act 2015) for disclosing the identify of a protection applicant.
Head 35: Information to be provided to the Applicant	A.19 AMMR requires the provision of information on a person's rights pursuant to AMMR Regulation. This has been omitted from Head 35, which only refers to obligations and consequences of non-compliance. Head 35 should be amended to include provision of information on application of the AMMR Regulation and on a person's rights pursuant to the Regulation, as set out in Article 19 AMMR, including on family reunification, right to and

	aim of the personal interview, obligation to submit any relevant information, right of an effective remedy, right of legal counselling and legal assistance, subject access rights, rights specific to unaccompanied minors.
Head 36: Personal Interview to Determine Member State Responsible	Head 36 (1) omits the protection in Art 22 (1) AMMR that: "*The interview shall also enable the applicant to properly understand the information received in accordance with Article 19*." The applicant shall have the opportunity to present duly motivated reasons to the competent authorities in order for them to consider applying Article 35(1). Head 36 should be amended to commit to the personal interview taking place in a timely manner, as required by Article 22 AMMR. 36(3): There must be an opportunity for applicants who are excluded from the opportunity of a personal interview to provide "all further information, including duly motivated reasons for the authority to consider the need for a personal interview" (Recital 60 AMMR) . Head 36 should be amended to include the protections in A.22.4 AMMR that personal interviews are conducted in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly. Interviews of unaccompanied and, where applicable, accompanied minors shall be conducted by a person who has the necessary knowledge of the rights and special needs of minors, in a child-sensitive and context-appropriate manner, taking into consideration the age and maturity of the minor, in the presence of the representative and, where applicable, the minor's legal adviser. Applicant should be able to require interpreter of the sex that the applicant prefers. In order to ensure that the personal interview facilitates as much as possible, the determination of the Member State responsible in a swift and efficient manner, there is a need for clarification that "*the staff interviewing applicants should have received sufficient training, including general knowledge of problems which could adversely affect the applicant's ability to be interviewed, such as indicators showing that the applicant might have been a victim of torture or trafficking in human beings*" (Recital 61 AMMR). In order to guarantee the effective protection of the applicants' fundamental rights to respect for private and family life, the rights of the child and the protection against inhuman and degrading treatment because of a transfer, applicants should have a right to an effective remedy, limited to those rights, in accordance, in particular, with

	Article 47 of the Charter and the relevant case-law of the Court of Justice of the European Union. Head 36 is intended to implement Article 22 of the AMMR. Other protections which have been omitted from Head 36, and which are required by A.22 AMMR: ▪ Confidentiality. ▪ Staff conducting interview: Person qualified ▪ Legal advisor has timely access to the summary afterwards. ▪ Opportunity to make comments / provide clarification orally / in writing with regard to any incorrect translations / misunderstandings / factual mistakes at the end of the personal interview or within a specified time limit. ▪ Need to include Guarantees for Minors as set out in A.23 AMMR in Head 36.
Head 37: Discretionary Assessment of Examination	The Discretionary Assessment of Examination should be based on family relations, on humanitarian grounds based in particular on meaningful links regarding family, social or cultural considerations, and the applicant's consent should be expressed in writing.

Part 4: Asylum and Migration Management

Head/subheads	Recommendation/Action
Head 40: Personal interview	Head 40 (1) sets out that the Minister shall…"subject to A.22(2)" conduct an interview. A.22(2) provides that the personal interview may be omitted where: "(a) the applicant has absconded; (b) the applicant has not attended the personal interview and has not provided justified reasons for his or her absence; (c) the applicant, after having received the information referred to in Article 19, has already provided the information relevant to determine the Member State responsible by other means." The role of personal interviews is crucial in the asylum procedure, highlighting the right to be heard as a fundamental principle in EU law, necessary to ensure fair decision-making and to uphold the principle of good administration. The interview plays a crucial role in assessing the credibility of the applicant's claims. Omission of the personal interview is permissible only in limited circumstances, as confirmed by the CJEU in Ministero dell'Interno, which emphasised that the interview serves to ensure the applicant. Recommendation: A.12 and A.13 APR should be interpreted in line with the jurisprudence of the courts to ensure that the right to a fair hearing is respected. For clarity of the rights of applicants as set out under Head 36, the Provisions of Article 22 AMMR should be set out in full in the Bill. **40 (2):** taking into account the requirements of A.22 AMMR
Head 41: Notification of transfer decision	A.42 AMMR requires notice to be in plain language, and that the notice is issued without delay. **Head 41(f)** should be amended to include time limits applicable for seeking such remedies. Adequate and sufficient access to information and rights must be provided for international protection applicants. For example, any information provided on access to legal advice should be provided in a

	variety of languages, the legal assistance application form should also be translated and accessible by the applicant.
Head 42: Appeal Against a Transfer Decision	**Head 42** sets the notice of appeal time as one week from the date of notification of a transfer decision. Recommendation: This should be extended to the maximum 3 week period allowed by A.43 (2) AMMR**.**
Head 43: Non-Suspensive Effect of a Transfer Decision	The right to remain, and therefore the automatic suspensive effect of the appeal, is removed for the following categories of decisions: • All decisions taken in accelerated procedure and in border procedures (except for those concerning unaccompanied children); • Some inadmissibility decisions (inadmissibility on the following grounds: application of the first country of asylum concept, ICC extraditions, where there is a return decision and the deadline to apply has been missed, and subsequent applications with no new elements); • All decisions on implicit withdrawal; • Decisions to reject subsequent applications as unfounded or manifestly unfounded; • Some explicit withdrawal decisions (crime and public order considerations). The removal of automatic suspensive effect is a very significant change to previous protections provided to international protection applicants and risks undermining access to an effective remedy and the principle of non-refoulement. Recommendations: • Given the impact of non-suspensive effect, all deadlines for appeal should be set at the maximum allowed by APR. • Given the administrative burden and practical difficulties this creates, Ireland should adopt national law which allows all applicants to remain while the Appeal is heard. • Head 43 should specify that interpretation shall be available. • Applicants must have effective access to legal assistance in advance of the 5 day deadline to apply for suspensive effect.
Head 45: Detention of an applicant under this Part	**H45(1):** As noted elsewhere in this submission. This coalition is concerned about the warrantless powers of arrest and detention proposed in the bill, granted to both members of An Garda Siochana and immigration officers. Such police powers must align with human rights law and standards. Interferences with rights to liberty and freedom of movement, privacy and bodily integrity must be prescribed by law, necessary in a democratic society and proportionate to a legitimate aim. Furthermore, it is unclear what recourse an applicant has to complain about the conduct of an immigration officer in relation to the use of

	search, arrest and detention powers. This is in contrast to the conduct Gardai, of which the Office of the Police Ombudsman has oversight. **45(3)**: To protect the right to privacy, including of people other than the applicant who may reside in such a dwelling, a warrant should be required before a dwelling in searched. This would ensure that that Gardai, or an immigration officer, have the evidence needed to justify a search and ensure the reasons for such a search under Head 45(1) are not abused. **45(4)(a):** Where a person subject to arrest and detention having been deemed at risk of absconding due to having "*misrepresented or omitted facts, whether or not by the use of false documents*", that person shall, as per Head 63(1)(a), be afforded the opportunity to demonstrate good cause for the misrepresentation or omission and State authorities shall demonstrate an applicant's "bad faith" before that applicant is subject to arrest and detention. **45(5)(b):** Where a person states that they are under the age of 18 years, the benefit of the doubt shall apply. Where required, an age assessment shall take place before a person is arrested and detained, or without undue delay after arrest has taken place.

Part 5: Assessment of Applications for International Protection at first instance

Heads/subheads	Recommendations/Action
Heads 47 (Substantive Interview) and 48 (Requirements for personal interviews):	It should be possible for an applicant to request an interviewer and interpreter of the sex that the applicant prefers. (S.21 and Article 13 (9) APR). This has not been provided for in the Heads.
Head 48: Requirements for Personal Interviews	**H48(3)(a):** A.13 APR sets out the competency requirements of staff and those interviewing applicants, which is not included in the Heads: "*be 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; acquired general knowledge of factors which could adversely affect the applicant's ability to be interviewed, such as indications that the person may have been tortured in the past or a victim of trafficking in human beings;* *(b) received, in advance, training that includes relevant elements from those listed in Article 8(4) of Regulation (EU) 2021/2303.* This should be extended to *"or within a specified time limit before the determining authority takes a decision"* to ensure consistency with A.14. **H48(6)(a)** A.13 APR guarantees that the presence of the legal representative at interview "shall be ensured". Adequate resources will have to be provided to the LAB to ensure this can be realised. **H48(6)(c):** States "*Where a legal adviser participates in the personal interview, he or she may only intervene at the end of the personal interview."* This confinement of the legal adviser's intervention seems an unnecessary block to the useful participation of the legal adviser in the interview. It may be necessary and more practical for a legal adviser to provide information such as in relation to the applicants' special procedural needs, difficulties arising due to interpretation, which would be more appropriately received at an earlier point in the interview. The Regulation does not contain any such limitations. The limitation appears to contradict Head 48 (12) which provides that "(*12) The applicant, the High Commissioner or any other person concerned may make representations in writing to the Minister in relation to any*

	matter relevant to an examination of an application for international protection and the Minister shall take account of any such representations made before or during a personal interview". The limitation does not appear to be in line with s.14 Regulation 2024/1348 (APR): "*The applicant should be given sufficient time to prepare and consult with his or her legal adviser or other counsellor admitted or permitted as such under national law to provide legal advice(the 'legal adviser') or a person entrusted with providing legal counselling. During the interview, the applicant should be allowed to be assisted by the legal adviser*". Or with s.13 APR. An applicant shall be allowed to be assisted by a legal adviser in the personal interview, including when it is held by video conference. While the Regulation allows for a MS to confine intervention to the end of the personal interview, it is recommended that this step limits the effectiveness and utility of the presence of the legal representative and should not be included. **H48(7):** A. 13 APR requires giving preference to interpreters and cultural mediators that have received training. This article should be transposed appropriately. **Head 48 (9):** *By way of derogation, the Minister may at his or her discretion cause the substantive interview to be held by video conference.* This blanket discretion to hold interviews by video conference is contrary to Recital 15 of the Regulation which considers that: "*In order to ensure an optimal environment for communication, in-person interviews should be given preference, with the conduct of remote interviews by video conference remaining the exception*." The Regulation sets out the circumstances in which video interviews would be appropriate: ▪ Public Health considerations ▪ Applicant's vulnerabilities preclude travel / make it difficult due to health or family reasons. ▪ Applicants in detention ▪ Applicants requiring specialist remote interpreter. Recital 5 cautions that *"The suitability of the use of the remote interviewing by video conference should be **assessed individually** before the interview, as remote interviews may not be suitable for all asylum*

	applicants due to their young age, the existence of visual or hearing impairments, or the state of their mental health, with particular regard to certain vulnerable groups, such as victims of torture or traumatised applicants" and "The best interests of the child should be a primary consideration". **H48(12):** This is not consistent with Article 14. APR 'Report and recording of personal interviews' which states: "*The applicant shall be given the opportunity to make comments or provide clarification orally or in writing with regard to any incorrect translations or misunderstandings or other factual mistakes appearing in the report, the transcript of the interview or the transcript of the recording, at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end, the applicant shall be informed of the entire content of the report, of the transcript of the interview or of the transcript of the recording, with the assistance of an interpreter, where necessary*." This was the previous position under S.35 (12) International Protection Act 2015 allowed representations to be taken into account after the interview and before the decision issued. A.13 (4) APR 'Requirements for Personal Interviews' provides that "*The presence of the applicant's legal adviser at the personal interview, where the applicant has decided to avail himself or herself of legal assistance in accordance with Section III of this Chapter shall be ensured.*" This requires that adequate resources are put in place to ensure that legal representatives and members of the private practitioners' panel are adequately resourced to attend the substantive interview.
Head 49: Recording and Transcript of interviews	**H49(1)(i):** There is a risk that a "report containing the main elements of the personal interview" would omit information which is ultimately crucial to the international protection claim. It is therefore recommended that the document produced in in the form of a full transcript of the interview. If 49 (1) (b) (i) is maintained, it should be amended to include "*a thorough and factual report containing all the main elements of the personal interview*" as set out in Article 14 APR. It should be clarified that the legal representative attending the interview is permitted to take a written note of the interview by way of using a laptop or by hand-writing. We refer by example to the steps taken by the courts in relation to the use of electronic devices in court proceedings. Paragraph 10 of Practice Direction of the Supreme Court no.18 states that:

	"*Parties, legal practitioners and other persons participating, involved in or attending court proceedings may use an electronic device in silent mode to take notes of (as distinct from recording) the proceedings provided that the use of such device does not, in the judge's opinion, disrupt the proceedings*." Practice Directions of the High Court, Circuit Court and District Court contain identical provisions at HC80(10), CC20(10) and DC10(10) respectively. Given that electronic devices are permitted in all court proceedings to take notes to assist with the provision of effective legal representation, it is submitted that such devices and note-taking should also be permitted during the International Protection Interview. Further, a laptop, on silent mode, used to take notes of the interview would not cause any disruption to the interview. **H49(3):** Clarifications are limited in Head 49 (3) to "at the end of the personal interview". This should be extended to *"or within a specified time limit before the determining authority takes a decision*", as set out in A.14 (3) APR. **H49(3):** This opportunity to make comments or provide any clarification should be extended to the legal representative attending the interview and should include the opportunity to make submissions or provide further clarifications for a reasonable period following the interview.
Head 50: Guarantees for Minors	Head 50 should be amended to include: *"The best interests of the child shall be a primary consideration for the competent authorities when applying this Regulation.* 2. *The determining authority shall assess the best interests of the child in accordance with Article 26 of Directive (EU) 2024/1346*". The conduct of interviews in the company of a *"responsible adult"*, together with the broad definition of a *"responsible adult"* risks a child being unable to disclose child-specific harm in the company of such adult, particularly where that adult is not a parent / previous caregiver, where the child is at risk from that adult and/or other family members, or where the child fears disclosure of past abuse in front of such adult due to fear / intimidation / relationship of mis-trust. Such risks are recognised in Head 66 (7) Bill which sets out: "(7) (b)*Where issuing a single decision under subhead (7)(a) would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender-based violence, trafficking in human beings, and persecution based on gender, sexual orientation, gender identity or age, a*

	separate decision shall be issued and notified to the person concerned in accordance with subhead (1)". **Head 50 (2)** should be amended to include *"The decision on the application of a minor shall be prepared by the relevant staff of the determining authority. Those relevant staff shall have the necessary knowledge and have received the appropriate training on the rights and special needs of minors".* The requirement that all minors are accompanied by adults does not respect the evolving capacity of children. **Recommendation**: Children should be supported to attend the Personal Interview without their *"responsible adult"* where they elect to do so, where this is in their best interests, and in line with the child's evolving capacity. It is welcomed that there is mandatory attendance of the child's legal adviser at the personal interview, although regrettable that it limited to *"where applicable"*. A legal adviser should always be appointed in situations of child applications for international protection. The specific protections for unaccompanied minors as set out in A.23 APR have not been included in the Heads of Bill. These require inclusion Eg. *"In the personal interview, the representative and the legal adviser shall have an opportunity to ask questions or make comments within the framework set by the person conducting the interview.* *The determining authority may require that the unaccompanied minor be present at the personal interview, even if the representative or legal adviser is present."*
Head 51: Reasons for Persecution	**H51(4):** Delete: "*(4) For the purposes of subsection (1)(d): (a) sexual orientation shall not include acts considered to be criminal in the State";* This has no basis in the Pact, and is inappropriate. Head 51 should be amended to include A.54 (2), second paragraph: "*The determining authority may only carry out an examination as referred to in paragraph 1 where it is clearly established that the risk of persecution or serious harm stems from an actor whose power is clearly limited to a specific geographical area or where the State itself only has control over certain parts of the country."* The Heads of Bill provide very limited detail on the substantive determination of the international protection application, as set out in the

	Qualification Regulation. Inclusion of the Acts of Persecution set out in A.9 QR could provide useful clarity to applicants, legal representatives and decision-makers.
Head 53: Actors of Protection	**53 (1) (b)** Delete "*parties or organisations"*. It is not appropriate to include these here, and they are not included in A.7 Qualification Regulation. **53 (3)** Insert "*and Subhead 1(b)***"** after *"When conducting an assessment under subhead (2)"* to bring this subhead in line with A.7 (3) Qualification Regulation, which provides*: "When assessing whether stable, established non-State authorities, including international organisations, control a State or a substantial part of its territory and provide protection within the meaning of paragraph 2, the determining authority shall take into account precise and up-to-date information on countries of origin obtained from relevant and available national, Union and international sources and, where available, the common analysis on the situation in specific countries of origin and the guidance notes referred to in Article 11 of Regulation (EU) 2021/2303"*.
Head 54: Internal Protection	**54 (3**) Insert *"Minister or"* after *"The applicant shall be entitled to present evidence to the"* *F*or clarity, Head 54 should include that for the purpose of para 1, the Minister / SIB will consider the following elements set out in A.8 (5) QR*:* "*a) the general circumstances prevailing in the relevant part of the country of origin, including the accessibility, effectiveness and durability of the protection referred to in Article 7; (b) the personal circumstances of the applicant in relation to factors such as health, age, gender, including gender identity, sexual orientation, ethnic origin and membership of a national minority; and (c) whether the applicant would be able to cater for his or her own basic needs".*
Head 55: Exclusion from being a Refugee	**55 (1)** A.12 QR provides "w*hen such protection or assistance has ceased for any reason, without the position of that third-country national or stateless person being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, that third-country national or stateless person shall ipso facto be entitled to the benefits of this Regulation*". This protection has been omitted from Head and should be inserted after 55 (1). A.12 (2) (b) Qualification Regulation provides for exclusion from refugee status where there are serious grounds for considering a person: "*has committed a serious non-political crime outside the country of refuge prior to that third-country national or stateless person's admission as a refugee, which means the time of granting refugee status; particularly*

	cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes"; Head 55 extends this to "prior to his arrival in the State". This should be amended to reflect the wording of the QR.

Part 6: Examination of applicant for international protection

Head/subhead	Recommendation/Article
Head 59: Assessment of Facts and Circumstances and Duty to Cooperate	**59 (7)** Should state, for clarity: *"It shall be the least invasive possible and performed in a way that respects the individual's dignity."* as per A. 25(5) APR. Should specify that any *medical examination be free of charge for applicant.*
Head 60: Examination of Applications	A. 34(3) APR requires staff to have the "*appropriate knowledge*" and "*have received training, including the relevant training under Article 8 of Regulation (EU) 2021/2303, in the relevant standards applicable in the field of asylum and refugee law*" and the possibility to seek advice, whenever necessary, from experts on particular issues such as medical, cultural, religious, mental health, and child-related or gender issues. Further it provides that where necessary, they may submit queries to the EUAA. Head 60 should be amended to reflect this. Head 60 (3) (b) should additionally refer to common analysis and guidance notes referred to in Article 11 of Regulation (EU) 2021/2303 (EUAA common analysis and guidance notes). Head 60 (3)(d) The information to be considered in respect of safe country of origin should not be limited to that which has been submitted by the applicant. There is no such limitation in the APR.
Head 61: Prioritisation	Prioritising applications means examining them "before other, previously made applications". Prioritisation allows for rapid examination of manifestly **founded** cases. Prioritisation of vulnerable applicants may minimise the time they spend in the procedure. The categories of prioritisation set out in paragraphs (a) to (l) should be deleted, as they risk dilution and therefore de-prioritisation of the matters set out in paragraphs (m) to (q), which correspond to A.34 (5) APR. Paragraphs (a) to (l) appear to refer more properly to a list of accelerated procedures rather than applications which should be prioritised. While these prioritisation criteria were listed under the IPA 2015, the IPO issued a document entitled "Prioritisation of Applications for International Protection under the International Protection Act", which was prepared in conjunction with UNHCR. This document, which was updated on 14 June 2021, reflects a useful application of prioritisation of certain international

	protection applications in a manner which can assist the efficient processing of international protection applications: *"4. UNHCR supports the prioritisation of applications for international protection as a means to enable the early identification of, for example, likely well-founded cases and cases involving children or the elderly.* *5. Prioritisation under section 73 of the International Protection Act 2015 is subject to the need for fairness and efficiency in dealing with applications for international protection. Accordingly, the scheduling of cases in the International Protection Office will primarily be done on the basis of the date of application (oldest cases first).* *6. Prioritisation relates solely to the scheduling of interviews and will not predetermine any recommendation to be made. Applications which are prioritised will be scheduled for interview at the earliest possible date having regard to available resources. All applications, whether prioritised or not will receive the same full and individual assessment under the procedure.* *7. The scheduling of interviews will occur under two processing streams which will run concurrently.* *8. Stream one, will comprise of the majority of applications for international protection which will be scheduled mainly on the basis of oldest cases first.* *9. Stream two will comprise certain categories of applications based on the criteria below. Within each of these classes of cases, priority will be mainly accorded on the basis of the oldest cases first.* *9.1 The age of applicants. Under this provision, the following cases will be prioritised:* *• Unaccompanied minors in the care of Tusla* *• Applicants who applied as unaccompanied minors, but who have now aged out* *• Applicants over 70 years of age, who are not part of a family group.* *9.2 The likelihood that applications are well-founded. Applicants who notify the IPO that a Medico-Legal report, indicating likely wellfoundedness, has been submitted will be prioritised. Other applications may be prioritised on the basis of likely well-foundedness at the discretion of the IPO on a case by case basis.*

	9.3 The likelihood that applications are well-founded due to the country of origin or habitual residence of applicants. UNHCR recommends the prioritisation of applications relating to the following countries on the basis of country of origin information, protection determination rates in EU member states and UNHCR position papers indicating the likely wellfoundedness of applications from such countries. *Syria, Eritrea, Afghanistan, Libya, Somalia, Sudan, Yemen* *9.4 Health Grounds. Applicants who notify the IPO after the commencement date that evidence has been submitted, certified by a medical consultant, of an ongoing severe/life threatening medical condition will be prioritised.* *10. As a general rule, applications from family members will be processed together. This will apply for prioritised and non-prioritised applications. 11. This prioritisation procedure will be kept under ongoing review and will be updated, as required, having regard to, inter alia, the nature of the changing caseload in the International Protection Office and the changing situation in countries of origin".* It is essential that the requirements under the CJEU ruling of HID C-175/11 that persons subject to a prioritised procedure are able to fully access their procedural rights under the Asylum Procedures Directive throughout such a procedure.
Head 62: Examination on the Merits of an Application	The expanded use of inadmissibility on the basis of safe country concepts and the onerous procedural requirements imposed on applicants, increases the risk of applicants being denied a full examination of the merits of their claim. Exempting an applicant from the right to remain on the basis of a subsequent application, and thus before an in-merits examination, may result in such applicants being subject to refoulement or inhuman and degrading treatment as a result of the lack of access to reception conditions in violation of ECtHR jurisprudence and their human dignity guaranteed by the CFREU. The Scheme should be reviewed to ensure that applicants are adequately protected from the risk of non-refoulement and have meaningful opportunities to access remedies including access to legal representation. All time limits should be set to the maximum allowable under the Pact. Significant resources will need to be allocated to legal aid, and to the decision-making bodies to ensure smooth functioning of the system. Recruitment should commence immediately so that people will be trained and in place for June 2026.

	There is a risk that shorter time limits will create pressure on the authorities and lead to poor quality decisions being provided, for instance in cases where further research or additional interviews would be necessary to establish the facts. Thus, implementation should also include evaluation of decision-making to ensure that time limits are not reducing quality.
Head 63: Accelerated examination procedure:	**63(1)(a)(iii):** That: • Applicants shall be afforded the opportunity to demonstrate good cause for their lack of travel documents; • State authorities shall demonstrate an applicant's "bad faith" before that applicant is subject to border procedure. • Applicants should have the opportunity to access "*organisations and persons providing advice and counselling*" when Head 63(1)(iii) may apply. A decision under this head to accelerate an application should be given to the applicant in writing. **H63(1)(x):** That the Minister adopts a non-exhaustive list of categories of applicants coming from countries where the EU-wide recognition rate is <20%, for whom specific protection needs warrant that they are not automatically subject to accelerated or border procedures. **Head 63** The 3-month time limit for the accelerated and border procedures is extremely tight and risks applicants being deprived of an effective opportunity to substantiate their claim. The process will only be fair when the necessary procedural safeguards are in place and respected. It is noted that there are no legal consequences for the State if the time limits foreseen are not met. Recommendation: Ensure that every applicant has an effective opportunity to have their application fully substantiated and considered, even when subjected to the accelerated procedures.
Head 64: Decision on the merits of an application	The possibility to present a decision as manifestly unfounded without explanation may result in arbitrariness and may encourage decisions on asylum applications being dictated by return policy objectives rather than protection considerations. It also implies an additional but unsubstantiated negative qualification of the substance of the claim which may de facto result in an increased burden of proof for the applicant in challenging a negative first instance decision before a court or tribunal.

	Recommendation: The provisions allowing rejection as “manifestly unfounded” rather than simply founded, unless there are substantive reasons for so doing. Delete: 64 (4).

Part 7: Assessment of Applications for International Protection at Second Instance and Part 11 Appeals and the Second Instance Body

Heads/subhead	Recommendations/actions
Heads 67: Appeal to the SIB **77: Withdrawal of international protection** **98: International Protection Second Instance Body (SIB)** **99: Appeals officers of the SIB** **103: Director**	This Bill needs to be reviewed in the context of the access to an effective remedy, in respect of the independence of the SIB. While **Head 98 (3) (b)** states that the SIB shall be independent in the performance of its functions and Head 73 (1) states that the SIB shall carry out a final and ex nunc examination of both facts and law, and Head 98 provides that the SIB shall be "independent in the performance of its functions", an analysis of the design of the SIB, as set out in the Heads of Bill, indicates that it risks being considered to inadequately respect the institutional independence necessary for the SIB to operate as a court/tribunal. To ensure the right to an effective remedy and to a fair trial, appeal decisions should only be taken by an **independent, impartial Tribunal** previously established by law (A.47 Charter of Fundamental Rights). The right to an effective remedy (A.67(1) APR) requires that: *"Applicants and persons subject to withdrawal of international protection shall have the right to an effective remedy before a* ***court or tribunal****, in accordance with the basic principles and guarantees provided for in Chapter II that relate to the appeal procedure"*. Recital 89 APR explains *"The notion of court or tribunal...can only mean an authority acting as a third party in relation to the authority which adopted the decision forming the subject-matter of the proceedings. That authority should perform judicial functions".* The CJEU emphasised in Banco de Santander SA (Case-274/14) in 2020 that the "*the guarantees of independence and impartiality require rules, inter alia, as regards the rejection and dismissal of its members in order to dismiss reasonable doubt in the minds of individuals as to the imperviousness of a court or tribunal to external factors and its neutrality with respect to the interest before it*". The institutional independence and autonomous operation of the "Tribunal or court" is essential to the right to a fair hearing (Hann-Invest and others (Joined Cases C-554/2L, C-622/2L and C-727/2t)); Case C-5O3/15, Ramón Marqarit Ponicello v Pilor Hernández Mortínez, There are various examples in the Heads of Bill where the Minister, and the Director of the SIB, who is appointed by the Minister, have significant

	and decisive powers that could be considered to undermine the SIB's independence. These include: • **Power to prescribe procedures for appeals:** Head 67 (7) **The Minister may**, in consultation with the Chief Appeals Officer under Head 100 and having regard to the need to observe fair procedures, prescribe procedures for and in relation to appeals under subhead (1), including the holding of oral hearings. • **Power to Set hearing dates:** Head 77: Withdrawal of international protection – Minister sets hearing dates • **Power of appointment:** Head 98: (4) The power of appointing a person to be an officer or servant of the SIB shall be vested in **the Minister**. (5) In accordance with subhead (4) the Minister may appoint such and so many persons to be members of the staff of the SIB as he or she considers necessary to assist the SIB in the performance of its functions and such members of the staff of the SIB shall receive such remuneration and be subject to such other terms and conditions of service as the Minister may, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine. • **Establishment of Director Position: Reporting and performance:** Head 103 (3) The Director shall be responsible to the Minister for the performance of his or her functions. The appointment of a Director of the SIB, who is responsible to the Minister, and the allocation of staff to such person appears to risk perception of absence of independence of the SIB.
Head 67: Appeal to the SIB	67 (7) APR provides for between a minimum of five days and a maximum of ten days to lodge appeals in respect of inadmissible decisions, implicitly withdrawn decisions, unfounded decisions and manifestly unfounded decisions, if at the time of the decision the circumstances referred to in Article 42 (1) or (3) apply. Those circumstances are rejection on the merits in the accelerated examination procedure. However, Heads 64 (3) and 64 (4) include situations which fall outside the parameters of 67 (7)(a) APR and should be included within the longer timeframes. Five days is an insufficient period of time for a person to receive legal representation and advice on the decision, grounds of appeal to be drafted and submitted. This time period should be extended.

Head 68: Suspensive Effect of an Appeal	This Coalition is fundamentally opposed to the Pact concept of non-suspensive decisions, and considers that it is extremely challenging for applicants to access effective remedies when subjected to Return Order. It is particularly concerning that applicants for international protection, whose applications are implicitly withdrawn, will not have the Return Orders suspended. The phrase "Should be without prejudice to the principle of non-refoulement" should be inserted as set out at A.69 (3) APR. **68 (4)** It is recommended that a time limit longer than the minimum permitted of 5 days would enable the process run more smoothly, with increased likelihood of meaningful access to legal representation. A.68 (4) APR provides for the *ex officio* power to decide "*whether or not the applicant or the person subject to withdrawal of international protection should be allowed to remain on the territory of the Member States pending the outcome of the remedy*". Head 68 confines this power to when such a request has been made by the applicant. Head 68 should be amended to include an ex officio power to remain in the State pending a final decision. **Head 68 (5)** should be amended to bring it in line with A. 68 (5) (d) APR which provides that: *"(ii), where the applicant or the person subject to withdrawal of international protection has requested to be allowed to remain within the set time limit, pending the decision of the court or tribunal on whether or not the applicant or the person subject to withdrawal of international protection shall be allowed to remain on the territory"*, and with A.43 AMMR. **Head 68 (5)** provides for an applicant or person subject to withdrawal to remain in the State until the time limit for requesting the right to remain has expired. There is a risk in Head 68 that, if the SIB does not respond to the request within the required time frame of 5 days, the applicant will no longer be protected from removal during any such delay on the part of SIB.
Head 69: Oral Hearing	Reference to legal representative at hearing at the SIB appears to be included only in the Heading on Oral Hearing. There needs to be clarification that there will be access to legal assistance at appeal stage in all cases, including those in which an Oral Hearing will not take place. Head 69 sets the default position that appeals will be decided on a "papers only" basis, without an Oral Hearing. Head 69 (2) provides for very limited conditions in which the Chief Appeals Officer may direct that the SIB hold an oral hearing: (i) applicant has requested an oral hearing **and**

	(ii) applicant was not given the opportunity of a personal interview **or** (iii) was given the opportunity of an interview, but the recording or transcript of the interview(s) was not placed on the applicant's file. It is only when both of those conditions are met that the Chief Appeals Officer may consider whether an oral hearing is necessary for the purpose of ensuring that there is a full and *ex nunc* examination of both facts and points of law. These circumstances are overly restrictive, particularly in circumstances where issues of credibility often arise as critical to international protection applications. The second condition set out in Head 69(2)(b) is rigid and inflexible in its nature as it is concerned only with the administrative process of carrying out an interview and placing the recording or transcript of that interview in the applicant's file. It does not allow for any consideration or engagement with the interview in question or with the contents of the recording or transcript of that interview. This condition will not be met if the applicant was given an opportunity of an interview and the recording or transcript of that interview was placed on their file. This condition means that the Chief Appeals Officer has no general power to decide whether an oral hearing is necessary for the purpose of ensuring that there is a full and *ex nunc* examination of both facts and points of law in light of the specific circumstances of each case. We have received advice from Colin Smith SC and Aoife Doonan BL that the wording of Head 69(2) of the 2025 Bill is incompatible with the right to an effective remedy under EU law. While there is not an absolute obligation to hold an oral hearing in all proceedings, the EU and national jurisprudence indicates that there are certain situations that may necessitate an oral hearing being held and that the obligation depends on the specific circumstances of the case. The Opinion sets out: "*The jurisprudence of the CJEU, and in particular the judgment in Sacko, emphasises the importance of the principle of effectiveness and the need for the appellate court or tribunal to carry out a full and ex nunc examination of both facts and points of law. This include an oral hearing if the appellate court or tribunal considers that this is necessary in order to carry out the full and ex nunc examination required*". In Case C-348/16 *Moussa Sacko v Commissione Territoriale per il riconoscimento della protezione internazionale di Milano* (26 July 2017), the CJEU considered the role of an oral hearing in the appeals process provided for in Article 46 of the Recast Directive. "*It is only if that court or tribunal considers that it is in a position to carry out such an examination solely on the basis of the information in the case-file, including, where applicable, the report or transcript of the personal interview with the applicant in the procedure at first instance, that it may decide not to hear*

	the applicant in the appeal before it. In such circumstances, the possibility of not holding a hearing is in the interest of both the Member States and applicants, as referred to in recital 18 of Directive 2013/32, to have a decision made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out." *45. On the other hand, if the court or tribunal hearing the appeal considers that the applicant must be afforded a hearing in order to carry out the full and ex nunc examination required, that hearing, as ordered by that court or tribunal, constitutes an essential procedural requirement, which cannot be dispensed with on grounds of speed, as referred to in recital 20 of Directive 2013/32. As the Advocate General observed in point 67 of his Opinion, although that recital allows Member States to accelerate the examination procedure in certain cases, inter alia where an application is likely to be unfounded, it does not authorise the elimination of procedures which are essential in order to guarantee the applicant's right to effective judicial protection.* *…* *48. Moreover, while Article 46 of Directive 2013/32 does not require a court or tribunal hearing an appeal against a decision rejecting an application for international protection to hear the applicant in all circumstances, it does not, nonetheless, authorise the national legislature to prevent that court or tribunal ordering that a hearing be held where, having found that the information gathered during the personal interview conducted in the procedure at first instance is insufficient, it considers it necessary to conduct a hearing to ensure that there is a full and ex nunc examination of both facts and points of law, as required under Article 46(3) of the directive."* The cases of C-406/18 *PG v Bevándorlási és Menekültügyi Hivatal* (19 March 2020) and C-564/18 *LH v Bevándorlási és Menekültügyi Hivatal* (19 March 2020) further considered the right to an effective remedy pursuant to Article 46 of the Recast Directive and again reiterated that the substantive rules and procedural guarantees enjoyed by the applicant under EU law must be effective. In *LH*, the Court further held that if the court hearing an appeal against a decision rejecting an application for international protection - in this case as to its inadmissibility - considers that it is necessary to hear the applicant in order to carry out the full and *ex nunc* examination which the court is required to conduct, it must hold such a hearing; in such a case, the applicant has the right, where necessary, during the hearing before the court, to the services of an interpreter in order to submit his or her arguments. In *SUN (South Africa) v. Refugee Applications Commissioner* [2013] 2 IR 555, acknowledged that, where negative findings as to the personal credibility of an applicant are made, the absence of an oral hearing on

	appeal can be disadvantageous to the point of breaching fair procedures, in particular as an unfairly processed asylum appeal may result in a real risk to life and limb. 1) In *M.M. v Minister for Justice* [2018] IESC 10, O'Donnell J notes that exceptionally, it may be necessary to permit an oral interview: "*27 If a decision requires credibility in this classic sense, that is, whether an account of disputed facts is to be believed or not, that, in Irish law can lead rapidly to the necessity for an oral hearing if fair procedures are to be applied. Thus, in the present context and applying the decision of the ECJ, one of the exceptional cases in which a hearing or interview may be necessary, might be, where although an adverse decision on certain facts had been made by ORAC/RAT, an application for subsidiary protection raised some substantial grounds for doubting that conclusion".* 2) In *SK v IPAT* [2021] IEHC 781, the High Court reiterated the importance of each case being assessed in light of its specific circumstances and held that the International Protection Appeals Tribunal had failed to engage at all with submissions that had been made in favour of an oral hearing.
	Recommendation: Insert a new section to enable the SIB to exercise its discretion to accept late appeals as provided for in Reg 4 SI No. 116/2017 - International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.
Head 71: Submission of Documents to the SIB	A.67 (5) APR provides "*Where the court or tribunal considers it necessary, it shall ensure the translation of relevant documents that have not already been translated in accordance with Article 34(4)*".It is submitted that Head 71 should be amended to provide for the translation by the SIB of documents which the applicant presents to it, and which the SIB considers relevant to consideration of the appeal. Head 71 (3) appears to limit translation by the SIB to those additional documents requested by the SIB, and excludes translation of documents which were spontaneously submitted by the applicant.
Head 72: Withdrawal and deemed withdrawal of appeal to the SIB	The withdrawal of the application should not be automatic in the situation outlined in 72 (2). If reasons such as illness, hospitalisation or failure to receive notification of appeal arise for an individual resulting in their inability to attend a hearing without informing the SIB, it is likely that they will not be in a position to inform the SIB of this within 3 working days of the scheduled Hearing. The SIB should have authority to consider information received within a longer period of time to ensure effective access to justice. The implicit withdrawal should not commence after 3 working days. A. *41 (4) APR: The competent authority may suspend the procedure in order to give the applicant the possibility to*

	justify or rectify omissions or actions as set out in paragraph 1 before a decision declaring the application as implicitly withdrawn is made." The Regulation does not therefore require such a limited timeline for justification of failure to attend, and should be extended, (7) Notifications under s(6)(d)(i) should be in a language her or she understands, regardless of whether he / she has access to legal representation. A.41 APR allows for this requirement of a language a person understands, without restriction as to availability of legal representative. *"A.41 (3). When the applicant is present, the competent authority shall, at the time of the withdrawal, inform the applicant in accordance with Article 8(2), point (c), of all procedural consequences of such a withdrawal in a language he or she understands or is reasonably supposed to understand*.
Head 73: Decision of the SIB on appeal	73 (6) (a) This appears to be an incorrect reference to 73 (2). Should refer to other relevant sections detailing notices of appeal.
Head 75: Implicit Withdrawal of application	75 (1) (b) sets out that an application shall be declared as implicitly withdrawn where "(b) the applicant refuses to cooperate by not providing the information referred to in head 16", or by not providing his or her biometric data. However, Head 16 is not specific in respect of the information to be provided. A.27 APR lists the specific relevant information. It is recommended that this is included to provide greater clarity: *"(a), the applicant's name, date and place of birth, gender, nationalities or the fact that the applicant is stateless, family members as defined in Article 2, point (8), of Regulation (EU) 2024/1351 and, in the case of minors, siblings or relatives as defined in Article 2, point (9), of that Regulation present in a Member State, where applicable, and other personal details of the applicant relevant for the procedure for international protection and for the determination of the Member State responsible;* *(b), where available, the type, number and period of validity of any identity or travel document of the applicant and the country that issued that document and other documents provided by the applicant which the competent authority deems relevant for the purposes of identifying him or*

	her, for the procedure for international protection and for the determination of the Member State responsible;" 75 (2) provides for implicit withdrawal where "*a competent authority other than the Minister conducts an assessment under this Head and deems that the application must be considered implicitly withdrawn, that authority shall inform the Minister accordingly. Subject to Heads (3) and (4), the Minister shall adopt a decision declaring that the application has been implicitly withdrawn*". The Explanatory Note sets out that this "*allows the authority in charge of reception centres to report when an applicant is not complying with the requirements of the Reception Conditions Directive, or An Garda Síochána to report to the Minister that an applicant is not complying with reporting duties*". Given the non-suspensive effect of appeals, the punitive nature of perceived failure to comply with reception conditions could result in a person who has protection needs having their application implicitly withdrawn and the merits of their case never considered. It is submitted that "*the authorities in charge of reception centres*" are not an authority which is suitable to be deemed a relevant authority for this purpose, and that accommodation-related issues do not have any bearing on a person's protection needs. Indeed, operation of the provision in such a way would heighten the significant imbalance of power which already exists as between an IPAS centre manager and an international protection applicant. The use of implicit withdrawal as a consequence of non-cooperation should not be used since it creates the risk that applications are declared withdrawn when that is not case, with negative consequences for the applicant and for the authorities. 75 (3) It is recommended to clarify that the process is being suspended in order to give the applicant an opportunity to make representations. 75 (4) (a) The period of 5 working days should be extended. This timeframe is not required by the regulation and may be inadequate for applicants. 75 (6) should be amended from "shall" to "may", which is the language of A.41 APR. This would give the Minister autonomy to take into account relevant information.
Head 76: Cessation	76 (4)(a) and 76 A(4)(b) Notification in writing should be in language refugee is reasonably expected to understand.
Head 77: Withdrawal of International Protection	**Head 77 (3):** The Article 14 QR protections do not appear to have been transposed in this Section: *Persons to whom points (d) and (e) of paragraph 1 or paragraph 2 of this Article apply shall be entitled to the rights set out in, or similar to those set out in, Articles 3, 4, 16, 22, 31, 32*

	and 33 of the Geneva Convention provided that they are present in the Member State. A.66 (4) APR Where the determining authority or, where provided for by national law, a competent court or tribunal has taken the decision to withdraw international protection, Articles 6, 17, 18 and 19 shall apply *mutatis mutandis*. **Head 77** (2) and (3) Retrospective / Prospective The possible retrospective application of Head 77 (2) lacks sufficient clarity and appears to contradict the Recitals of the Qualification Regulation: Recital "(63) *Where the refugee status or the subsidiary protection status ceases to exist, the decision by the determining authority of a Member State to withdraw the status does not prevent the third-country national or stateless person concerned from applying for residence on the basis of grounds other than those which justified the granting of international protection or from continuing to remain legally on the territory of that Member State on other grounds, in particular when holding a valid Union long-term residence permit, in accordance with relevant Union and national law."* Recital *"(64) A decision to end international protection should not have a retroactive effect. A decision to revoke international protection should have a retroactive effect. Where a decision is based on a cessation ground, it should not have a retroactive effect. Where refugee status or subsidiary protection status is revoked on the basis that it should never have been granted, acquired rights could be retained or lost in accordance with national law*".
Head 79: Option to Voluntarily Return to Country of Origin	The Returns Regulation makes several references to provisions of the Returns Directive, notably those concerning the best interests of the child, family ties and the state of the applicant's health. According to Article 4(3) of the Returns Regulation, Article 7(2) of the Returns Directive should still apply, yet it is absent from the Bill. Article 7(2) provides that *"Member States shall, where necessary, extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links."* This is not included and should be inserted in the General Scheme.
Head 80: Issuance of Return Decisions	The Returns Directive notes in Article 5 that "*Member States shall take due account of: (a) the best interests of the child; (b) family life; (c) the*

	state of health of the third-country national concerned," when implementing the Directive. As provided for in Article 4(3) of the Returns Regulation, this continues to apply. Reference should be made to include these considerations in the General Scheme. Article 4(3) of the Returns Regulation further notes that Article 10 of the Returns Directive applies. This provides that *"1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child. 2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return"*. This should be inserted.
Head 89: Permission to Reside in the State	Head 89 A. 24 Qualification Regulation indicates that residence permits should be issued free of charge or a fee not exceeding what nationals pay, but this is not addressed in the Scheme. A. 20 of the general rules in the Qualification Regulation requires residence permits to be issued within 15 days of a grant of international protection and, if not, provisional measures must be taken "*such as registration or the issuance of a document, to ensure that the beneficiary has effective access to the rights"*. This is not addressed in the General Scheme. Insert provisions confirming that registration will be free of charge, and that residence permits will be issued within 15 days

Part 8: Declarations and other outcomes

Heads/subheads	Recommendations/actions
Head 86: Return of person subject of return order	**86(4)(a):** As noted elsewhere in this submission. This coalition is concerned about the warrantless powers of arrest and detention proposed in the bill, granted to both members of An Garda Siochana and immigration officers. Such police powers must align with human rights law and standards. Interferences with rights to liberty and freedom of movement, privacy and bodily integrity must be prescribed by law, necessary in a democratic society and proportionate to a legitimate aim. Furthermore, it is unclear what avenue an applicant has to complain about the conduct of an immigration officer in relation to the use of search, arrest and detention powers. This is in contrast to the conduct of Gardai, of which the Office of the Police Ombudsman has oversight. **86(4)(a)(v):** Where a person is subject to detention under the grounds that they were "*previously detained under the asylum border procedure in accordance with head 115,"* that person should be brought before a judge of the District Court as per Head 122(15). **86(4)(b)(ii):** Increases the maximum time for detention for returns from 7 days- under s51B(4) of the Act of 2015- to 12 weeks. This represents an excessive and disproportionate length of time to detain someone for the purpose of removal from the State. **86(5):** To protect the right to privacy, including of people other than the applicant who may reside in such a dwelling, a warrant should be required. This would ensure that that Gardai, or an immigration officer, have the evidence needed to justify a search and ensure the reasons for such a search under Head 45(1) are not abused. **86(6)(a):** Where a person subject to arrest and detention having been deemed at risk of absconding due to having "*misrepresented or omitted facts, whether or not by the use of false documents*", that person shall, as per Head 63(1)(a), be afforded the opportunity to demonstrate good cause for the misrepresentation or omission and State authorities shall demonstrate an applicant's "bad faith" before that applicant is subject to arrest and detention. **86(8):** Where a person states that they are under the age of 18 years, the benefit of the doubt shall apply. Where required, an age assessment shall take place before a person is arrested and detained, or without undue delay after arrest has taken place.

Part 9: Content of International Protection

Head/subhead and concern	Recommendation / action

General recommendation re Family Reunification	**Recommendation:** In line with Article 22 of the Qualification Regulations and *SH and AJ v Minister for Justice, Ireland and the Attorney General* [2022] IEHC 392 the right to family reunification should be communicated to the recipient of International Protection as part of the correspondence issued to them by the Ministerial Decisions Unit informing them of their grant of International Protection. This should include information on the restrictions to the right to family reunification such as the time limitations and the need to apply for family reunification before the relevant siblings or children attain 18 years of age.
General recommendation re Family Reunification	**Recommendation:** Provide a statutory entitlement to access to legal aid for support in family reunification applications.
General recommendation re Family Reunification	**Recommendation:** Provide adequate resourcing to the Family Reunification Unit to ensure applications processed in a regular, timely way.
General recommendation re Family Reunification	**Recommendation**: Provide a statutory independent appeals mechanism for decision-making to ensure the integrity of the decision-making process and to uphold the principles of fair procedures and natural justice.
91 Permission to Enter and Reside for Member of Family of Beneficiary of International Protection ***The Minister shall investigate, or cause to be investigated, an application under subhead (1) to determine—*** ***(a) the identity of the person who is the subject of the application,*** ***(b) the relationship between the sponsor and the person who is the subject of the application, and***	**91(2) Recommendation:** Make publicly available policy and practice documents which demonstrate how applications are to be investigated, assessed and determined including timelines for decision-making.

(c) the domestic circumstances of the person who is the subject of the application.	
91 (2) (c) ***(2) The Minister shall investigate, or cause to be investigated, an application under subhead (1) to determine— …*** ***(c) the domestic circumstances of the person who is the subject of the application.*** **This is a replica of the current section 56 (2) IPA 2015**	**Concern**: It is not clear what the exact relevance of "domestic circumstances" is for purposes of the investigation. ***Recommendation*:** Publish guidance which should make clear what comes within the definition of domestic circumstances and why the rationale for investigating same. ***Recommendation*:** The consideration of 'domestic circumstances' should be integrated in a meaningful way with Head 93 concerning the 'Situation of Vulnerable Persons', leading to where appropriate, for example, the waiver of documentation for particular proposed beneficiaries, or prioritisation of applications for investigation and assessment. Similarly, this could be integrated in a meaningful way by being a ground upon which extensions to the 12 month period for initiating applications can be granted.
91 (5) (a) and (b) ***(a) A permission to reside issued pursuant to subhead (4) shall have the same date of expiry as the permission to reside issued to the beneficiary of international protection … .*** ***(b) The period of validity of the permission to reside issued to the family member shall not extend beyond the date of expiry of the permission to reside held by the beneficiary*** **(Note replica of QR Art 23 (2))**	Concern: While it is welcomed that this is potentially provides a more generous time period for arrival to the state, this fails to account for an array of situations which might arise owing to the lived reality of difficulties presented by travel to the state and registration. Changes in the beneficiary's circumstances resulting in changes to their permission to reside could also pose undue hardship to family members, including revocation of status, deportation, and death. **Recommendation: This provision would benefit from inclusion of exemptions which would allow the permission for the family member to retain their permission to reside in certain circumstances notwithstanding the permission for the sponsor has expired, including but limited to instances of revocation, deportation and death of the sponsor.**

91 (7) ***The Minister shall refuse to give permission to enter and reside in the State to a spouse or civil partner where there are strong indications that the marriage or partnership was contracted for the sole purpose of enabling the person concerned to enter or reside in the State*** **(Note: this is a replica of QR Art 23 (4))**	**Recommendation: publish guidance on how the Minister will interpret the threshold of "strong indications" in order to exercise this power.**
91 (10) ***A permission given under subhead (4) to the spouse or civil partner of a sponsor shall cease to be in force where the marriage or the civil partnership concerned ceases to subsist.*** **This mirrors section 56(6) of the IP Act 2015.**	Concern: The blanket cessation for all instances of dissolution of marriage / civil partnership may cause issues of undue hardship and unfairness for beneficiaries who have been forced to dissolve their relationship for whatever reason, and particularly so in certain instances for example, where there has been Domestic Violence. **Recommendation: There should be access to independent residence permission in circumstances of dissolution of marriage / civil partnership based on exemptions relating to humanitarian grounds relating to family unity, integration, and the rights of any children to, among other considerations, the care and company of their parents, and education.**
91 (11) ***An application under subsection (1) shall be made within 12 months of the giving under head 78 of the refugee declaration or, as the case may be, subsidiary protection declaration to the sponsor concerned.*** **This provision is carried forward from section 56(8) of the IP Act 2015.**	The current practice is to provide a maximum of 12 months from the grant of the international protection to initiate the application for Family Reunification. **Recommendation: that further provision for extensions to this 12 month period be included on the basis that the Minister is of the reasonably-held opinion there are humanitarian grounds and / or personal / domestic circumstances of either the sponsor or the proposed beneficiaries which justifies an extension.**

91(12)(a) ***(12)(a) In this head and head 92, family member means, insofar as the family already existed before the sponsor arrived on the territory of the State, the following members of the family of the beneficiary of international protection:*** ***(i) the spouse of the sponsor or his or her civil partner*** ***(ii) the minor children of the sponsor or of his or her spouse or civil partner and the adult dependent children of the sponsor or of his or her spouse or civil partner, provided that they are unmarried and regardless of whether they were born in or out of wedlock or adopted;*** ***(iii) where the sponsor is, on the date of the application under subhead (1), a minor, the father, mother, and their children who, on the date of the application under subhead (1), are under the age of 18 years, or another adult responsible for that beneficiary, including an adult sibling.*** **This is subhead implements the definition of "family member" from Article 3 QR.**	Concern: "Insofar as the family already existed" - concern that this might not extend to siblings / children who are not yet born. **Recommendation: clarity regarding the eligibility of children / siblings who are not born as at the time of the arrival of the Sponsor to the State would be welcomed.** --- **Concern: "*spouse of the sponsor or his or her civil partner".*** The provision does not account for "*unmarried partner in a stable relationship"* as envisioned in Article 3 of the Qualification Regulations. It is understood this is on the basis that the QR provides for this category to be eligible "where the law or practice of the Member State concerned treats unmarried couples as equivalent to married couples." As currently drafted this omission from the Heads of Bill will exclude many couples in stable relationships and have a disproportionate impact on couples in same-sex relationships where there is no legal recognition of same-sex marriage in their country of origin, or marriages conducted outside of civil legal frameworks. **Recommendation: Given that Irish law does recognise unmarried couples 'in a stable relationship' in a range of circumstances, most notably in concept of 'cohabitants' as provided for under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, this head should be amended to include couples who would fall under this category and should provide express guidance in the provision as to what, for the purposes of the family reunification application, will meet this definition.** --- Concern: the inclusion of "**Another adult responsible for the beneficiary including an adult sibling**" is to be welcomed. It is unclear what will satisfy this definition however. **Recommendation: the head be amended to include an inexhaustive list of relationships and circumstances which may give rise to the conclusion that a proposed beneficiary is an "Another adult responsible for the beneficiary".** ---

	Concern: due to administrative burdens and delays, all of which are outside of the sponsor's control, delays in receiving a grant of refugee status or subsidiary protection can mean that a sponsor 'ages out' of being able to apply for family reunification for categories of family member who otherwise would have been eligible were the sponsor still under the age of 18. This results in the sponsor being unfairly prejudiced as a result of the delays in processing applications for international protection. **Recommendation: that the head be amended to substitute in the date of application for international protection as the relevant date for eligibility under head 91 (12) (a) (iii)**
91(12)(b) **(*b)For the purpose of paragraph (1)(a)(ii), an adult child should be considered dependent, on the basis of an individual assessment, only in circumstances where that child is unable to support him or herself due to a physical or mental condition linked to a serious non-temporary illness or severe disability.*** **This definition is taken from recital 17 of the QR.**	Overall: this is a positive development and to be welcomed. Concern: this is an unduly restrictive definition - not sufficient account for circumstances where the only remaining family member in the CO could be an adult sibling who is acutely at risk e.g. a single female. **Recommendation: that the circumstances be expanded to include where that adult child where there are extenuating humanitarian circumstances justifying their inclusion in the application.** --- Concern: There are questions arising the implementation of this provision and resourcing and conduct of the 'individual assessment'. Will this be conducted via documentation (i.e. medical reports) solely? Or is provision for the role of INGOs, UN agencies and aid organisations envisioned? Will the DFA / FRU conduct in-person or remote assessments with potential beneficiaries, in a way analogous what is currently provided by way of DNA testing. **Recommendation: that guidance be published on how the FRU will conduct individual assessments in respect of adult children under this provision.**

Head 92	No recommendation: this is a replica of Section 57 of the IPA 2015.
Head 93 ***(1) In the application of heads 88 to 92 due regard shall be had to the specific situation of vulnerable persons such as persons under the age of 18 years (whether or not accompanied), disabled persons, elderly persons, pregnant women, single parents with children under the age of 18 years, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence.*** ***(2) In the application of heads 88 to 92 in relation to a person who has not attained the age of 18 years, the best interests of the child shall be a primary consideration.*** **Head 93 mirrors section 58 of the IP Act 2015.**	Concern: this is a replication of the current Section 58, the purpose of which and impact on applications is unknown. **Recommendation: the heads should be amended to make clear what the relevance and impact of the "due regard" envisioned here is. It is further recommended that a non-exhaustive list of the ways in which this can impact the application of the heads concerns be included, for example, the expedition or prioritisation of investigations or waiver of requirements, and / or the provision of alternative means of investigation.** Single parents with adult dependent children and persons with serious illnesses have been excluded. They are referred to in A.20 QR and s.58 International Protection Act 2015. These categories should be included.
Head 94: Programme Refugees	**94 (2)** provides that "(2) During such period as he or she is entitled to remain in the State pursuant to permission given by the Government or the Minister referred to in subhead (1), heads 88 to 92 shall apply to a programme refugee as if the programme refugee is a beneficiary of international protection". However, the length of time provided to "beneficiaries of protection" differs depending on whether the person is recognised as a refugee (3 years) or granted

	subsidiary protection (1 year)." Beneficiary of international protection" should therefore be amended to "refugee".
Head 98: International Protection Second Instance Body (SIB)	**98 (4) and (5)** To ensure the institutional independence of the SIB, the Chief Appeals Officer (rather than the Minister) should have the power to appoint "a person to be an officer or servant of the SIB".
Head 99: Appeals Officers of the SIB	It is suggested that, given that the SIB is an inquisitorial Tribunal, the persons tasked with determining appeals should be known as "*Tribunal members*", "*Chief Tribunal Member*" and "*Deputy Chief Tribunal Member*" rather than "Appeals Officers", "Chief Appeals Officer" and "Deputy Chief Appeals Officer". The Appeals Officers should be provided with greater autonomy to determine matters relevant to the determination of appeals, such as which documents require translation by SIB, and when it is necessary and appropriate to hold an Oral Hearing.
Head 100, 101 and 102	The functions of the Chief Appeals Officer, Deputy Chief Appeals Officer and Appeals Officers appear to be overly-restrictive for an independent, impartial Tribunal which must exercise its functions "wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body, and without taking orders or instructions from any source whatsoever, and is thus protected against external interventions or pressure liable to jeopardise the independent judgment of its members as regards proceedings before them. (Case C-5O3/15, Ramón Marqarit Ponicello v Pilor Hernández Mortínez, paras 37/38). It appears that the limited autonomy afforded to Appeals officers, CAO, and DCAO may hamper institutional independence. While the CJEU in *HID*, found that the Refugee Appeals Tribunal had satisfied the criteria for independence, because of the existence of the possibility of judicial review in the High Court, there have been developments in the relevant law since that time. In Hann-Invest (Joined Cases C-554/2L, C-622/2L and C-727/2t), the CJEU held: "The rules applicable to the status of judges and the performance of their duties must, in particular, be such as to preclude not only direct influence, in the form of instructions, but also types of influence which are more

	indirect and which are liable to have an effect on the decisions of the judges concerned, and thus preclude a lack of appearance of independence or impartiality on their part likely to prejudice the trust which justice in a democratic society governed by the rule of law must Inspire in individuals" It is recommended that this Head is considered against the relevant EU law, and that appeal officers, the Chief Appeals Officer and Deputy Chief Appeals Officer are provided with adequate autonomy and scope to complete their roles effectively, and are not subordinated to any other body.
Head 104: Functions of the Director	Many of the functions of the Director, were previously functions of the Chair of the IPAT. It is submitted that in order to respect the independence of the Appeal mechanism, those functions should be retained by an independent Tribunal Chair.
Head 122 (2) (c)	**Head 122(2)(c)** Amend to include “significant” before “risk of absconding”. **Head 122 (2)(a):** Delete the reference to nationality. Although nationality is part of identity this could be interpreted as relating to statelessness leading to indefinite or prolonged detention of stateless persons.

Part 12: Asylum Border Procedure

Head/subhead	Recommendation/action
Head 105: Conditions for Applying the Asylum Border Procedure	**H105(1):** This Head has been transposed with a minor deviation from Article 43(1) Asylum Procedures Directive, but with a significant change to the meaning of the Head. Article 43 APR only applies the asylum border procedure in limited circumstances, enumerated under Article 43(1). Head 105(1) gives the Minister power to apply the border procedure to any applicant who has undergone screening, in addition to those enumerated in Head 105(2). Given the policy choice in these Heads to apply screening to virtually all international protection applicants, this Head gives the Minister broad power to apply the border procedure to any applicant, except for those who apply *sur place*. This has significant consequences for the rights of applicants who may consequently be subject to detention, alternatives to detention, restrictions of movement and who will not be legally allowed to enter the State. **H105(5):** To assign the definition of "external border crossing point" to any Screening Centre, which may be within the territory of the State, is an overreach and is not consistent with the Screening Regulation. Article 2 Regulation (EU) 2016/399, to which Ireland is not a party but which the Screening Regulation 'compliments' as per Recital 2, defines an external border as "*the Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders."* References to 'external borders' are made across the Pact regulations, including in the APR, therefore the meaning assigned to it must be consistent with the definition laid out above. It follows that an "external border crossing point" should be located at or in proximity to an external border. **H105**: Where the Minister decides that an applicant will be subject to the border procedure, this should be communicated to the applicant in writing.
Head 106: Mandatory Application of the Asylum Border Procedure	**H106(b):** This provision does not exist in the Asylum Procedures Regulation. An applicant who has been granted access to the State via the standard or accelerated asylum border procedures, under Head 29(2)(a), cannot be later subject to the border procedure, as this would require removing the applicant from the territory of the

	State. Head 105(3)(a) states that "Applicants subject to the asylum border procedure shall not be authorised to enter the State."
Head 108: Adequate Capacity in the Border Procedure	While Head 108 accurately reflects Article 49 Asylum Procedures Directive, Article 50 APR "*Notification by a Member State where the annual maximum number of applications is reached,"* has not been transposed. This should be amended to allow the Minister to notify the European Commission when maximum capacity in the asylum border procedure is reached.
Head 110: Exceptions to Asylum Border Procedure	The Coalition requests the opportunity, and reserves the right, to make further submissions when Head YY (Age Assessment) is published. Age disputed unaccompanied young people who seek international protection are unquestionably among the most vulnerable applicants in the process. There are enormous consequences for the young person if they are deemed an adult. They will be accommodated as adults in reception centres, their protection claim will be processed as an adult and access to public services, including health, education and welfare, will be negatively impacted. The Asylum Border Procedure should not be applied where there is a reasonable dispute as to a person's age [to be determined under Head YY (Age Assessment)]. In addition, such persons should be accommodated in alternative suitable special purpose accommodation facilities for the duration of the determination process. To ensure a rights-based approach to age assessment, reflecting international best practice and underpinned by the best interest of the child, the following essential procedural safeguards should be provided for in the age assessment process under Head YY: • Identity documents presented should be validated. • Benefit of Doubt and Presumption of Minority should be applied. • Right to Information in a language the presenting UAM understands. • Rights vindicated by presence of Guardian/ Support Persons. • Informed Consent. • Clear assessment roles and responsibilities, avoid conflict of interest. • Assessments should be conducted by a multidisciplinary team. • Conduct of Child Friendly Meetings and Questioning.

	• Right to respond to information or reasons challenging their eligibility. • Clear and transparent decision-making process. • Clear reporting of assessment outcome verbally and in writing. • Information on right to appeal/ grounds for assessment. • Independent appeal conducted with appropriate safeguards. • Reassessments/ Appeals conducted in a timely manner. Head YY (Age Assessment) should consider inclusion of a Best Interest Assessment (BIA) as part of any age assessment procedures. UNCHR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child (2021) states "*A holistic assessment of capacity, vulnerability and needs that reflect the actual situation of the young person is preferable to reliance on age assessment procedures aimed at estimating chronological age. A BIA may be used to conduct this assessment for (presumed) children at risk.*"
Head 111: Locations for Carrying Out the Border Procedure	**H111(1):** Article 54 Asylum Procedures Directive States that "*a Member State shall require… applicants to reside at or in proximity to the external border or transit zones as a general rule or in other designated locations within its territory…*" The 'general rule' that applicants should be required to reside at or in proximity to the external border, with reference to H105(5) above, should be reflected in the Heads. Article 54 (2) Asylum Procedures Regulation should be transposed into this Head. It states: *"Without prejudice to Article 47, Member States shall ensure that families with minors reside in reception facilities appropriate to their needs after assessing the best interests of the child, and shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development, in full respect of the requirements of Chapter IV of Directive (EU) 2024/1346."*

Part 13: Return Border Procedure

Head/Subhead	Recommendation/action
Head 112: Return Border Procedure	The Coalition requests the opportunity to, and reserves the right, to make further submission on *head YY (alternatives to detention)* when those heads are published.
Head 115: Detention under the Border Procedure	**115(2):** Given the potential for a significant period of detention - spanning the screening procedure, asylum border procedure and return border procedure- a person who was detained during the asylum border procedure should be brought before a judge of the District Court, as per Head 122(15)(b), to determine whether they shall be detained under Head 125.

Part 14: Allocation of Accommodation, Restrictions of Movement, and Detention

Head/subhead	Recommendation/action
No provision in Heads of Bill	**Comments:** There is no provision for reception capacity and contingency planning in Heads of Bill. **-Note: Art 32 of RCD 2024** includes a provision regarding contingency planning and provides that Member States are obliged to draw up contingency plans with local and regional authorities, civil society, and international organisations "*as appropriate*" to set out measures which would ensure Member States meet the obligations set out in the Directive, whereby there is a "*disproportionate number of applicants for international protection, including of unaccompanied minors*." **Recommendations**: -Clarify whether this will be dealt with in SI and whether there will be an opportunity to review/comment in advance of enactment. -A multi-agency, inter-departmental approach ought to be required in contingency planning. Additionally, a more expansive role is envisaged for the Department of Housing and Local Authorities, who ought to work alongside IPA and the Department of Justice to ensure that adequate resources are allocated with respect to contingency planning. -Contingency plans should allow for increased allocation of resources should the number of new arrivals increase during a particular period. -The plans should seek to avoid reliance on lower reception standards in the case of increased arrivals (e.g. temporary emergency centres, tented accommodation, accommodation in congregated settings etc). -Contingency plans ought to be subject to careful ongoing review in line with the number of arrivals.
No provision in Heads of Bill	**Comments:** -No mention of reduction or withdrawal of material reception conditions in Heads of Bill. -It is noted that Art 23(2) of the RCD 2024 provides for new circumstances in which the State will be permitted to reduce reception conditions and further expands on the consequences for existing circumstances such that it will now be permitted to withdraw material reception conditions in circumstances whereby

	applicants fail to participate in compulsory integration unless same is beyond the applicant's control or for serious or repeated breaches of the rules of the accommodation centre or violent or threatening behaviour. -Note also the significant change RCD 2024, which did not previously exist under RCD 2013 – State will be obliged to withdraw Reception Conditions of applicant whereby they are subject to a transfer under the RAMM. Recommendations: -Given the serious impact on the applicant, the proportionality of reduction or withdrawal of material reception conditions should always be assessed before any action is taken. -In this regard, any decision to withdraw or reduce reception conditions must be objective, impartial, reasoned and proportionate to the particular situation and the state must, in all circumstances ensure access to health care and a dignified standard of living for the applicant. -The jurisprudence of the European courts should instruct the development of plans for implementation of these provisions by the State. (e.g. Haqbin) -Applicants ought to have access to an adequate and effective appeals mechanism in order to appeal decisions regarding withdrawal or reduction of reception conditions and any such decision in this regard ought to be suspensive in effect while the appeals process remains ongoing. -The State ought to include in planning and resource allocation minimum reception standards for applicants awaiting transfer under the RAMM. -The provision of reception conditions to such applicants ought to meet the standards required by the CFREU and jurisprudence of the European courts. -Continuity of provision of reception needs to be ensured whereby applicants invoke their right of appeal against a transfer decision and transitional arrangements ought to be implemented so as to avoid a situation whereby applicants facing withdrawal of reception conditions are not evicted from one day to the next – avoid situation of large-scale destitution. -Reduction and withdrawal of reception conditions ought in all cases to observe the right to human dignity and there ought not be a situation whereby complete withdrawal of reception conditions occurs, even in the most egregious of breaches.
No provision in Heads of Bill	**Comments:**

	-It is noted that the RCD 2024 provides that children, in general, ought not be detained save for in exceptional circumstances, whereby strictly necessary, as a measure of last resort and for the shortest period possible. -However, Art 13 RCD 2024 does provide for detention of both accompanied and unaccompanied minors. -It is noted that pursuant to the RCD, while the State has the obligation under EU law to lay down in national law the grounds for detention, they have discretion to decide whether children may be subject to it or not within the national regulatory framework implementing the Pact. Moreover, Art 4 RCD 2024 allows States to introduce or retain more favourable provisions with respect to reception conditions for applicants and their family members than those which are established in the Pact. **Recommendations:** -It is recommended that the State utilise its discretion pursuant to Art 4 RCD 2024 to establish an express exception from detention in respect of minors, both accompanied and unaccompanied. -Whereby children are accompanied by their family members, the principle of family unity ought to apply and alternatives to detention ought to be utilised instead of detention. -Designation of accommodation to children and their families must take place in such a way that it does not constitute de facto detention or constitute a restriction on children's liberty. -Unaccompanied, age-disputed minors ought also to be excluded from detention.
No mention of places or standards of accommodation in Heads of Bill	**Comments:** -There is no mention of places or standards of reception in the Heads of Bill. -It is not clear whether the National Standards will continue to apply in respect of accommodation centres. **Recommendations:** -The National standards ought to continue to apply in respect of all designated centres and provision ought to be made in law for same. -HIQA inspectorate role should continue in respect of all designated accommodation. -See also recommendations above re special reception conditions of unaccompanied and age disputed minors.
Head 118: Allocation of accommodation to applicants	**Comments:** -In comparing Head 118 and Article 7(3) RCD, it is apparent that Head 118 does not require the Minister to take into account objective factors when allocating accommodation, including special reception needs and family unity.

	-Moreover, there is an omission in the Heads of Bill in that there is no provision for assessment of special reception needs as per Art 25 of the RCD 2024. It is not currently clear whether this will be provided pursuant to a subsequent SI. -There is no mention in the Heads of Bill in respect of accommodation for unaccompanied minors. However, it is noted that, pursuant to Article 27(9) of the Reception Conditions Directive, a Member State may place unaccompanied children with adult relatives, a foster family, in accommodation centres with special provisions for minors and in other accommodation suitable for minors. It also allows for the placement of those aged 16 or over in accommodation centres for adult applicants (if this is considered in their best interests). It is noted that this derogation is optional and thus, Ireland is not legally required to implement it. **Recommendations:** -Include in Head 118 the obligation to take special reception needs and family unity into account when allocating accommodation. -Provide for an explicit obligation on the part of the Minister to assess applicant's special reception needs prior to allocating accommodation. -All children under the age of 18 years, whether accompanied or unaccompanied, should be placed in appropriate, child-friendly accommodation and should not be accommodated with adults who are unrelated to them. -Age disputed applicants ought to be accommodated in designated residential units. -The use of an 'electronic reporting system' should be proportionate and have respect for private and family life.
Head 119: Allocation of applicant to a particular geographic area	**Comments:** -There is no provision of a right of appeal against an allocation of accommodation at a particular geographic location – Head 119 is not referenced under the Appeals Head. -It is further noted that there is no provision for an appeal under the RCD 2024. -Head 119 does not include the protection, set out in Art 8(3) RCD that "Member States shall ensure that applicants have effective access to their rights under this Directive and to the procedural guarantees in the procedure for international protection within the geographical area to which those applicants are allocated. That geographical area shall be sufficiently large, allow access to necessary public infrastructure and shall not affect the applicants' unalienable sphere of private life".

	Recommendations: -That there be provision for an appeals mechanism against the allocation of accommodation located in a particular geographic area. This is particularly pertinent bearing in mind the short time frame in which screening takes place. -The protections set out in Art 8(3) RCD should be included in Head 119.
Head 121: Restriction on freedom of movement	**Comments:** -Head 119 is linked to Head 121 - Restriction of freedom of movement. -Significantly alters the balance between the autonomy of the applicant and what the State can impose, compared to the 2013 RCD. -Pursuant to the RCD 2024, restrictions on freedom of movement must 'be proportionate', however, it remains to be seen whether a proportionality test is envisaged here. -Such restriction liable to amount to deprivation of liberty for the purposes of Article 5 ECHR if the applicant is not allowed to freely leave that designated place. **Recommendations:** -Restrictions on Freedom of Movement must be proportionate and ought not constitute de facto detention. A test in order to determine the proportionality of any restriction of freedom of movement ought to be implemented pursuant to Head 121. It is recommended that any such proportionality test examine whether the detention is necessary following an individual assessment of the circumstances in each case and detention ought to apply only if less coercive alternative measures cannot be effectively applied.
Head 122: Detention of applicants	**Comments:** -Concern as to whether apparent power of arrest without warrant by immigration officer is rights compliant. -Apparent that there is an increased focus on detention and much more extensive reference to powers of arrest and subsequent detention. -There does not appear to be any reference to detention as a last resort. -Heads of Bill permit detention for those with special reception needs provided a ground for detention as specified in Head 121 subhead (2) applies to the applicant, and alternative measures in accordance with Head 121 cannot be applied effectively to the applicant. -'Place of detention' not defined – not apparent whether applicants will be detained in detention centres specifically adapted for the purposes of immigration detention or in general prison population.

	-Concern regarding whether reporting and electronic systems are rights compliant. **Recommendations:** -Arrest without warrant should only occur whereby there is a reasonable suspicion of an individual having committed an 'arrestable offence' and not for the purposes of identification of an applicant, to determine the elements on which the application for international protection is based etc. -Detention should only be utilised as a last resort, particularly in respect of applicants who are vulnerable and have special reception needs. -Whereby individuals are detained, detention in the general prison population is not appropriate. -Reporting and electronic systems should comply with the right to privacy. **- 122(13):** a person arrested or detained under this Head shall be given a copy of warrant, however several of these heads - 12(1), 45(1), and 86(4) - refer to arrest and detention without warrant. **- 122(14):** a person detained under this head ***should be informed*** of their entitlements under this head, in a language they can understand.

Part 15: Chief Inspector of Asylum Border Procedure

Head/subhead	Recommendation/action
Head 123: Interpretation	**H123:** the Chief Inspector does not have access to facilities in the standard or accelerated asylum procedures. This is a significant limitation, given that fundamental rights violations could also occur in these procedures. We recommend expanding the powers of the Chief Inspector to investigate breaches of fundamental rights in the standard and accelerated procedures.
Head 125: Functions of the Chief Inspector of Asylum Border Procedure	**H123 & 125(3):** The broad access to border facilities, including screening centres, return border facilities and places where a person may enter the state, and the power to take copies of records held in those facilities, is welcome.
Head 129: Appointment and terms and conditions of members of Advisory Board	**H129:** there is a lack of clarity around possible overlap with advisory board agencies. There are unclear parameters of the Chief Inspector regarding its relationship with other monitoring bodies which can lead to unnecessary duplication of work and the potential for responsibilities to be overlooked. Where an advisory board agency has a statutory responsibility to oversee or examine any part of the international protection procedure, including the functioning of the role of Chief Inspector of Asylum Border Procedure itself, membership of the advisory board must in no way compromise the independence of that agency. **H129(2)(e):** The proposed pieces of legislation should align on both the EU Pact and the Inspection of Places of Detention Bill to ensure that the Places of Detention Inspectorate may have a role in cases where someone is deprived of their liberty in an international protection or immigration setting. Given the reference to the National Preventive Mechanism under this subhead, there must be clarity on the timeline for the drafting of the Inspection of Places of Detention Bill 2022 and Ireland's subsequent ratification of OPCAT, which should be progressed as a matter of priority to ensure cohesion of the oversight framework. There must be clear definitions in place that ensure any deprivation of liberty, de facto or otherwise, does not occur save in accordance with law and is necessary and proportionate. There should be clarity as to how the new immigration legislative framework, including statutory monitoring bodies, interacts with the proposed Places of Detention Inspection Bill and ensure it is compliant with the Optional Protocol to the Convention Against Torture. Both legislative

	frameworks must establish safeguards and oversight where a person is or may be subject to any form of deprivation of liberty. H129: A representative of a nominated non-governmental organisation should, ex-officio, be a member of the board, under the same terms outlined in Head 129. Article 10(2) Screening Regulation States that "*the independent monitoring mechanism may also involve relevant international and non-governmental organisations and public bodies independent from the authorities carrying out the screening… The independent monitoring mechanism shall establish and maintain close links with them*." H129(4): The Government, rather than the Minister, should appoint a chairperson to the Advisory Board to ensure independence. Consideration could also be given to assigning this responsibility to the Public Appointments Service, as suggested in the explanatory note.
Head 131: Inspections of designated asylum border facilities	H131(2): this subhead only provides for the Chief Inspector to inspect matters "*relating to the management and operation of a designated asylum border facility*." This is significant stepdown in the scope of the inspectorate's powers, as outlined in Article 10(2) of the Screening Regulation. In particular, the failure to include the principle of non-refoulement within the scope of powers severely restricts the inspector's role in ensuring that the fundamental rights of applicants can be effectively monitored. Article 10(2) states that the monitoring mechanism should: *(a) 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, during the screening; and* *(b) ensure that substantiated allegations of failure to respect fundamental rights in all relevant activities in relation to the screening are dealt with effectively and without undue delay, trigger, where necessary, investigations into such allegations and monitor the progress of such investigations.*
Head 126: Funding of the Chief Inspector	The Chief Inspector should be allocated sufficient human and financial resources, to carry out its function, in line with the number of people and facilities it has under its jurisdiction and the number of complaints it is likely to receive. Given the policy choice under these Heads to apply screening and, consequently, the border

	procedure to a wider number of applicants than envisioned in the Pact, the inspectorate would require substantial resourcing.
Head 132: Recording and handling of complaints	H132: In addition to complaints, the Chief Inspector should also receive and assess unsolicited information, defined as information which is not requested by the Chief Inspector, but is received from civil society organisations and people, including the public or people who use services. This could be information that indicates a non-compliance with the regulations or standards or a general comment about an accommodation centre. This would put the Chief Inspector in line with HIQA processes. H132: Given the large volume of complaints the Chief Inspector is likely to receive, adequate resourcing of this function will be imperative to its ability to effectively determine the admissibility of complaints and subsequently investigate admissible complaints. There must be sufficient financial and human resources dedicated to the Chief Inspector and their office, in line with the FRA guidance. The Chief Inspector shall be consulted and asked to prepare a draft budget. With reference to Head 17, there should be a duty on management of border facilities and screening authorities to make applicants aware of the complaint mechanism and available remedies, in a language they understand. H132: the inspectorate should consult Civil Society Organisations and those with lived experience of the international protection process in designing and implementing a complaints mechanism.

Part 16 Unaccompanied Minors

Head/subhead	Recommendation/action
Head 141: Appointment of a Representative and Provisional Representatives	Concerns regarding Head 141 (7), whereby the Child and Family Agency "may", rather than will, provide childcare services to a person, presumed to be a child under subhead 6, and identified as an unaccompanied minor under subhead (3) or (4). Head 141, Section (10) (a) to (k) details a comprehensive list of tasks that any appointed representative shall carry out to assist the presenting UAM, including to support the engagement of the UAM with elements of the family tracing procedure including with international organisations. Head 141 (10) and (11) references the anticipated capacities and necessary training/qualifications of appointed persons.

Part 17: Offences

Head/subhead	Recommendation/action
Head 142: Offences	**Head 142(1):** There should be a reasonable derogation provided for under this subhead, for persons deemed vulnerable as part of vulnerability check.
	The International Protection Bill 2025 is a significant opportunity to put in to statute Article 31 of the Refugee Convention. Section 11 of the Immigration Act 2004 states: *"Every person (other than a person under the age of 16 years) landing in the State shall be in possession of a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality.* *(2) Every person landing in or embarking from the State shall furnish to an immigration officer, when requested to do so by that officer—* *(a) the passport or other equivalent document referred to in subsection (1), and (b) such information in such manner as the immigration officer may reasonably require for the purposes of the performance of his or her functions.* *(3) (a) A person who contravenes this section shall be guilty of an offence. (b) In proceedings brought against a person for an offence under this section, it shall be a defence for the person to prove that, at the time of the alleged offence, he or she had reasonable cause for not complying with the requirements of this section to which the offence relates."* Reasonable cause is an insufficiently clear transposition of Article 31 of the Refugee Convention. Section 31 of the UK's Immigration and Asylum Act 1999 was amended to include the following defence. Similar text could be used in Ireland. *"It is a defence for a refugee charged with an offence to which this section applies to show that, having come to the United Kingdom directly from a country where his life or freedom was threatened (within the meaning of the Refugee Convention), he—* *(a)presented himself to the authorities in the United Kingdom without delay;* *(b)showed good cause for his illegal entry or presence; and* *(c)made a claim for asylum as soon as was reasonably practicable after his arrival in the United Kingdom."*

Part 18: Transitional Provisions

Head/subhead	Recommendation/Action
Head 145 (2): Transitional provisions relating to declarations and permissions under repealed enactments	A permission to reside under Art 54 IPA shall for the duration of its unexpired time be deemed to be permission under the General Scheme. Article 54(1) International Protection Act 2015 gives right to reside for period of not less than 3 years for qualified persons. Qualified persons under Art 2 IPA 2015 includes both RS and SP beneficiaries. However, Head 89 provides for at least **one** year for beneficiaries of SP and not 3 years. This could result in a beneficiary of SP being denied the second and third year permission to reside, to which they became entitled to under the IPA 2015.
Head 149: Designation and Partial designation	The Heads of Bill do not transpose the procedural safeguards in 61(5)(b) of the APR. This provides that the concept of SCO may only be applied provided that (a) the applicant has the nationality of that country or he or she is a stateless person and was formerly habitually resident in that country; (b) the applicant does not belong to a category of persons for which an exception was made when designating the third country as a safe country of origin; (c) the applicant cannot provide elements justifying why the concept of safe country of origin is not applicable to him or her, in the framework of an individual assessment. The inclusion of the power to designate part of a country safe is regressive. It is also a 'may' provision in the APR. Partial designation is subjective and could lead to the inconsistent application of the law. The concept may shift the burden onto individuals to prove that no part of their country is safe, even when general instability exists. It is also unclear how a partial designation process would surmount issues around travel to locate to a "safe" area within the same country. Recommendation: Ireland should not partially designate any country as safe.

Part 18: Miscellaneous Provisions

Head/subhead	Recommendation/action
Head 150 Designation and Partial Designation of Safe Third Countries	Head 150 fails to transpose Article 59 (5) of the APR which states that there must be a connection between the applicant and the third country in question on the basis of which it would be reasonable for him or her to go to that country. Head 150 also fails to transpose important elements of the existing safe third country process. In particular Section 21 (7) of the International Protection Act which include that a person would be readmitted to the country and have a sufficient connection to it. *For the purposes of this section, a safe third country is a safe country for a person if he or she—* *(a) having regard to the matters referred to in subsection (18), has a sufficient connection with the country concerned on the basis of which it is reasonable for him or her to return there,* *(b) will not be subjected in the country concerned to the death penalty, torture or other inhuman or degrading treatment or F13[punishment or a serious and individual threat to his or her life or person by reason of indiscriminate violence in situations of international or internal armed conflict,* *(c) will be re-admitted to the country F13[concerned, and] 4[(d) has the possibility in the country concerned to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.* *(18) For the purposes of subsection (17)(a), the matters to which regard shall be had include (but are not limited to) the following:* *(a) the period the person concerned has spent, whether lawfully or unlawfully, in the country concerned;* *(b) any relationship between the person concerned and persons in the country concerned, including nationals and residents of that country and family members seeking to be recognised in that country as refugees;* *(c) the presence in the country concerned of any family members, relatives or other family relations of the person concerned;* *(d) the nature and extent of any cultural connections between the person concerned and the country concerned.]* The concerns around partial designation for safe countries of origin also apply to safe third countries.

	Partially designating a safe third country as safe also risks making the refugee process even more complex and technical.

Part 20: Crisis and Force Majeure Regulation

Head/subhead	Recommendation/action
Head 156: Performance of functions under Crisis and Force Majeure Regulation	**Head 156 (4)** appears to suggest a unilateral decision taken by the State that a situation of force majeure exists, and that the relevant procedures under the Regulation will then be followed. However, the Regulation specifies that, when a Member State considers itself to be in a situation of crisis or *force majeure*, it may, given those exceptional circumstances, submit a "reasoned request to the Commission, in order to benefit from solidarity measures allowing for the proper management of that situation and to allow for possible derogations from the relevant rules on the asylum procedure, <u>while ensuring that the applicants' fundamental rights are respected.</u> Article 2(1) FMR sets out the aspects to be included in a Reasoned request by a Member State: *Article 2(2): A reasoned request shall include:* *"(a) a description of:* *(i) how, as a result of a situation of crisis, the Member State's asylum and reception system, including child-protection services, has become non-functional, as well as the measures taken so far to address the situation and a justification proving that that system, although well-prepared and notwithstanding the measures already taken, is unable to address the situation; or* *(ii) how the Member State is faced with a situation of instrumentalisation that is putting its essential functions at risk, including the maintenance of law and order or the safeguard of its national security; or* *(iii) how the Member State is faced with abnormal and unforeseeable circumstances outside its control, the consequences of which could not be avoided notwithstanding the exercise of all due care, and how that situation of force majeure prevents it from fulfilling its obligations laid down in APR and AMMR;* *(b) where relevant, the type and level of solidarity measures that it considers necessary;* *(c) where relevant, the derogations provided for in CFMR that it considers necessary; and* *(d) if the Member State requests to apply the derogation relating to broadening the scope of the border procedure, whether it intends to provide for the exclusion of specific categories, such as minors or vulnerable persons, or the*

	cessation of the border procedure for specific categories of applicants following an individual assessment". This process does not appear to be envisaged by the Bill, and it needs to be amended to reflect this situation. In the Advocate General Opinion in the matter of *Case C97/24 S.A., R.J. v The Minister for Children, Equality, Disability, Integration and Youth, Ireland, The Attorney General*, joined party: The United Nations High Commissioner for Refugees, the Advocate General set out: "*it is apparent from the case-law that the threshold for demonstrating the existence of circumstances that would amount to force majeure is high. Even in abnormal and unforeseeable circumstances, a Member State is required to take all measures within its power to comply with EU law."* Furthermore, as the expression *'temporarily insuperable difficulties'* indicates, the strict interpretation of force majeure entails that, if the event causing the inability to perform is temporary, the EU law obligation may only be suspended for the duration of the event and for a reasonably short period. **Recommendation: The provisions relating to Force Majeure should take the above into account.**

Part 21: Miscellaneous Amendments

Head/subhead	Recommendation/action
Head 159: Power to Search	Amendments to the Immigration Act of 2004 on the issue of search of documents upon arrival. **7(3)(b)** the amendment under this Head is very wide – officer has power to detain any document as long as it is considered reasonably necessary to provide evidence of the grounds for a refusal of permission to land or evidence linked to a criminal offence. As noted elsewhere in this submission, this is of concern.
Head 161: Amendment of the illegal Immigrants (Trafficking) Act 2000	The Scheme should be reviewed to ensure that all decisions and orders made under the Bill are liable to Judicial Review.

Placeholder Heads

Head YY- Legal Counselling	We request the opportunity, and reserve the right, to make further submissions when the heads related to Legal Counselling are published. In the absence of those heads, we make recommendations as follows: Legal representation (assistance) available at first instance facilitates fair and efficient procedures and reduces the financial costs borne by the State by: -Reducing the burden on decision-makers to identify the material elements of an asylum-seeker's claim; -Strengthening the quality of decisions, resulting in reduced appeal rates; and -Better equipping asylum seekers with information to understand the relevant procedures so that they engage appropriately in the process, provide any relevant documentary or medical evidence early, and meet relevant time limits, thereby increasing the likelihood of a fully articulated claim. In order to ensure access to justice, adequate and realistic timeframes ought to be established for the provision of meaningful legal advice to applicants. Rushed procedures significantly impact upon an applicant's ability to provide a comprehensive, consistent account of all relevant information pertaining to their application.

	Recommendation: It is therefore recommended that the maximum time-frame allowable under the Pact for each obligation placed on the applicant should be selected. If short deadlines based on full-weeks rather than working dates are introduced, consideration will need to be given to the provision of legal representation over weekends, in order to meet the short time-frames, through systems of rotation of "on duty" solicitors. This would accrue significantly higher legal costs than deadlines based on working days. The APR includes in the scope of free legal counselling "for the purposes of the administrative procedure": (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 Articles 67, 68 and 69. Additionally, legal counselling is defined in the APR to include: the preparation for the interview, (Recital 14 APR) "good quality information and legal support," (Recital 16 APR) consultation before the lodging of the individual application, (Article 8 (2)d, APR and Article 8 (4), APR) consultation before any decision to conduct substantive and admissibility interviews together, (Article 12 (1) APR). It is therefore recommended that the legal counselling international protection applicants have access to at first instance encompasses individual, case-specific and confidential legal advice and representation provided by legal representatives. Such provision at first instance ensures efficiency, reduces the burden on decision-makers, strengthens the quality of decisions, resulting in reduced appeal rates. Legal counselling should therefore encompass legal advice and representation.

	Legal Counselling and Legal Aid should be provided by the Legal Aid Board, directly and through panels of suitably qualified and trained legal representatives, being specialist practising solicitors and barristers. Access to Legal Counselling in the administrative procedure for second or subsequent application (A.16 APR): *Access to legal counselling should be available for all applicants, irrespective of whether they are making an initial or subsequent application. Without prejudice to the above, if it is deemed necessary to exclude such applicants from access to legal counselling, an individual assessment of the needs of the applicant and the circumstances of their case is warranted prior to any exclusion from access.* Potential for two-tiered system and conflict with LSRA: *-Providing legal advice or assistance, in line with Article 16 APR, by anyone other than a lawyer qualified under the LSRA 2015 risks infringing the applicant's right to effective legal representation and contradict the rule of law. The General Scheme has not defined or provided detail on "legal counselling" but appears to introduce a new regime which would allow some legal counsellors to operate outside the regulatory safeguards established by the LSRA. This gives rise to serious concerns, including the absence of professional oversight and the potential absence of legal professional privilege.* *The creation of a new category of legal counsellors may also be incompatible with Article 6(1)(a) and (d) of the Council of Europe's Luxembourg Convention, which obliges states to ensure that only lawyers—recognised and authorised as such—can offer legal advice, assistance, and representation, particularly in matters of human rights.* *Additionally, the General Scheme lacks clear provisions on access to and transfer of legal files, as well as on the duties of confidentiality for legal counsellors and cultural mediators. These omissions potentially conflict with principles of natural and constitutional justice and with Article 6(1)(e) of the Luxembourg Convention.* - Excluding legal assistance on the basis of merits test or for second level appeal/onward higher appeal (Art. 17 APR): All applicants, irrespective of the perceived merits of their particular case, ought to have access to legal counselling for second level appeals and onward higher appeals, given the complex legal issues involved. To impose a merits test could lead to arbitrary restriction of access to legal assistance. It would place an additional, unnecessary, administrative burden on the Legal Aid Board, as the statutory mechanism underpinning the right to legal aid comes with a right to appeal. This would result in international protection timelines not being met. It would thus be in the State's interest to utilise its

	discretion so as to provide access to legal assistance and representation at appeal stage, without any consideration of merits. - Consideration may need to be given to the provision of legal representation over weekends, in order to meet the short time-frames, through systems of rotation of "on duty" solicitors. - Legal representatives must have effective access to reception and detention facilities, and confidential spaces in those facilities and at interview and appeal locations for the purpose of provision of legal counselling and assistance, to ensure meaningful interaction and privacy (Art. 20 RCD), access to detention centres (Art. 12 RCD).
Resourcing	In order to meet the significant demand for legal counselling, adequate human and financial resourcing of the Legal Aid Board is essential. A **stakeholder consultation** could be undertaken to better understand international protection applicants' needs in accessing legal aid. A **review of existing legal services** could also help identify examples of good practice and assist with mapping out the changes required for the new system under the Pact on Migration and Asylum. Significantly increased staffing levels at all grades of the Legal Aid Board, including management grades, solicitors, and legal clerks, are needed. Flexible recruitment procedures are needed. Existing vacancies within the Legal Aid Board ought to be filled on a priority basis and additional staffing capacity ought to be identified and sourced. A dedicated unit ought to be established in order to process requests for legal counselling by international protection applicants. Dedicated traineeships for trainee solicitors within the Legal Aid Board, along with clear career progression pathways for solicitors, with prospects of increased salaries over time, should be provided for. Adequate financial resources are also required. It is noted that Art 16 APR provides for access to Union funds as necessary, as does Art 76 APR in the context of border procedures. Any financial assessments must ensure there is sufficient capacity/resources and a realistic fee structure for practitioners on the Private Practitioners Panel. Moreover, as it is envisaged that the transition to implementing the Pact system may give rise to legal ambiguities which need to be addressed and more complex procedural streams, more funding will be required (see for e.g. Art 29 RCD – appeals on restrictions of movement and legal assistance which may be required in this regard.)

	In allocating cases, it must ensure that persons providing legal counselling are not entrusted with the counselling of a disproportionate number of applicants at the same time, and take measures to address potential increases in workload during periods of higher numbers of asylum applicants. • Re-instatement of the Judicial Review Unit in which unit staff would advise other LAB staff on the merits of a potential JR on a case-by-case basis, and initiate Judicial Review proceedings where justice requires this (as recommended by Catherine Day Report). • Legal aid providers will need to **be present in some of the new proposed locations** and have unhindered access to asylum seekers at the border and transit zones. • Significant investment in LAB's IT system is required to meet needs, including support remote interviews and online file systems. • Fees for legal aid provision through the private practitioners panel (solicitors and barristers) should reflect the true value of the work. • Authorities should make sure that the persons entrusted with the counselling of a caseload of several applicants at the same time have sufficient time and resources to perform their duties. Staff should not be over-burdened with disproportionate number of clients. • Resourcing in this sector should also ensure **sufficient capacity for specialised law centres** such as the Irish Refugee Council and Immigrant Council of Ireland, and sufficient resourcing for legal representatives to instruct experts on behalf of clients, including for the provision of medico-legal reports. Legal aid for judicial review matters may also be necessary in certain circumstances to ensure access to justice. Resourcing should also include supports for ensuring self-care for practitioners working in this area to avoid burn-out and vicarious trauma.
Training	It is essential that all staff involved in the provision of legal counselling, whether they be lawyers, caseworkers or support staff, receive adequate and appropriate training on a regular basis. Individuals engaged in the provision of legal advice should possess broad knowledge of asylum law in both a national, EU and international context and should be subject to ongoing professional development requirements. All individuals working with international protection applicants should also receive training on trauma-informed practice, identification of victims of human trafficking etc. A training and quality unit should be established within the Legal Aid Board in order to ensure best practice with regard to the provision of legal counselling.