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**An Bille um Chosaint Idirnáisiúnta, 2026**  
**International Protection Bill 2026**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE UM CHOSAINT IDIRNÁISIÚNTA, 2026**  
**INTERNATIONAL PROTECTION BILL 2026**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILL UM CHOSAINT IDIRNÁISIÚNTA, 2026**  
**INTERNATIONAL PROTECTION BILL 2026**

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# **Bill**

*entitled*

An Act to provide for the entry into, and presence in, the State of persons seeking international protection, while having regard also to the power of the Executive in relation to these matters; to give effect to Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024<sup>1</sup> laying down standards for the reception of applicants for international protection (recast); to give further effect to Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024<sup>2</sup> on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted; to give further effect to Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024<sup>3</sup> establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU; to give further effect to Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024<sup>4</sup> establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147; to give further effect to Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024<sup>5</sup> on asylum and migration management; to give further effect to Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024<sup>6</sup> on the establishment of ‘Eurodac’ for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes; to give further effect to Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024<sup>7</sup> addressing situations of crisis and *force majeure* in the field of migration and asylum and amending Regulation (EU) 2021/1147; to give further

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1 OJ L, 2024/1346, 22.5.2024

2 OJ L, 2024/1347, 22.5.2024

3 OJ L, 2024/1348, 22.5.2024

4 OJ L, 2024/1350, 22.5.2024

5 OJ L, 2024/1351, 22.5.2024

6 OJ L, 2024/1358, 22.5.2024

7 OJ L, 2024/1359, 22.5.2024

effect to the Convention relating to the Status of Refugees done at Geneva on the 28th day of July 1951 and the Protocol relating to the Status of Refugees done at New York on the 31st day of January 1967; to provide for the gathering of information from applicants for international protection; to provide for the removal from the State of certain persons; to provide for the establishment of a body to be known as An Binse um Achomhairc i dtaobh Tearmainn agus Filleadh or, in the English language, as the Tribunal for Asylum and Returns Appeals and to provide for its functions; to provide for the establishment of a body to be known as *Oifig an Phriomh-Chigire Nósanna Imeachta Teorann um Thearmann* or, in the English language, as the Office of the Chief Inspector of Asylum Border Procedures and to provide for its functions; to amend, or repeal certain provisions of, the International Protection Act 2015; to amend the Irish Nationality and Citizenship Act 1956, the Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000, the Immigration Act 2004 and certain other enactments; and to provide for related matters.

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**Be it enacted by the Oireachtas as follows:**

## PART 1

### PRELIMINARY AND GENERAL

#### CHAPTER 1

##### *Preliminary and general*

#### **Short title and commencement**

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1. (1) This Act may be cited as the International Protection Act 2026.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions, and for the repeal of different enactments or provisions of enactments effected by *section 5*.
- (3) A power under this section to appoint a day on which a Part (or a provision thereof) shall come into operation, whether generally or otherwise, includes a power to appoint a particular time, on a particular day, at which the Part (or provision thereof) shall come into operation, whether generally or otherwise, and, accordingly, where a time is so appointed, the Part concerned (or provision thereof) shall come into operation at that time, whether generally or otherwise.

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#### **Interpretation**

2. (1) In this Act—

“Act of 1996” means the Refugee Act 1996;

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“Act of 1999” means the Immigration Act 1999;

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|--|----|
| “Act of 2004” means the Immigration Act 2004;  |    |
| “Act of 2014” means the Companies Act 2014;  |    |
| “Act of 2015” means the International Protection Act 2015;   |    |
| “actors of persecution or serious harm” shall be construed in accordance with Article 6 of the Qualification Regulation;   | 5  |
| “adequate capacity” means the adequate capacity of the State calculated by the European Commission in accordance with the Asylum Procedures Regulation;  |    |
| “admissibility interview” has the meaning given to it by <i>section 99(4)</i> ;  |    |
| “adult” means a person who has attained the age of 18 years;   |    |
| “age assessment” has the meaning given to it by <i>section 52(1)</i> ;   | 10 |
| “applicant”, other than in <i>Part 12</i> and <i>section 214</i> , means a third-country national or stateless person who—   |    |
| (a) has made an application for international protection in accordance with <i>Chapter 1</i> of <i>Part 3</i> or on whose behalf such an application has been, or is deemed to have been, made in accordance with that Chapter, and  | 15 |
| (b) has not had a final decision taken on his or her application;  |    |
| “applicant in need of special procedural guarantees” means an applicant whose ability to benefit from the rights and comply with the obligations provided for in the Asylum Procedures Regulation and this Act is limited due to individual circumstances, such as specific vulnerabilities; | 20 |
| “application” (other than in the definition of “previous application”) means a request for international protection made in accordance with <i>Chapter 1</i> of <i>Part 3</i> ;  |    |
| “Asylum Agency” means the European Union Agency for Asylum established by the European Union Agency for Asylum Regulation;   |    |
| “Asylum and Migration Management Regulation” means Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 <sup>8</sup> on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013; | 25 |
| “Asylum Procedures Regulation” means Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 <sup>9</sup> establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU;                                       | 30 |
| “beneficiary of international protection” means a person who has been granted refugee status or subsidiary protection status;  |    |
| “biometric data” means fingerprint data and facial image data;   |    |
| “Chief Appeals Officer” means the person appointed by the Government under <i>section 179(5)</i> to be the Chief Appeals Officer of the Tribunal;  | 35 |
| “Chief Inspector” has the meaning given to it by <i>section 194</i> ;  |    |

<sup>8</sup> OJ L, 2024/1351, 22.5.2024

<sup>9</sup> OJ L, 2024/1348, 22.5.2024

“civil partner” means a person in a civil partnership or legal relationship to which section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 applies;

“country of origin” has the meaning it has in the Qualification Regulation;

“cultural mediator” means a person tasked with assisting applicants at specified points in the procedures under this Act by— 5

(a) providing information to applicants,

(b) supporting applicants, including in communication with officers of the Minister, and

(c) completing such other tasks as may be necessary; 10

“Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>10</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“deportation order” shall be construed in accordance with section 3 of the Act of 15 1999;

“Determining Authority” means the Minister as designated under *section 7*;

“Directive 2008/115/EC” means Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008<sup>11</sup> on common standards and procedures in Member States for returning illegally staying third-country nationals; 20

“document” includes—

(a) any written matter,

(b) any photograph,

(c) any currency notes or counterfeit currency notes,

(d) any information in non-legible form that is capable of being converted into 25 legible form,

(e) any audio or video recording, and

(f) a travel document or an identity document;

“enactment” has the meaning it has in the Interpretation Act 2005;

“EU acts” means acts adopted by the institutions of the European Union for the purposes of managing migration and establishing a common asylum system at EU level and includes the Asylum and Migration Management Regulation, the Asylum Procedures Regulation, the Eurodac Regulation, the Qualification Regulation and the Reception Conditions Directive; 30

“Eurodac” means the system known as “Eurodac” established under Article 1 of the 35 Eurodac Regulation;

<sup>10</sup> OJ No. L 119, 4.5.2016, p. 1

<sup>11</sup> OJ No. L 348, 24.12.2008, p. 98

“Eurodac Regulation” means Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024<sup>12</sup> on the establishment of ‘Eurodac’ for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council;

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“European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950;

“European Union Agency for Asylum Regulation” means Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021<sup>13</sup> on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010;

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“facial image data” means digital images of the face with sufficient image resolution and quality to be used in automatic biometric matching;

“final decision” has the meaning it has in the Asylum Procedures Regulation;

“fingerprint data” means the data relating to plain and rolled impressions of the fingerprints of all ten fingers, where present, or a latent fingerprint;

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“Geneva Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (the text of which, in the English language, is, for convenience of reference, set out in *Schedule 1*) and includes the Protocol relating to the Status of Refugees done at New York on 31 January 1967 (the text of which, in the English language, is, for convenience of reference, set out in *Schedule 2*);

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“High Commissioner” means the United Nations High Commissioner for Refugees and includes the Representative for Ireland of the High Commissioner;

“identity document” includes a passport, visa, transit visa, national identity card, entry permit, residence permit, driving licence, employment permit, birth certificate, marriage certificate or any other document establishing or contributing to establishing a person’s nationality or identity issued or purporting to be issued by or on behalf of a local or the national authority of a state, including the State, or by an organ or agency of the United Nations;

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“immigration officer” has the meaning it has in the Act of 2004;

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“information” includes—

- (a) information in the form of a document (or any other thing) or in any other form, and
- (b) personal information, including biometric data;

12 OJ L, 2024/1358, 22.5.2024

13 OJ No. L 468, 30.12.2021, p. 1

“International Criminal Court” means the International Criminal Court established under the Rome Statute of the International Criminal Court done at Rome on 17 July 1998;

“international protection” means refugee status or subsidiary protection status;

“international tribunal” has the meaning it has in the International War Crimes Tribunals Act 1998; 5

“legal assistance” means legal aid or legal advice, within the meaning of the Civil Legal Aid Act 1995;

“legal representative” means a practising solicitor or a practising barrister;

“Member State responsible” means the Member State responsible for the examination of an international protection application in accordance with the Asylum and Migration Management Regulation; 10

“Minister” means the Minister for Justice, Home Affairs and Migration;

“minor” means a third-country national or stateless person under the age of 18 years;

“persecution” shall be construed in accordance with Article 9 of the Qualification Regulation; 15

“person eligible for subsidiary protection” means a person—

(a) who is not a national of a Member State,

(b) who does not qualify as a refugee,

(c) in respect of whom substantial grounds have been shown for believing that he or she, if returned to his or her country of origin, would face a real risk of suffering serious harm and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country, and 20

(d) who is not excluded from being eligible for subsidiary protection in accordance with Article 17 of the Qualification Regulation; 25

“personal interview” means an admissibility interview or a substantive interview;

“port” has the meaning it has in the Act of 2004;

“practising barrister” has the meaning it has in the Legal Services Regulation Act 2015;

“practising solicitor” has the meaning it has in the Legal Services Regulation Act 2015; 30

“prescribed” means prescribed by regulations;

“previous application” means—

(a) an application by a person made in accordance with *Chapter 1* of *Part 3* in respect of which a final decision has been taken, including where an application has been rejected as explicitly or implicitly withdrawn, 35

- (b) an application by a person in another Member State in respect of which a final decision has been taken, including where an application has been rejected as explicitly or implicitly withdrawn,
- (c) an application by a person under section 15 of the Act of 2015, in respect of which the Minister has refused to give a refugee declaration or a subsidiary protection declaration, 5
- (d) an application by a person under section 8 of the Act of 1996 in respect of which the Minister has refused to give a refugee declaration, or
- (e) an application by a person under Regulation 3 of the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013) in respect of which the Minister has refused to give a subsidiary protection declaration; 10

“prison” means a place of custody administered by or on behalf of the Minister (other than a Garda Síochána station) and includes—

- (a) a place provided under section 2 of the Prisons Act 1970, and
- (b) a place specified under section 3 of the Prisons Act 1972; 15

“protection” (except where the context otherwise requires) means protection against persecution or serious harm and shall be construed in accordance with Article 7 of the Qualification Regulation;

“provisional representative person”, in relation to an unaccompanied minor, means an individual designated under *section 43(1)(a)* or *section 44(a)* to be a provisional representative person in respect of that minor; 20

“Qualification Regulation” means Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024<sup>14</sup> on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council; 25

“real risk of suffering serious harm” shall be construed in accordance with Article 5 of the Qualification Regulation;

“Reception Conditions Directive” means Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024<sup>15</sup> laying down standards for the reception of applicants for international protection (recast); 30

“refugee” means—

- (a) a person who is—
  - (i) a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or 35

<sup>14</sup> OJ L, 2024/1347, 22.5.2024

<sup>15</sup> OJ L, 2024/1346, 22.5.2024

(ii) a stateless person who, being outside of the country of former habitual residence for the same reasons as referred to in *subparagraph (i)*, is unable or, owing to such fear, is unwilling to return to that country,

and

(b) who is not excluded from being a refugee in accordance with Article 12 of the Qualification Regulation; 5

“refugee status” means the recognition by the State of a third-country national or a stateless person as a refugee;

“registered medical practitioner” has the meaning it has in the Medical Practitioners Act 2007; 10

“representative person”, in relation to an unaccompanied minor, means an individual appointed under *section 43(1)(b)* or *section 44(b)* to be a representative person in respect of that minor;

“request to remain”, other than in *Part 4*, has the meaning given to it by *section 131(1)*; 15

“safe country of origin” means—

(a) a country that has been designated by the Minister under *section 215* as a safe country of origin, or

(b) a country that has been designated at European Union level in accordance with the Asylum Procedures Regulation as a safe country of origin; 20

“safe third country” means—

(a) a country that has been designated by the Minister under *section 216* as a safe third country,

(b) a country that has been designated at European Union level in accordance with the Asylum Procedures Regulation as a safe third country, or 25

(c) a country, other than a Member State or a country to which *paragraph (a)* or *(b)* applies, that is safe for a specific applicant provided that the conditions in *section 216(3)* are met with regard to the applicant;

“Screening Regulation” means Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024<sup>16</sup> introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817; 30

“*section 98 notification*” has the meaning given to it by *section 98(1)*;

“serious harm” has the meaning it has in Article 15 of the Qualification Regulation;

“Service” means the Public Appointments Service; 35

“staff of the Determining Authority” includes persons with whom the Minister or the Determining Authority has entered into a contract for services under *section 213*;

“stateless person” has the meaning it has in the Asylum Procedures Regulation;

16 OJ L, 2024/1356, 22.5.2024

|   |    |
|---|----|
| “subsequent application” means an application by a person who has made a previous application;  |    |
| “subsidiary protection status” means the recognition by the State of a third-country national or a stateless person as a person eligible for subsidiary protection;   |    |
| “substantive interview” has the meaning given to it by <i>section 106(3)</i> ;  | 5  |
| “Tribunal” means the body established under <i>section 177</i> ;  |    |
| “unaccompanied minor” means—  |    |
| (a) a minor who arrives in the State unaccompanied by an adult responsible for him or her and for as long as that minor is not effectively taken into the care of such an adult, or   | 10 |
| (b) a minor who arrives in the State and, after such arrival, is left unaccompanied by an adult responsible for him or her, and for as long as that minor is not effectively taken into the care of such an adult;  |    |
| “Union Resettlement and Humanitarian Admission Framework Regulation” means Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 <sup>17</sup> establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147;   | 15 |
| “well-founded fear of being persecuted” shall be construed in accordance with Article 5 of the Qualification Regulation;  |    |
| “withdrawal of international protection” means a decision by the Minister—  | 20 |
| (a) to withdraw refugee status in accordance with <i>section 152(1)</i> , or  |    |
| (b) to withdraw subsidiary protection status in accordance with <i>section 152(2)</i> .   |    |
| (2) For the purposes of this Act, Article 73 of the Asylum Procedures Regulation shall apply to the calculation of any period of time referred to in or under this Act.   |    |
| <b>Regulations and orders</b>   | 25 |
| 3. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.  |    |
| (2) Different regulations may be made under this Act in respect of different classes of matter the subject of the prescribing concerned.  |    |
| (3) A regulation or order under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulation or order.  | 30 |
| (4) Every regulation or order, other than an order made under <i>section 1(2), 18, 174(1)</i> or <i>174(5)</i> , made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order, as the case may be, is passed by either such House within the next 21 days on which that House sits after the regulation or order is laid before it, the regulation or order concerned shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. | 35 |

<sup>17</sup> OJ L, 2024/1350, 22.5.2024

## Service of documents

4. (1) A notice or other document that is required or authorised by or under this Act to be served on or given to a person shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:

- (a) by delivering it to the person; 5
- (b) by leaving it at the address most recently furnished by him or her to the Minister under *section 61(2)(b)* or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter, or by any other form of recorded delivery service prescribed by the Minister, addressed to the person at the address most recently furnished by him or her to the Minister under *section 61(2)(b)* or, in a case in which an address for service has been furnished, at that address; 10
- (d) by sending it to the person by electronic means in accordance with *subsection (2)*.

(2) For the purposes of *subsection (1)(d)*, a notice or other document shall be sent to a person— 15

- (a) to the email address most recently furnished by him or her to the Minister under *section 61(2)(b)* or, in a case in which an email address for service has been furnished, to that email address, or
- (b) in a case in which the person is registered on an electronic interface, by sending a notification— 20

  - (i) to the email address most recently furnished by him or her to the Minister under *section 61(2)(b)*, or, in a case in which an email address for service has been furnished, to that email address, or
  - (ii) to the telephone number most recently furnished by him or her to the Minister under *section 61(2)(b)*, or, in a case in which a telephone number for service has been furnished, to that telephone number, 25

informing the person that the notice or document has been left on the electronic interface.

(3) Where a notice or other document referred to in *subsection (1)* has been sent to a person in accordance with— 30

- (a) *paragraph (c)* of that subsection, the notice or other document shall be deemed to have been duly served on or given to the person on the third working day after the day on which it was so sent, and
- (b) *paragraph (d)* of that subsection, the notice or other document shall be deemed to have been duly served on or given to the person when the sender's facility for the delivery of notices or other documents by electronic means generates a message or other record confirming the delivery of the notice or other document by the electronic means used. 35

(4) In this section, “electronic interface” means a secure information technology platform, portal, exchange network or other similar interface maintained by, or on behalf of, the Minister which requires personal log-in details. 40

## Repeals

5. The following provisions of the Act of 2015 are repealed:

- (a) Part 2;
- (b) sections 15, 22, 29, 30, 31, 52 and 59;
- (c) Part 8.

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## Expenses

6. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, be paid out of moneys provided by the Oireachtas.

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## CHAPTER 2

### *Designation of Determining Authority, conduct of examinations and application of certain concepts*

#### Designation of Determining Authority

7. The Minister is designated as the Determining Authority for the purposes of Article 4 of the Asylum Procedures Regulation.

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#### Examinations conducted in accordance with Qualification Regulation

8. For the purposes of this Act, examinations to determine whether a person qualifies as a refugee or is eligible for subsidiary protection shall be conducted by the Determining Authority and the Tribunal in accordance with the provisions of the Qualification Regulation.

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#### Individual assessment of applicability of concept of first country of asylum

9. The concept of first country of asylum may only be applied provided that the applicant cannot provide elements justifying why the concept of first country of asylum is not applicable to him or her, in the framework of an individual assessment.

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#### First country of asylum for unaccompanied minor

10. A third country may only be considered to be a first country of asylum for an unaccompanied minor where it is not contrary to his or her best interests and where the Minister has first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by those authorities and that he or she will immediately benefit from effective protection as defined in Article 57 of the Asylum Procedures Regulation.

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## **Application of concept of safe third country**

11. (1) The concept of safe third country may be applied—

- (a) where a third country has been designated as a safe third country at European Union level or by order under *section 216*, and
- (b) in relation to a specific applicant where the country has not been designated as a safe third country at European Union level or by order under *section 216*, provided that the conditions set out in Article 59(1) of the Asylum Procedures Regulation are met with regard to that applicant.

(2) The concept of safe third country may only be applied provided that—

- (a) the applicant cannot provide elements justifying why the concept of safe third country is not applicable to him or her, in the framework of an individual assessment, and
- (b) there is 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.

## **Safe third country for unaccompanied minor**

12. A third country may only be considered to be a safe third country for an unaccompanied minor where it is not contrary to his or her best interests and where the Minister has first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by those authorities and that he or she will immediately have access to effective protection as defined in Article 57 of the Asylum Procedures Regulation.

## **Application of concept of safe country of origin**

13. The concept of a safe country of origin 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, and
- (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.

## PART 2

### EURODAC AND SCREENING

#### CHAPTER 1

##### *Eurodac*

###### **Definitions (Part 2) (Chapter 1)**

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###### **14.** In this Chapter—

“designated person” means a person designated by order under *section 18*;

“relevant person” means a member of An Garda Síochána, an immigration officer, an officer of the Minister or a designated person.

###### **Taking of data and transmission of data to Eurodac**

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###### **15.** (1) A relevant person shall require a person referred to in Article 15(1), 20(1), 22(1), 23(1), 24(1) or 26(1) of the Eurodac Regulation to—

(a) provide biometric data for the purposes referred to in Article 13(1) of that Regulation, and

(b) provide the data required to be transmitted to Eurodac in accordance with Article 17, 21, 22, 23, 24 or 26 of that Regulation, as the case may be. 15

###### (2) Where a person is required to provide biometric data or other data in accordance with *subsection (1)*—

(a) the person shall comply with the requirement, and

(b) a relevant person shall take the biometric data in accordance with the Eurodac Regulation. 20

###### (3) Subject to Articles 13(5) and 14(2) of the Eurodac Regulation, where a person fails to comply with a requirement under *subsection (1)*, the relevant person shall inform the person of—

(a) the obligation to cooperate referred to in *section 25*, 25

(b) the grounds for implicit withdrawal of an application under *section 67*, and

(c) the obligations under Article 7 of the Asylum Procedures Regulation.

###### (4) In taking biometric data under this section, the relevant person shall respect the dignity and physical integrity of the person from whom the biometric data is being taken. 30

###### (5) A relevant person shall not take biometric data from a person who is under 6 years of age.

###### (6) A relevant person shall consider a person to be under 6 years of age where—

(a) the relevant person is uncertain as to whether or not the person is under 6 years of age, and 35

- (b) there is no supporting proof of the age of the person available to the relevant person.

(7) A relevant person shall not take biometric data from a minor, other than in the presence of—

- (a) an adult family member of the minor, or 5
- (b) where the minor is an unaccompanied minor—
  - (i) a provisional representative person or representative person, or
  - (ii) an employee of, or other person appointed by, the Child and Family Agency, who is trained to safeguard the best interests and general wellbeing of the child. 10

(8) A relevant person who is taking the biometric data of a minor shall—

- (a) before the taking of the biometric data, explain the procedure for the taking of the data to the minor,
- (b) take the biometric data in a child-friendly and child-sensitive manner, and
- (c) at the time of the taking of the biometric data, have completed appropriate training in relation to the taking of biometric data from minors. 15

(9) For the purposes of this section and subject to the conclusion of any age assessment, a relevant person shall consider a person to be a minor where—

- (a) the relevant person is uncertain as to whether or not the person is under 18 years of age, and 20
- (b) there is no supporting proof of the person's age available to the relevant person.

(10) Where a minor refuses to comply with a requirement under *subsection (1)* and a relevant person considers that there are reasonable grounds for believing there are risks relating to safeguarding or protecting the minor, the relevant person shall notify the Child and Family Agency of that fact. 25

(11) A relevant person shall transmit the biometric data and other data taken under this section to Eurodac in accordance with the Eurodac Regulation.

(12) A relevant person shall provide a person referred to in Article 15(1), 20(1), 22(1), 23(1), 24(1) or 26(1) with the information referred to in Article 42 of the Eurodac Regulation in accordance with that Article. 30

(13) In so far as it relates to Article 26 of the Eurodac Regulation, this section shall only apply and have effect on and after 12 June 2029.

#### **Taking of data from person referred to in Article 18 of Eurodac Regulation**

16. (1) The Minister may request the relevant authorities of another Member State, the European Union Agency for Asylum or another relevant international organisation to take and transmit to the Minister—

- (a) the biometric data of persons referred to in Article 18(1) or (2) of the Eurodac Regulation for the purposes referred to in Article 13(1) of the Eurodac Regulation, and 35

(b) the data of such persons required to be transmitted to Eurodac in accordance with Article 19 of that Regulation.

(2) Where the Minister informs a relevant person that a request is not being made under *subsection (1)* or that a request is made but the biometric data or other data is not taken and transmitted under *subsection (1)*, a relevant person shall require a person referred to in Article 18(1) or (2) of the Eurodac Regulation to provide the biometric data or other data referred to in *subsection (1)* in accordance with Articles 18 and 19 of the Eurodac Regulation. 5

(3) Where a person is required to provide biometric data or other data in accordance with *subsection (2)*— 10

- (a) the person shall comply with the requirement, and
- (b) a relevant person shall take the data or cause the data to be taken in accordance with the Eurodac Regulation.

(4) *Subsections (4) to (12) of section 15* shall apply to the taking of biometric data or other data under *subsection (3)* as those subsections apply to the taking of biometric data or other data under that section. 15

(5) Where a person does not comply with a requirement under *subsection (2)*, the relevant person shall inform the person of the consequences referred to in Article 7 of the Union Resettlement and Humanitarian Admission Framework Regulation.

**Management of biometric data and other data** 20

17. (1) The Minister shall maintain or cause to be maintained a record of biometric data taken under this Chapter.

(2) The record of biometric data of a person referred to in *subsection (1)* shall— 25

- (a) be retained for the same period for which the biometric data of such a person may be stored in Eurodac in accordance with Article 29 of the Eurodac Regulation, and
- (b) be deleted, or caused to be deleted, by the Minister upon the expiry of the relevant period specified in that Article 29 or when the data is erased from Eurodac in accordance with Article 30 of the Eurodac Regulation.

(3) An Garda Síochána is designated to be the designated authority in the State for the purpose of Article 5 of the Eurodac Regulation (in this section referred to as the “designated authority”). 30

(4) The Minister shall keep a list of the operating units within the designated authority that are authorised to request comparisons with Eurodac data (within the meaning of the Eurodac Regulation) through the National Access Point designated in accordance with *subsection (9)*. 35

(5) Subject to *subsection (6)*, the Minister may by order designate a unit within An Garda Síochána to be the verifying authority in the State for the purpose of Article 6 of the Eurodac Regulation (in this section referred to as the “verifying authority”).

(6) The verifying authority shall—

- (a) be separate from the operating units within the designated authority referred to in *subsection (4)* and shall not be given instructions by the operating units as regards the outcome of the verification done by the verifying authority in accordance with the Eurodac Regulation, and 5
- (b) act independently of the designated authority in performing its functions under the Eurodac Regulation.

(7) A relevant person shall, where necessary, update, erase or delete the data transmitted to Eurodac under this Chapter, in accordance with the Eurodac Regulation.

(8) The Minister shall, as necessary— 10

- (a) erase data from Eurodac in accordance with Article 30 of the Eurodac Regulation, and
- (b) mark and unmark data in Eurodac in accordance with Article 31 of the Eurodac Regulation.

(9) The Minister shall by order designate the National Access Point (within the meaning of the Eurodac Regulation) in the State for the purposes of the Eurodac Regulation and this section. 15

(10) In so far as it relates to Article 26 of the Eurodac Regulation, this section shall only apply and have effect on and after 12 June 2029.

**Designated person** 20

18. The Minister may by order designate a person to be a designated person (in this Chapter referred to as a “designated person”) for the purposes of the performance of the functions of a designated person under this Chapter.

**Offence of processing data in Eurodac contrary to Article 1 of Eurodac Regulation** 25

19. (1) A person who engages in the processing of data recorded in Eurodac in a manner or for a purpose that is contrary to the purpose for which the information is recorded in Eurodac, as referred to in Article 1 of the Eurodac Regulation, shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

(2) In *subsection (1)*, “processing” has the same meaning as it has in Article 4(2) of the Data Protection Regulation. 30

## CHAPTER 2

### *Screening*

#### **Definitions (Part 2) (Chapter 2)**

20. In this Chapter—

- “children detention school” has the meaning it has in the Children Act 2001; 35
- “guardian”, in relation to a minor, includes a person exercising parental responsibility

(within the meaning of paragraph 2 of Article 1 of the Hague Convention as set out in the Schedule to the Protection of Children (Hague Convention) Act 2000) in respect of the minor;

“healthcare professional” means—

(a) a registered medical practitioner, 5

(b) a registered nurse or registered midwife within the meaning of the Nurses and Midwives Act 2011, or

(c) a member of one or more than one of the following designated professions within the meaning of the Health and Social Care Professionals Act 2005, namely:

(i) psychologist; 10

(ii) social care worker;

(iii) social worker;

(iv) such other designated profession, within the meaning of section 3 of that Act, as the Minister, following consultation with the Minister for Health, may prescribe; 15

“qualified medical professional” means—

(a) a registered medical practitioner,

(b) a registered nurse or registered midwife within the meaning of the Nurses and Midwives Act 2011, or

(c) a paramedic or advanced paramedic within the meaning of the Pre-Hospital Emergency Care Council (Establishment) Order 2000 (S.I. No. 109 of 2000) and the European Union (Recognition of Professional Qualifications) Regulations 2017 (S.I. No. 8 of 2017); 20

“screening centre” means a premises designated to be a screening centre under section 21. 25

### **Designation of screening centre**

21. (1) The Minister may designate a premises to be a screening centre where the Minister is satisfied that the premises is suitable to be so designated having regard to the purposes of this Part.

(2) The Minister shall publish a notice of a designation, including the location of the premises designated and the date of the designation, on a website maintained by or on behalf of the Minister or the Government as soon as practicable after the designation. 30

### **Obligation to travel to screening centre**

22. (1) Subject to *subsections (4) and (6)*, an applicant who makes an application, or on whose behalf an application is made or deemed to have been made, under *Chapter 1 of Part 3*, at a place other than a screening centre, shall travel to a screening centre in accordance with a direction under *subsection (2)*. 35

(2) A member of An Garda Síochána, an immigration officer or an officer of the Minister may give a direction to an applicant referred to in *subsection (1)* and the applicant shall comply with the direction.

(3) A direction under *subsection (2)* shall be in writing and given in a language the applicant understands or is reasonably supposed to understand and, where given to an applicant referred to in *subsection (5)*, shall state the reason for the direction. 5

(4) Subject to *subsection (5)*, an applicant shall not be subject to the obligation referred to in *subsection (1)* where—

(a) the applicant holds a valid registration certificate under section 9(4A) of the Act of 2004, or 10

(b) the applicant is a minor exempted from the obligation to register under section 9(6)(a) of the Act of 2004 and the minor's parent or guardian holds a valid registration certificate under that section 9(4A).

(5) Where a member of An Garda Síochána, an immigration officer or an officer of the Minister has reasonable grounds for believing that it is in the interests of public policy or national security for an applicant to whom *paragraph (a)* or *(b)* of *subsection (4)* applies to be subject to the obligation referred to in *subsection (1)*, the member or officer may give the applicant a direction referred to in *subsection (2)*. 15

(6) Where the Minister considers it appropriate, the Minister may exempt an applicant to whom one of the following paragraphs applies from the obligation referred to in *subsection (1)*— 20

(a) an applicant serving a term of imprisonment in a prison,

(b) an applicant detained in a children detention school,

(c) an applicant—

(i) in respect of whom a warrant has been issued under section 26 or 27 of the Extradition Act 1965, 25

(ii) who is subject to committal under section 29 of that Act,

(iii) who has consented to surrender or is committed under section 29A of that Act, or

(iv) who is subject to surrender under section 33 or 33A of that Act, 30

(d) an applicant in respect of whom a European arrest warrant (within the meaning of the European Arrest Warrant Act 2003) has been issued, or

(e) an applicant considered by a registered medical practitioner to be incapable for medical reasons of travelling to a screening centre.

#### **Alternative arrangements for screening of certain applicants**

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23. (1) Where *section 22(4)* or *(6)* applies to an applicant, the Minister may, where the Minister considers it necessary, make alternative arrangements to ensure that the procedures under this Part are carried out in respect of the applicant as soon as practicable.

(2) Where alternative arrangements are made in respect of an applicant referred to in *subsection (1)*, the Minister shall by notice in writing and in a language the applicant understands or is reasonably supposed to understand—

- (a) inform the applicant of the reason the obligation referred to in *section 22(1)* shall not apply to the applicant, 5
- (b) inform the applicant of the alternative arrangements,
- (c) require the applicant to comply with the alternative arrangements, and
- (d) inform the applicant of the consequences of failing to comply with the alternative arrangements.

(3) Without prejudice to the generality of *subsection (1)*, alternative arrangements may include a requirement made by the Minister that an applicant present to a screening centre at a time specified by the Minister or that the procedures referred to in *subsection (1)* be carried out at a location other than a screening centre. 10

**Arrest and detention (Part 2)**

24. (1) Where an applicant (other than an applicant referred to in *section 22(6)(e)*) refuses or fails to comply with a direction under *section 22(2)* or a requirement made for the purposes of alternative arrangements under *section 23*, a member of An Garda Síochána or an immigration officer shall inform the applicant of— 15

- (a) the obligations to cooperate referred to in *sections 25 and 63*,
- (b) the grounds for implicit withdrawal of an application under *section 67*, and 20
- (c) the powers under *subsection (2)*.

(2) Subject to *subsection (3)*, where an applicant who has been informed of the matters referred to in *subsection (1)* (other than an applicant referred to in *section 22(6)(e)*) continues to refuse or fail to comply with the direction or requirement, a member of An Garda Síochána or an immigration officer may, as a measure of last resort and where necessary for the purposes of determining or verifying the applicant's identity or nationality, arrest the applicant without warrant and take the applicant to a place referred to in *subsection (4)*. 25

(3) *Subsection (2)* shall not apply to—

- (a) an applicant referred to in *section 22(4)* unless *section 22(5)* applies to the applicant, or 30
- (b) a minor.

(4) An applicant arrested under *subsection (2)* may be detained—

- (a) in a screening centre or a place of detention prescribed by the Minister (in this section referred to as a “place of detention”), under warrant of the arresting member or officer and in the custody of the person for the time being in charge of the screening centre or place of detention, and 35
- (b) where necessary in order to bring the applicant to a screening centre or a place of detention, and for a period not exceeding 12 hours, in a vehicle.

(5) Where a place of detention referred to in *subsection (4)(a)* is a prison or a Garda Síochána station, the Governor of the prison or the member in charge of the station (within the meaning of Regulation 4 of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119 of 1987)) shall be informed of the fact that the applicant has been brought to the prison or station. 5

(6) An applicant may be detained under *subsection (4)* only until such time (being as soon as practicable) as the applicant's identity or nationality is determined or verified, but in any event may not be detained for a period or periods exceeding 2 days in aggregate. 10

(7) An applicant shall not behave in a manner likely to endanger the applicant's safety or the safety of others in the course of the performance of a function by a member of An Garda Síochána or an immigration officer under this section.

(8) A person shall not obstruct or hinder a member of An Garda Síochána or an immigration officer engaged in the performance of a function under this section. 15

(9) A person who contravenes *subsection (7)* or *(8)* shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months, or both.

(10) Where a person under the age of 18 years is in the custody of an applicant (whether the applicant is a parent or a person acting in *loco parentis* or any other person) and the applicant is detained under this section, a member of An Garda Síochána or an immigration officer shall notify the Child and Family Agency of the detention and its circumstances without delay. 20

(11) A member of An Garda Síochána or an immigration officer may, in exceptional circumstances and as a measure of last resort, arrest without warrant and detain, in accordance with *subsection (13)*, a minor who is in the custody of an applicant (whether the applicant is a parent or a person acting in *loco parentis* or any other person) where the applicant is detained under this section and where— 25

(a) it is necessary for the purposes of determining or verifying the identity or nationality of the minor,

(b) the member or officer is satisfied that less coercive alternative measures cannot be applied effectively, and

(c) it is assessed by the member or officer that the detention is in the minor's best interests.

(12) A member of An Garda Síochána or an immigration officer may, in exceptional circumstances and as a measure of last resort, arrest without warrant an applicant who is an unaccompanied minor and detain the unaccompanied minor in accordance with *subsection (13)*, where— 35

(a) it is necessary for the purposes of determining or verifying the identity or nationality of the unaccompanied minor,

(b) the member or officer is satisfied that less coercive alternative measures cannot be applied effectively, and

- (c) it is assessed by the member or officer that the detention is in the unaccompanied minor's best interests and safeguards the unaccompanied minor.

(13) A minor referred to in *subsection (11)* or *(12)* shall be detained—

- (a) for the shortest possible period of time, and in any event for a maximum period of 12 hours, and 5
- (b) in a place prescribed by the Minister for that purpose (which shall not be a prison, children detention school or Garda Síochána station), under warrant of the arresting member or officer and in the custody of the person for the time being in charge of the place, or in a vehicle for the purposes of bringing the minor to that place. 10

### **Obligations of applicant under Part 2**

25. An applicant shall—

- (a) cooperate fully with the Minister or any other person performing a function under this Part, 15
- (b) comply with any requirement or direction given under this Part,
- (c) where requested by an officer of the Minister, provide the officer with—
  - (i) the applicant's name, previously used names (if any), aliases (if any), date of birth, sex, and nationality,
  - (ii) where necessary for the purposes of this Act, evidence of family relationships between the applicant and other persons, and 20
  - (iii) any other information required in order for the Minister to complete the form referred to in *section 31*,

and

- (d) where available and requested by the Minister, provide the Minister with documents or information that prove any of the matters referred to in 25 paragraph (c). 25

### **Provision of information to applicant**

26. (1) The Minister shall inform an applicant of—

- (a) the time limits and stages of the procedure in respect of an application, including the procedures that may be carried out under this Part, 30
- (b) the rights of an applicant, in particular—
  - (i) the right to lodge an application in accordance with *section 38*, and
  - (ii) the rights of the applicant under the Asylum and Migration Management Regulation,
- (c) the obligations of an applicant, including under this Part, *sections 39* and *63*, and the Asylum and Migration Management Regulation, 35

|  |    |
|--|----|
| (d) the means by which the applicant may fulfil the obligation to submit the elements of the application referred to in Article 4 of the Qualification Regulation and <i>section 39</i> ,  | 5  |
| (e) the consequences under <i>section 67</i> of non-compliance by the applicant with the applicant's obligations,  |    |
| (f) the rights conferred on an applicant as a data subject under the Data Protection Regulation and the Data Protection Act 2018,  |    |
| (g) the process for voluntary return under <i>section 151</i> ,  |    |
| (h) such provisions of this Act or any other enactment as the Minister considers to be relevant, in particular section 5(3) of the Act of 2004,  | 10 |
| (i) the matters referred to in Article 42 of the Asylum and Migration Management Regulation, and   |    |
| (j) the right of the applicant to arrange for a medical examination in accordance with Article 24(3) of the Asylum Procedures Regulation.  |    |
| (2) The information referred to in <i>subsection (1)</i> shall be given to the applicant in writing, in paper or electronic format, and, if the Minister considers necessary, orally, and in a language the applicant understands or is reasonably supposed to understand.   | 15 |
| (3) The Minister shall give an applicant the opportunity to confirm that the applicant has received the information referred to in <i>subsection (1)</i> and the Minister shall record the confirmation or refusal to confirm in the applicant's file.   | 20 |
| (4) Where the Minister considers it appropriate, the Minister may permit a relevant and competent national or international organisation or body or non-governmental organisation or body to provide an applicant with further information relevant to the matters referred to in <i>subsection (1)</i> .            |    |
| <b>Preliminary health assessment</b>   | 25 |
| 27. (1) Subject to <i>subsections (2), (6) and (7)</i> an applicant shall be subject to a preliminary assessment of the applicant's health (in this section referred to as a "preliminary health assessment") carried out by a qualified medical professional for the purposes of identifying whether the applicant— |    |
| (a) requires urgent or acute medical care, or  | 30 |
| (b) has or may have an illness which may pose a threat to public health, including an infectious disease (within the meaning of the Health Act 1947).  |    |
| (2) An applicant shall not be subject to a preliminary health assessment where—  |    |
| (a) the applicant holds a valid registration certificate under section 9(4A) of the Act of 2004, or  | 35 |
| (b) the applicant is a minor exempted from the obligation to register under section 9(6)(a) of the Act of 2004 and the minor's parent or guardian holds a valid registration certificate under that section 9(4A),   |    |
| unless the applicant or, where the applicant is a minor, the applicant's parent or guardian, requests that a preliminary health assessment be carried out.   | 40 |

(3) Subject to *subsection (4)*, a preliminary health assessment shall consist of one or more than one of the following, as considered appropriate by a qualified medical professional for the purposes referred to in *subsection (1)*:

- (a) an interview with the applicant in relation to the applicant's health and medical history;
- (b) an examination of the applicant by a qualified medical professional;
- (c) such medical tests as a qualified medical professional considers appropriate.

(4) A preliminary health assessment shall be the least invasive possible for the purposes referred to in *subsection (1)*.

(5) A report of a qualified medical professional completed in respect of a preliminary health assessment conducted in respect of an applicant under this section shall—

- (a) be provided to the registered medical practitioner conducting the examination referred to in *section 90* (if any),
- (b) be made available to the applicant as soon as practicable, and
- (c) be accessible to the Minister and, where applicable, the Tribunal.

(6) An applicant may refuse to undergo a preliminary health assessment or, at any point during the conduct of the preliminary health assessment, request that the preliminary health assessment cease, and in either such case the preliminary health assessment shall not be carried out or shall cease unless a qualified medical professional believes, on reasonable grounds, that it is necessary for the purposes of *subsection (1)(b)*.

(7) In the case of an applicant who is a minor, the preliminary health assessment shall only be carried out with the consent of the minor's parent, such other adult who has responsibility for the care and protection of the minor, a provisional representative person or a representative person, as the case may be and, where such consent is not provided, the preliminary health assessment shall only be carried out where a qualified medical professional believes, on reasonable grounds, that it is necessary for the purposes of *subsection (1)(b)*.

(8) Where *subsection (6)* applies or consent is not provided in accordance with *subsection (7)*, the preliminary health assessment shall only be done in so far as is necessary for the purposes of *subsection (1)(b)*.

(9) An applicant shall be informed by an officer of the Minister or a qualified medical professional, prior to the conduct of a preliminary health assessment under this section, of—

- (a) the right to refuse to undergo a preliminary health assessment or to request that such an assessment cease in accordance with *subsection (6)*, and
- (b) the fact that the report completed in respect of the preliminary health assessment shall—
  - (i) be provided to the registered medical practitioner for the purposes of *section 90*, and
  - (ii) be accessible to the Minister and, where applicable, the Tribunal.

(10) The Minister for Health and the Health Service Executive shall provide the Minister with such assistance as is necessary for the purposes of this section.

(11) A preliminary health assessment done in respect of an applicant under this section may be taken into account for the purposes of the applicant's medical examination referred to in *section 90*. 5

### **Preliminary vulnerability assessment**

**28.** (1) An officer or agent of the Minister referred to in *subsection (2)* shall carry out or cause to be carried out an assessment of an applicant (in this section referred to as a "preliminary vulnerability assessment") for the purpose of identifying whether the applicant may— 10

- (a) be a stateless person,
- (b) be vulnerable or a victim of torture or other inhuman or degrading treatment,
- (c) have special reception needs within the meaning of Article 24 of the Reception Conditions Directive, or
- (d) require special procedural guarantees within the meaning of Article 21 of the Asylum Procedures Regulation. 15

(2) A preliminary vulnerability assessment shall be carried out by officers or agents of the Minister who have received specialised training in the conduct of such assessments and the officers or agents of the Minister may be assisted in the conduct of such assessments by healthcare professionals who have received specialised training in the conduct of such assessments and with whom or in respect of whom the Minister has entered into a contract for services. 20

(3) The results of the preliminary vulnerability assessment may be transmitted to the Determining Authority where the applicant so consents. 25

(4) The Minister shall, when registering an application under *section 37*, include information on any first indications that the applicant may require special procedural guarantees in accordance with Article 20(2) of the Asylum Procedures Regulation in the applicant's file and shall make that information available to the Determining Authority. 30

(5) Where the Minister considers that an applicant has special reception needs referred to in *subsection (1)(c)* or requires special procedural guarantees referred to in *subsection (1)(d)*, the Minister shall, in such form and manner as the Minister may prescribe in respect of such applicants, address such special reception needs or provide such special procedural guarantees as the Minister considers appropriate. 35

(6) A preliminary vulnerability assessment and a preliminary health assessment under *section 27* may, where appropriate, form part of, or the entirety of, the assessment under Article 25 of the Reception Conditions Directive or Article 20 of the Asylum Procedures Regulation. 40

(7) A preliminary vulnerability assessment may include an assessment as to whether a personal interview under *section 93* would be in the best interests of an applicant who is a minor. 40

## Guarantees for minors

29. (1) The best interests of the child shall be a primary consideration in the carrying out of procedures in respect of a minor under this Part.

(2) Subject to *subsection (3)*, an applicant who is a minor who is provided with information orally under *section 26* or who is subject to the procedures under *section 27* or *28* shall be accompanied by the minor's parent, or such other adult who has responsibility for the care and protection of the minor, while being provided with that information or for the duration of those procedures, as the case may be.

(3) The Minister shall, as soon as practicable, ensure that a provisional representative person, representative person or an employee of, or other person appointed by, the Child and Family Agency accompanies the minor while the minor is being provided with the information or for the duration of the procedures referred to in *subsection (1)*, where—

(a) the minor's parent or such other adult who has responsibility for the care and protection of the minor cannot be contacted,

(b) the minor's parent or such other adult who has responsibility for the care and protection of the minor refuses to, or cannot, accompany the minor, or

(c) the attendance of the minor's parent or such other adult who has responsibility for the care and protection of the minor is not, on justified grounds, considered to be in the best interests of the minor by the Child and Family Agency.

(4) For the purposes of *subsection (3)(c)*, “justified grounds” includes but is not limited to circumstances where:

(a) the minor is not receiving adequate care and protection;

(b) the minor requests that a person other than the minor's parent or such other adult who has responsibility for the care and protection of the minor attend.

## Search of applicant

30. (1) An applicant shall, when required so to do by a member of An Garda Síochána, an immigration officer or an officer of the Minister, declare whether or not the applicant is carrying or conveying any documents and, if so required, shall produce the documents to the member or officer.

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

(a) it is reasonably necessary to do so for reasons of national security,

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

(c) the member or officer has a reasonable suspicion that one or more than one of the following offences is being committed or that the applicant may have evidence of or relating to such an offence in the applicant's possession:

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

(3) A member of An Garda Síochána may examine and retain a document produced under *subsection (1)* or found during a search under *subsection (2)* for as long as the member reasonably believes it to be necessary for reasons of national security or reasonably believes it to be evidence of or relating to an offence referred to in *subsection (2)(c)*. 10

(4) An immigration officer or an officer of the Minister may examine a document produced under *subsection (1)* or found during a search under *subsection (2)* and shall, where the officer reasonably believes the document to relate to matters of national security or to be evidence of or relating to an offence referred to in *subsection (2)(c)*, give the document to a member of An Garda Síochána as soon as practicable after it is produced or found and may retain the document only for so long as is necessary to give the document to the member. 15 20

(5) A member of An Garda Síochána, an immigration officer or an officer of the Minister may examine and retain a document produced under *subsection (1)* or found during a search under *subsection (2)* for as long as the member or officer considers it reasonably necessary to assist in—

- (a) the examination of an application for international protection under *Part 5*, 25
- (b) the consideration of an appeal under *Part 6*, or
- (c) the carrying out of a return under *Part 9*.

(6) An applicant shall, if so required by a member of An Garda Síochána, an immigration officer or an officer of the Minister, provide all reasonable assistance in relation to the operation of any devices in which documents are or may be stored or access to the documents stored in those devices, including— 30

- (a) providing the documents to a member or officer in a form in which the documents can be taken away and in which the documents are, or can be made, legible and comprehensible,
- (b) giving to a member or officer any password necessary to make the relevant documents concerned legible and comprehensible, or 35
- (c) otherwise enabling a member or officer to examine the relevant documents in a form in which the document is legible and comprehensible.

(7) A search of the applicant's person under *subsection (2)* shall be carried out by a person of the same sex as the applicant and in full respect for the human dignity of the applicant and the applicant's physical and psychological integrity. 40

(8) A member of An Garda Síochána, an immigration officer or an officer of the Minister shall—

- (a) inform the applicant of the reasons for the search before conducting the search,
- (b) before conducting the search, give the applicant a warning, in a language that the applicant understands or is reasonably supposed to understand, that a failure to comply with the requirements of subsection (1) or (6) is an offence, and
- (c) include a note of the reasons for the search in the applicant’s file.

(9) A person who contravenes subsection (1) or (6) shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months, or both.

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### Screening form

31. (1) The Minister shall complete a form (either in paper or electronic format, as the Minister considers appropriate) containing the following information—

- (a) the applicant’s name, date of birth, place of birth, and gender,
- (b) an indication of the nationalities or statelessness of the applicant, the countries of residence of the applicant prior to the applicant’s arrival in the State and the languages spoken by the applicant,
- (c) the reason for which screening was performed,
- (d) such information as the Minister considers relevant from the report of a qualified medical professional arising from the preliminary health assessment carried out in accordance with section 27,
- (e) such information as the Minister considers relevant from the preliminary vulnerability assessment carried out in accordance with section 28, in particular any vulnerability or special reception needs under Article 25 of the Reception Conditions Directive or requirement for special procedural guarantees under Article 21 of the Asylum Procedures Regulation identified,
- (f) confirmation that the applicant made an application,
- (g) information provided by the applicant as to whether the applicant has family members located on the territory of any Member State,
- (h) whether the consultation of Eurodac or any other database or system referred to in Article 15 of the Screening Regulation in respect of the applicant resulted in a hit,
- (i) whether the applicant has, in so far as it is applicable, complied with the obligations to cooperate in accordance with sections 25 and 63, and
- (j) such other information as the Minister may prescribe having regard to the purposes of this Act.

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(2) A form referred to in subsection (1) shall, where applicable, include—

- (a) the reason for the irregular arrival or entry of an applicant in the State,

(b) information on routes travelled by an applicant, including the point of departure, places of previous residence, third countries of transit, third countries where international protection may have been sought by the applicant or granted to the applicant and the intended destination of the applicant within the European Union, 5

(c) copies or detail of travel or identity documents carried by an applicant, and

(d) any comments of the Minister or other relevant information, including any related information in cases of suspected smuggling or trafficking in human beings.

(3) Where appropriate, the Minister shall state on the form referred to in *subsection (1)* whether the information contained in the form is based on the declaration of the applicant or whether it has been verified by the Minister. 10

(4) Subject to *subsection (5)*, the Minister shall make a copy of the form available in either paper or electronic format to the applicant.

(5) Before making a copy of the form available to the applicant under *subsection (4)*, the information referred to in *subsection (1)(h)* and *(2)(d)* shall be redacted by the Minister from the form to the extent necessary and proportionate for the purpose of the restrictions referred to in section 60(3)(a)(ii) of the Data Protection Act 2018. 15

(6) The Minister shall request the applicant to confirm the accuracy of the information in the form and, where the applicant disputes the accuracy of any of the information, the Minister shall include a statement to that effect in the form. 20

(7) The Minister may give a copy of the form to, and the copy form may be used by—

(a) the Determining Authority for the purposes of the consideration of the applicant's application under *Part 5*,

(b) the Tribunal for the purposes of the performance of functions under *Part 6*, and

(c) the Minister or another Member State for the purpose of performance of functions under *Part 4* or *Part 9*. 25

(8) The form to be completed under *subsection (1)* shall be in such form as the Minister may specify and the Minister shall publish the specified form on a website maintained by or on behalf of the Minister or the Government.

(9) In this section, “hit” means— 30

(a) the existence of a match established by Eurodac by means of a comparison between biometric data recorded in the computerised central database and those transmitted in accordance with *Chapter 1* with regard to a person, and

(b) in relation to any other database or system referred to in Article 15 of the Screening Regulation, the existence of a match established by that database or system by means of a comparison between biometric or other data recorded in that database or system and those submitted by means of a query through the database or system operator. 35

## Cultural mediator

32. The Minister may make arrangements to allow cultural mediators to assist an applicant during the carrying out of the procedures under this Part, including by the provision of information to the applicant and the provision of support to the applicant in the applicant's communication with officers of the Minister. 5

## Termination of screening

33. (1) Subject to *subsection (2)*, the Minister and any other person carrying out procedures in respect of a person under this Part shall endeavour to carry out those procedures as soon as practicable and, where possible, no later than—

(a) 7 days after the person arrives at a screening centre, or 10

(b) in the case of an applicant referred to in *section 23(1)*, 7 days after the procedures have commenced in respect of the applicant in accordance with alternative arrangements referred to in that section.

(2) Nothing in *subsection (1)* shall operate to prevent the Minister or any other person from performing a function under this Part after the expiry of the period referred to in *subsection (1)*. 15

(3) Subject to *subsection (4)*, the procedures under this Part shall be terminated immediately where—

(a) the person expresses an intention to withdraw the application concerned under *section 66*, 20

(b) the person is arrested on suspicion of committing an offence,

(c) the person is surrendered under the Extradition Act 1965, or

(d) the person is considered by a registered medical practitioner to be unable to be the subject of procedures under this Part for reasons of ill-health.

(4) Where the procedures under this Part are terminated in accordance with *subsection (3)* the Minister— 25

(a) may—

(i) complete, in so far as practicable, the form referred to in *section 31* in respect of the person, and

(ii) require the applicant to comply with alternative arrangements under *section 23*, 30

and

(b) shall record the reason why the procedures were terminated under *subsection (3)* in the form referred to in *section 31*.

## PART 3

### APPLICATION FOR INTERNATIONAL PROTECTION

#### CHAPTER 1

##### *Making, registration and lodgement of application*

###### **Application for international protection**

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34. (1) Subject to *sections 35 and 36*, a third-country national or stateless person, including an unaccompanied minor, who is at the frontier of the State or who is in the State (whether lawfully or unlawfully) may make an application for international protection.

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(2) An application under this section shall be considered to have been made where a person referred to in *subsection (1)* expresses his or her wish to receive international protection in person to—

- (a) an officer of the Minister,
- (b) a member of An Garda Síochána,
- (c) an immigration officer, or
- (d) a governor of a prison.

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(3) Where an application is made to a person referred to in *paragraph (b) or (d) of subsection (2)*, that person shall inform the Minister of the making of the application as soon as practicable and at the latest within 3 working days from when the application is made.

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###### **Application on behalf of minor**

35. (1) Subject to *subsection (2)*, an application on behalf of a minor who is at the frontier of the State or who is in the State (whether lawfully or unlawfully) shall be made by the minor's parent or such other adult who has responsibility for the care and protection of the minor (in this section referred to as the "person responsible").

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(2) An application shall be deemed to have been made on behalf of a minor where the parent of, or person responsible for, the minor makes an application under *section 34* and the minor is present at the making of the application.

(3) Where a minor—

- (a) is born in the State while the parent of, or person responsible for, the minor is an applicant, or
- (b) enters the State while the parent of, or person responsible for, the minor is an applicant,

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the parent or person responsible shall inform the Minister and the Minister shall direct the parent or person responsible to attend with the minor at a specified place on a specified date and, where communicated, time for the purpose of making, registering and lodging an application on behalf of the minor.

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(4) An application—

- (a) deemed to have been made on behalf of a minor under *subsection (2)*, or
- (b) made on behalf of a minor under *subsection (3)* prior to a decision being taken by the Determining Authority at first instance in respect of the application of the parent or person responsible,

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shall be examined in conjunction with the application of the parent or person responsible.

(5) *Subsections (2) and (3)* shall not apply where the minor is—

- (a) an Irish citizen, or
- (b) a Union citizen as defined in Regulation 2 of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015).

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(6) For the purposes of this section, the Minister may request that a birth certificate or other appropriate documentary evidence is submitted to him or her to substantiate the relationship between the minor and the person making the application on his or her behalf, including in relation to the—

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- (a) age and nationality of the person making the application on behalf of the minor, and
- (b) the nature of relationship between the minor and the person making the application on his or her behalf.

**Application on behalf of person lacking capacity**

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36. (1) This section applies to an adult who—

- (a) lacks capacity to make an application under *section 34*, and
- (b) is otherwise eligible to make an application under *section 34*.

(2) An application may be made and lodged on behalf of a person to whom this section applies (in this section referred to as the “person concerned”)—

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- (a) where the person concerned is a ward of court, by his or her committee,
- (b) where the person concerned is subject to a decision-making representation order which authorises a decision-making representative to make an application on behalf of the person concerned, by the person concerned’s decision-making representative,

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- (c) where the person concerned is subject to an order capable of being recognised in the State pursuant to section 124 of the ADMC Act, whether or not such an order has actually been recognised by a court in the State pursuant to section 125 of that Act, by the person authorised under that order to take decisions on behalf of the person concerned, provided that such authorised person is at the frontier of the State or is in the State,

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- (d) where the person concerned is subject to a registered co-decision-making agreement which provides for the joint making by the appointer and a

co-decision-maker of an application, by the appointer, provided that it is signed jointly by the appointer and the co-decision-maker, or

(e) where the person concerned is not a person referred to in *paragraphs (a) to (d)*, subject to *subsection (3)*, by a person of full age and capacity who is the spouse, civil partner, parent or child of the person concerned, or otherwise who the Minister is satisfied has a *bona fide* interest in the welfare of the person concerned. 5

(3) For the purposes of ascertaining whether an application may be made or lodged under *subsection (2)(e)* on behalf of a person, the Minister may— 10

(a) request that a medical report, or such other appropriate documentary evidence relating to the capacity of the person concerned, be submitted to him or her, or

(b) request that the person concerned attend a registered medical practitioner for the purposes of obtaining a report to the Minister in relation to the capacity of the person concerned.

(4) The costs of and incidental to the preparation of a report referred to in *subsection (3)(b)* shall be borne by the Minister. 15

(5) The amount payable under *subsection (4)* shall not exceed such amount as is specified from time to time by the Minister, in consultation with the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.

(6) In this section— 20

“ADMC Act” means the Assisted Decision-Making (Capacity) Act 2015;

“appointer” has the same meaning as it has in Part 4 of the ADMC Act;

“capacity” shall be construed in accordance with section 3 of the ADMC Act;

“co-decision-maker” has the same meaning as it has in Part 4 of the ADMC Act;

“co-decision-making agreement” has the same meaning as it has in Part 4 of the ADMC Act; 25

“decision-making representation order” has the same meaning as it has in the ADMC Act;

“decision-making representative” has the same meaning as it has in the ADMC Act.

**Registration of application** 30

37. (1) The Minister is designated as the competent authority to register applications for international protection pursuant to Article 4(3) of the Asylum Procedures Regulation.

(2) Without prejudice to the obligations to collect and transmit data in accordance with *Chapter 1 of Part 2*, the Minister shall register the following information from an applicant in accordance with Article 27 of the Asylum Procedures Regulation by recording the information in a form (in this Part referred to as an “international protection application form”): 35

(a) the applicant’s name;

(b) the applicant’s date and place of birth;

- (c) the applicant's gender;
- (d) the applicant's nationality or nationalities or whether the applicant is stateless;
- (e) the applicant's family members as defined in Article 2 of the Asylum and Migration Management Regulation;
- (f) in the case of an applicant who is a minor, the applicant's siblings or relatives within the meaning of the Asylum and Migration Management Regulation present in a Member State, where applicable; 5
- (g) 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 Minister deems relevant for the purposes of identifying the applicant for the purposes of this Act and the Asylum and Migration Management Regulation; 10
- (h) the date of the application, the place where the application was made and the person to whom the application was made;
- (i) the applicant's location or the applicant's place of residence or address; 15
- (j) where available, a telephone number and an email address which can be used to contact the applicant;
- (k) such other information relevant for the purposes of this Act and the Asylum and Migration Management Regulation.

- (3) Information collected from an applicant for the purposes of completing the form in *section 31* may be used by the Minister for the purposes of *subsection (2)*. 20
- (4) An applicant shall be provided with the services of an interpreter during the registration process whenever appropriate communication cannot be otherwise ensured.

**Lodgement of application** 25

38. (1) Subject to *section 35(3)* and *subsections (3) to (7)*, an applicant shall lodge his or her application with the Minister by—

- (a) attending a place on a date and, where communicated, time specified by the Minister, and
- (b) at that place providing information to the Minister, which shall be recorded in the applicant's international protection application form. 30

(2) Where practicable, the lodgement shall take place at the same time as the registration of an application.

(3) An application may be lodged on behalf of an applicant who is a minor—

- (a) by the minor's parent or such other adult who has responsibility for the care and protection of the minor, or
- (b) in the case of an unaccompanied minor, by a provisional representative person or a representative person. 35

(4) Where an application is lodged on behalf of a minor in accordance with subsection (3), the requirement under subsection (1) to attend a specified place for the purpose of lodging the application shall apply both to the minor and to the person who is lodging the application on behalf of the minor except where there are justified reasons for which the minor is unable or unfit to be present. 5

(5) An application shall be deemed to have been lodged on behalf of an applicant who is a minor where the parent of, or such other adult who has responsibility for the care and protection of, the minor lodges an application under subsection (1) and the minor is present at the lodgement of the application.

(6) Where section 36 applies in respect of a person, the requirement under subsection (1) to lodge an application in person shall not apply where there are justified reasons for which the person is unable or unfit to be present and where such reasons exist, it shall be sufficient for the person who is lodging the application on his or her behalf in accordance with section 36(2) to attend a place on a date and, where communicated, time, specified by the Minister for the purpose of lodging the application. 10 15

(7) Where an applicant cannot comply with subsection (1) due to imprisonment or long-term hospitalisation, the Minister shall make alternative arrangements for the lodgement of the application.

(8) An applicant shall be provided with the services of an interpreter when lodging his or her application whenever appropriate communication cannot be otherwise ensured. 20

(9) Following the lodgement of an application, the Minister shall inform the applicant as soon as practicable in relation to how his or her application will be examined under Part 5.

(10) The Minister shall notify the High Commissioner in writing of the lodgement of an application. 25

(11) A notification under subsection (10) shall include—

- (a) the name of the applicant,
- (b) the applicant's country of origin, and
- (c) such other information as the Minister considers appropriate.

(12) The type of information to be included in an international protection application form under section 37 and subsection (1)(b) shall be specified by the Minister and published on a website maintained by or on behalf of the Minister or the Government. 30

### **Submission of elements and documents**

39. (1) When an applicant lodges his or her application, he or she shall, in accordance with Article 4 of the Qualification Regulation, without undue delay submit to the Determining Authority all the elements and documents available to him or her which are needed to substantiate his or her application. 35

(2) Notwithstanding subsection (1), an applicant may submit to the Determining Authority any additional elements or documents relevant to the examination of his or her application prior to a decision being taken on his or her application, in particular at his or her personal interview. 40

(3) An applicant shall endeavour to submit any additional elements and documents relevant to the examination of his or her application within the period ending 5 days after the day on which the applicant’s substantive interview takes place in accordance with *section 106*. 5

(4) An applicant may not make a new application in advance of a final decision being made in respect of his or her application under *Part 5* or *Part 6*, as the case may be, (in this subsection referred to as the “current application”) and any representations made by an applicant before a final decision is made in respect of the current application shall be considered to be further representations in respect of the current application and shall not constitute a new application. 10

(5) Without prejudice to the generality of this section, in this section “elements and documents” shall include the following: 15

- (a) the applicant’s statements;
- (b) all documents at the applicant’s disposal in relation to:
  - (i) the applicant’s reason for applying for international protection;
  - (ii) the applicant’s age;
  - (iii) the applicant’s background, including that of relevant family members and other relatives;
  - (iv) the applicant’s identity;
  - (v) the applicant’s nationality or nationalities;
  - (vi) the applicant’s country or countries, and place or places of previous residence;
  - (vii) any previous applications made by the applicant;
  - (viii) the results of a resettlement or humanitarian admission procedure relating to the applicant as defined by the Union Resettlement and Humanitarian Admission Framework Regulation; 25
  - (ix) the applicant’s travel routes;
  - (x) the applicant’s travel documents.

## CHAPTER 2

### *Appointment of representatives for unaccompanied minors*

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#### **Definition (Part 3) (Chapter 2)**

**40.** In this Chapter, “representative organisation” means an organisation designated under *section 43(1)(a)* or appointed under *section 43(1)(b)* as a representative organisation.

#### **Best interests of child**

**41.** The best interests of the child shall be a primary consideration in the application of this Chapter. 35

## Requirement to notify the competent authority

42. (1) A person referred to in *paragraph (a), (b), (c) or (d)* of *section 34(2)* shall, as soon as possible after the making of an application in accordance with that section and subject to *subsection (2)*, notify the competent authority, where—

- (a) the applicant claims to be a minor and is not accompanied by an adult who is responsible for the applicant, or 5
- (b) the person referred to in *paragraph (a), (b), (c) or (d)* of *section 34(2)* has objective grounds for believing that the applicant is a minor and is not accompanied by an adult who is responsible for the applicant.

(2) Without prejudice to *Chapter 3, subsection (1)* shall not apply where a person first-referred to in that subsection concludes without any doubt that the applicant is not a minor or is accompanied by an adult responsible for the applicant. 10

(3) Where the Minister is notified that an unaccompanied minor has been or will be relocated or transferred to the State in accordance with *Part 4*, the Minister shall as soon as possible notify the competent authority and the Child and Family Agency of the relocation or transfer, as the case may be. 15

(4) The Minister, the Determining Authority, the Tribunal or the Child and Family Agency shall notify the competent authority, where he, she or it, as the case may be, becomes aware that an applicant—

- (a) is a minor who is not accompanied by an adult responsible for him or her, or 20
- (b) may be a minor who is not accompanied by an adult responsible for him or her.

(5) Without prejudice to section 32 of the Child Care Act 1991 and subject to *Chapter 3*, an applicant shall be presumed to be a minor for the purposes of that Act, following a notification under *subsection (1), (3) or (4)*. 25

## Designation of provisional representative and appointment of representative

43. (1) Following a notification under *section 42(1), (3) or (4)*, the competent authority shall—

- (a) as soon as possible, designate an individual with the necessary skills and expertise (in this Act referred to as a “provisional representative person”) or, subject to *subsection (3)*, designate an organisation (in this Chapter referred to as a “representative organisation”) to provisionally act as a representative (within the meaning of the EU acts) for the unaccompanied minor that is the subject of the notification until an individual or organisation has been appointed under *paragraph (b)*, and 30
- (b) as soon as possible and, subject to *section 49*, no later than 15 working days from the date on which the application is made, appoint an individual with the necessary skills and expertise (in this Act referred to as a “representative person”) or, subject to *subsection (3)*, appoint an organisation (in this Chapter referred to as a “representative organisation”) to act as a representative (within the meaning of the EU acts) for the unaccompanied minor that is the subject of the notification. 35

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(2) The function of a representative organisation shall be to appoint individuals under *section 44* to assist, represent and act on behalf of unaccompanied minors, as applicable, in procedures provided for in and under this Act or the EU acts, with a view to safeguarding the best interests and general well-being of unaccompanied minors so that an unaccompanied minor can benefit from the rights and comply with the obligations provided for in and under this Act or the EU acts. 5

(3) The competent authority shall not designate an organisation under *subsection (1)(a)* to be a representative organisation or appoint an organisation under *subsection (1)(b)* to be a representative organisation unless the competent authority is satisfied that the organisation— 10

- (a) is independent in the performance of its functions,
- (b) does not have any interests that conflict, or could potentially conflict, with the interests of unaccompanied minors,

(c) is able to appoint an individual to be a provisional representative person in accordance with *section 44* to perform the functions of a provisional representative person in respect of an unaccompanied minor to whom that individual is appointed, 15

(d) is able to appoint an individual to be a representative person in accordance with *section 44* to perform the functions of a representative person in respect of an unaccompanied minor to whom that individual is appointed, 20

(e) is able to ensure that, subject to *section 49*, a provisional representative person or a representative person is appointed in respect of no more than 30 unaccompanied minors at any one time, and

(f) has sufficient internal governance and management arrangements in place to ensure that provisional representative persons and representative persons appointed by the representative organisation have the necessary qualifications, training and expertise to perform the functions of a provisional representative person or a representative person, as the case may be. 25

### **Appointment of provisional representative persons and representative persons**

44. Where a representative organisation has been designated under *section 43(1)(a)* in respect of an unaccompanied minor, the representative organisation shall— 30

(a) as soon as possible, appoint an individual with the necessary skills and expertise to provisionally act as a representative (within the meaning of the EU acts) for the unaccompanied minor (in this Act referred to as a “provisional representative person”) until a representative person has been appointed under *paragraph (b)*, and 35

(b) as soon as possible, and within the period referred to in *section 43(1)(b)*, appoint an individual with the necessary skills and expertise to act as a representative (within the meaning of the EU acts) for the unaccompanied minor (in this Act referred to as a “representative person”). 40

**Power to appoint substitute provisional representative person and representative person**

45. Subject to the requirement under Article 23(9) of the Asylum Procedures Regulation and Article 27(6) of the Reception Conditions Directive that the representative person or provisional representative person shall be changed only where necessary—

- (a) the power to designate a provisional representative person under *section 43(1)(a)* or appoint a provisional representative person under *section 44(a)* includes the power to designate or appoint a provisional representative person in place of the provisional representative person who stands designated or appointed under *section 43(1)(a)* or *section 44(a)*, as the case may be, and 5
- (b) the power to appoint a representative person under *section 43(1)(b)* or *section 44(b)* includes the power to appoint a representative person in place of the representative person who stands appointed under *section 43(1)(b)* or *section 44(b)*, as the case may be. 10

**Consequences of appointment of provisional representative person or representative person** 15

46. (1) Following the designation or appointment of a provisional representative person, or the appointment of a representative person in respect of an unaccompanied minor, the competent authority or the representative organisation, as the case may be, shall immediately notify the Determining Authority of the designation or appointment concerned. 20

- (2) Following a notification under *subsection (1)*, the Determining Authority shall—
  - (a) in a manner that is age-appropriate and in a language that the unaccompanied minor understands or is reasonably supposed to understand, immediately—
    - (i) inform the unaccompanied minor concerned that a provisional representative person or a representative person has been designated or appointed, as the case may be, in respect of him or her, and 25
    - (ii) explain to the unaccompanied minor that he or she may lodge a complaint against the provisional representative person or representative person in accordance with regulations made under *section 50* in confidence and safety,
  - (b) inform the provisional representative person or representative person, as the case may be, of any relevant facts known to the Determining Authority pertaining to the unaccompanied minor, and 30
  - (c) inform the Child and Family Agency that a representative person or a provisional representative person has been designated or appointed, as the case may be, in respect of the unaccompanied minor. 35

- (3) A provisional representative person and a representative person may request information regarding the progress of a procedure under this Act or the EU acts in relation to an unaccompanied minor in respect of whom the person is designated or appointed and, where applicable, the Minister, the Child and Family Agency, the Determining Authority or the Tribunal shall provide the information requested to the provisional representative person or the representative person about that procedure. 40

## Functions of provisional representative person and representative person

47. (1) The functions of a provisional representative person or a representative person in respect of an unaccompanied minor in relation to whom he or she is designated or appointed shall be—

(a) to safeguard the best interests and general well-being of the unaccompanied minor to enable the minor to benefit from his or her rights under this Act or the EU acts, 5

(b) to meet with the unaccompanied minor and take into account the minor's views regarding his or her needs where those views are relevant to the performance by the provisional representative person or the representative person of his or her functions in relation to that unaccompanied minor, 10

(c) to assist the unaccompanied minor in the provision of information by the minor to any person that is relevant to the assessment of his or her best interests for any purpose under this Act or the EU acts,

(d) where applicable, to assist the unaccompanied minor in relation to the provision of biometric and other data under *section 15* including providing the minor with information relevant to the provision of the data, 15

(e) where applicable, to assist the unaccompanied minor with an age assessment carried out in accordance with *Chapter 3*,

(f) where applicable, to assist the unaccompanied minor with the registration and lodgement of an application, or to register and lodge an application on behalf of the unaccompanied minor in accordance with *sections 37* and *38* and to submit elements and documents in accordance with *section 39*, 20

(g) where applicable, to provide the unaccompanied minor with information relevant to the procedures provided for in this Act or the EU acts, 25

(h) where applicable, to assist the unaccompanied minor in understanding the information relevant to the procedures provided for in and under this Act or the EU acts,

(i) where applicable, to assist with the preparation of, and be present for, the unaccompanied minor's personal interview and to inform the unaccompanied minor about the purpose and possible consequences of the personal interview and about how to prepare for that interview, and 30

(j) where applicable, to support the unaccompanied minor in any engagement with family tracing procedures.

(2) A provisional representative person or a representative person appointed in relation to an unaccompanied minor shall— 35

(a) be independent in the performance of his or her functions,

(b) not have any interests that conflict, or potentially conflict, with the interests of the unaccompanied minor, and

(c) treat any information received in his or her capacity as a representative person or a provisional representative person as confidential and not disclose such information to any person except— 40

- (i) for the purpose of the performance of his or her functions under this Act or the EU acts,
- (ii) when required, by an order of a court of competent jurisdiction, to disclose the information in civil or criminal proceedings, or
- (iii) where otherwise required to do so in accordance with any enactment.

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**Cessation of designation or appointment of representatives and consequences of cessation**

**48.** (1) The designation or appointment of a provisional representative person or the appointment of a representative person in respect of a person (in this section referred to as a “relevant person”) shall cease on the earliest of the following occurring—

- (a) in relation to a provisional representative person designated or appointed in respect of a relevant person—
  - (i) where the relevant person is an unaccompanied minor, a representative person is appointed for the relevant person, or
  - (ii) where the relevant person is not an unaccompanied minor, the period referred to in *section 43(1)(b)* has elapsed and, where *paragraph (b)* applies, a representative person has not been appointed for the relevant person,
- (b) the Determining Authority is satisfied that the relevant person for whom a provisional representative person or a representative person was designated or appointed is 18 years or over, and—
  - (i) an age assessment carried out under *Chapter 3* in respect of the relevant person has concluded that he or she is 18 years or over, or
  - (ii) the age of the relevant person is verified, other than by an age assessment carried out under *Chapter 3*, to be 18 years or over,
- (c) the relevant person is a beneficiary of international protection, granted by the State or by a Member State other than the State, and a guardian has been appointed for the relevant person,
- (d) the relevant person ceases to be an applicant,
- (e) the relevant person leaves the State without the consent of the Minister,
- (f) the relevant person is a minor and an accompanying family member becomes responsible for him or her such that the Determining Authority is satisfied that the relevant person is not unaccompanied,
- (g) the representative person or provisional representative person resigns or is otherwise unavailable to perform the functions of a representative person or a provisional representative person,
- (h) the designation or appointment of the provisional representative person or the appointment of the representative person is terminated by the competent authority in accordance with regulations made under *section 50* because the provisional representative person or representative person has not adequately performed his or her functions under this Act or the EU acts, or

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- (i) the appointment of the provisional representative person or representative person is terminated on foot of a complaint that is well founded and made in accordance with regulations made under *section 50*.
- (2) Where the designation or appointment of a provisional representative person or the appointment of a representative person ceases under *paragraph (g), (h) or (i)* of *subsection (1)*, a provisional representative person or a representative person shall be appointed in his or her place under *section 45(a)* or *section 45(b)*, as appropriate. 5
- (3) Following the cessation under *subsection (1)* of the designation or appointment of a provisional representative person or the cessation of the appointment of a representative person the Determining Authority shall— 10
  - (a) immediately inform the relevant person that the provisional representative person or the representative person, as the case may be, is no longer designated or appointed, as the case may be, for the relevant person, in a manner that is age-appropriate and in a language that the relevant person understands or is reasonably supposed to understand, 15
  - (b) if applicable, immediately inform the relevant person that a provisional representative person or a representative person has been appointed for the relevant person in accordance with *subsection (2)*, in a manner that is age-appropriate and in a language that the relevant person understands or is reasonably supposed to understand, and 20
  - (c) inform the Child and Family Agency of the matters referred to in *paragraphs (a)* and *(b)* in relation to the relevant person.

#### **Modification of certain references (exceptional situations)**

49. (1) For the purposes of this Part, where—

- (a) a disproportionate number of applications are made by unaccompanied minors or other exceptional situations arise, and 25
- (b) the competent authority decides that the measures set out in the contingency plan referred to in *section 218* are insufficient to ensure that a representative person is appointed for an unaccompanied minor within 15 working days,

the reference to 15 working days in *section 43(1)(b)* shall be construed as a reference to 25 working days. 30

(2) For the purposes of this Part, where—

- (a) a disproportionate number of applications are made by unaccompanied minors or other exceptional situations arise, and
- (b) the competent authority decides that the measures set out in the contingency plan referred to in *section 218* are insufficient to ensure that a provisional representative person or a representative person, as the case may be, is appointed in respect of no more than 30 unaccompanied minors at any one time, 35

the reference to 30 unaccompanied minors in *section 43(3)(e)* shall be construed as a reference to 50 unaccompanied minors. 40

(3) Where the competent authority makes a decision under subsection (1)(b) or (2)(b), the Minister shall inform the European Commission and the European Union Agency for Asylum in accordance with Article 27 of the Receptions Conditions Directive.

**Regulations (Part 3) (Chapter 2)**

50. The Minister, having consulted with the competent authority, shall, for the purpose of promoting high professional standards and good practice on the part of representative organisations, provisional representative persons and representative persons, make regulations to—

- (a) specify the standards to be applied to representative organisations, provisional representative persons and representative persons in the performance by them of their functions under this Act and the EU acts, 10
- (b) make provision for the training of provisional representative persons and representative persons and the staff of representative organisations, including initial and continuous training concerning the rights and needs of unaccompanied minors and any applicable child safeguarding standards, 15
- (c) make provision for the monitoring, measuring and evaluation of the performance by representative organisations, provisional representative persons and representative persons of their functions under this Act and the EU acts,
- (d) make provision for the establishment and administration of a system of investigation and adjudication of complaints against representative organisations, provisional representative persons and representative persons, 20
- (e) make provision for the procedures that are to apply in respect of the termination of the designation or appointment of a representative organisation, a provisional representative person or a representative person because the representative organisation, the provisional representative person or representative person, as the case may be, has not adequately performed his, her, or its functions under this Act or the EU acts, 25
- (f) specify such fees and expenses to be paid to representative organisations, provisional representative persons and representative persons as the Minister may, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, from time to time determine, and 30
- (g) make provision for such other matters as the Minister considers necessary to ensure that representative organisations, provisional representative persons and representative persons are capable of performing their functions under this Act and the EU acts. 35

CHAPTER 3

*Assessments to determine age of applicant*

**Best interests of child**

51. The best interests of the child shall be a primary consideration in the application of this Chapter. 40

## Age assessments

52. (1) Where, at any point following the making of an application and arising from one or more of the matters referred to in *subsection (2)*, there are doubts in relation to the age of an applicant, the Determining Authority may arrange for an age assessment to be carried out to determine the age of the applicant (in this Act referred to as an “age assessment”) for the purposes of this Act, in accordance with this Chapter. 5

(2) The matters referred to in *subsection (1)* are:

(a) statements made by the applicant to—

(i) an officer of the Minister,

(ii) a member of An Garda Síochána, 10

(iii) an immigration officer,

(iv) a designated person within the meaning of *Chapter 1 of Part 2*,

(v) an Appeals Officer within the meaning of *Part 11*, or

(vi) a member of staff of the Child and Family Agency;

(b) available documentary evidence; 15

(c) any other matter that gives rise to a doubt as to the age of an applicant that a person referred to in *paragraph (a)* considers relevant.

(3) An age assessment including a further age assessment referred to in *section 56* or *57* carried out in relation to an applicant— 20

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

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

(c) shall only be carried out by persons— 25

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

(ii) who are independent of a representative organisation, if any, designated under *section 43(1)(a)* or appointed under *section 43(1)(b)* in respect of the applicant concerned, a provisional representative person appointed or designated in respect of the applicant concerned or a representative person appointed in respect of the applicant concerned, 30

and

(d) shall be carried out in accordance with regulations made under *section 60*.

(4) An age assessment, including a further age assessment referred to in *section 56* or *57*, or part of an age assessment, that requires the presence of an applicant shall not be carried out in relation to the applicant, other than in the presence of an interpreter, if required, and— 35

- (a) a provisional representative person appointed or designated in respect of the applicant, or a representative person appointed in respect of the applicant,
- (b) the applicant's parent or another adult responsible for the applicant, or
- (c) where the presence of a person referred to in *paragraph (b)* is, on justified grounds, considered by the Determining Authority not to be in the best interests of the applicant, a person trained to safeguard the best interests of the child within the framework of the age assessment process.

(5) An applicant's legal representative or, with the consent of the applicant, a person nominated by that legal representative may be present at an age assessment, including a further age assessment referred to in *section 56* or *57* or part of an age assessment, that requires the presence of the applicant. 10

### **Multi-disciplinary assessment**

**53.** (1) A multi-disciplinary assessment shall include—

- (a) a psycho-social assessment,
- (b) an assessment of any relevant statements made by the applicant in relation to his or her application, and 15
- (c) one or more than one of the following, as the Determining Authority considers necessary:
  - (i) with due regard for the applicant's dignity and right to privacy, a visual assessment based on the applicant's physical appearance; 20
  - (ii) an assessment of any available documentation, which shall be considered genuine unless there is evidence to the contrary;
  - (iii) an assessment of any relevant statements made by the applicant to a public body and communicated to the Determining Authority;
  - (iv) an assessment of any relevant information provided by another Member State; 25
  - (v) such other assessments as may be prescribed by the Minister under *section 60*.

(2) Following a multi-disciplinary assessment carried out in relation to an applicant, the Determining Authority shall— 30

- (a) where the result of the multi-disciplinary assessment undertaken in respect of the applicant is conclusive as to the applicant being a minor, determine, subject to *sections 56, 57 and 59*, that the applicant is a minor for the purposes of this Act,
- (b) where the result of the multi-disciplinary assessment undertaken in respect of the applicant is conclusive as to the applicant not being a minor, determine, subject to *sections 56, 57 and 59*, that the applicant is not a minor for the purposes of this Act, or 35
- (c) where the result of the multi-disciplinary assessment undertaken in respect of the applicant is not conclusive, determine, subject to a medical examination to determine age that may be carried out in accordance with *section 53* and subject 40

to sections 56, 57 and 59, that the applicant is presumed to be a minor for the purposes of this Act.

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

- (a) of a determination referred to in subsection (2)(a), (b) or (c), and
- (b) of the applicant's right to request a further age assessment in accordance with section 56,

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in an age-appropriate manner and in a language that the applicant and, if applicable, the parent or person, understands or is reasonably supposed to understand.

(4) Without prejudice to the power of the Determining Authority to arrange for a further age assessment to be carried out in relation to an applicant under section 57, subject to the right of an applicant to request a further age assessment under section 56 and subject to the age of the applicant being verified under section 59, a determination under subsection (2) shall be final.

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#### **Medical examination to determine age**

**54.** (1) A medical examination to determine age shall not be carried out, unless, prior to the examination—

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- (a) the applicant is informed, in an age-appropriate manner and in a language that the applicant understands or is reasonably supposed to understand, of the possibility that the age of the applicant may be assessed by means of a medical examination and the consequences under subsection (4) of refusing to undergo the examination,

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- (b) where applicable, a parent, an adult responsible for the applicant, a provisional representative person designated or appointed in respect of the applicant, or a representative person appointed in respect of the applicant, is informed in a language that the parent or adult responsible understands or is reasonably supposed to understand of the possibility that the age of the applicant concerned may be assessed by means of a medical examination and the consequences under subsection (4) of the applicant refusing to undergo the examination, and

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- (c) having been informed of the matters set out in paragraph (a) in accordance with that paragraph, the applicant has consented to the medical examination, and a person referred to in paragraph (b) has consented, in relation to the applicant, to the medical examination.

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(2) The consent referred to in paragraph (c) of subsection (1) may be given orally or in writing and if given orally—

- (a) the person performing the medical examination to determine age shall, as soon as practicable, make a written record of the consent, and

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- (b) the written record of the consent shall be entered in the applicant's file.

(3) A medical examination to determine an applicant's age shall be—

- (a) performed with full respect for the applicant's dignity,
- (b) consistent with the need to achieve a reliable result, the least invasive examination possible,
- (c) performed in accordance with regulations made under *section 60(2)(a)*, and
- (d) carried out by a designated healthcare professional who has the training and qualifications as prescribed under *section 60(2)(b)*.

(4) A refusal by an applicant to consent to, or a refusal by a person referred to in subsection (1)(b) in relation to an applicant to consent to the applicant undergoing a medical examination—

- (a) shall not prevent the Determining Authority or Tribunal from taking a decision on the application for international protection or appeal, as the case may be, and
- (b) may give rise to a rebuttable presumption that the applicant is not a minor.

(5) Following a medical examination carried out in relation to an applicant, the Determining Authority shall—

- (a) where the results of a multi-disciplinary assessment and a medical examination to determine age are, analysed together, conclusive as to an applicant being a minor, determine, subject to *sections 56, 57 and 59*, that the applicant is a minor for the purposes of this Act,
- (b) where the results of a multi-disciplinary assessment and a medical examination to determine age are, analysed together, conclusive as to the applicant not being a minor, determine, subject to *sections 56, 57 and 59*, that the applicant is not a minor for the purposes of this Act, or
- (c) where the results of a multi-disciplinary assessment and a medical examination to determine age are, analysed together, not conclusive, determine subject to *sections 56, 57 and 59* that the applicant is presumed to be a minor for the purposes of this Act.

(6) The Determining Authority shall, as soon as practicable following a medical examination to determine age carried out in relation to an applicant, notify the applicant and if applicable, the applicant's parent, an adult responsible for the applicant, a provisional representative person designated or appointed in respect of the applicant or a representative person appointed in respect of the applicant—

- (a) of a determination referred to in subsection (5)(a), (b) or (c), and
- (b) of the applicant's right to request a further age assessment in accordance with *section 56*,

in an age-appropriate manner and in a language that the applicant and, if applicable, the parent or person, understands or is reasonably supposed to understand.

(7) Without prejudice to the power of the Determining Authority to arrange for a further age assessment to be carried out in relation to an applicant under *section 57*, subject to the right of an applicant to request a further age assessment under *section 56* and

subject to the age of the applicant being verified under *section 59*, a determination under *subsection (5)* shall be final.

(8) In this section, a “designated healthcare professional” means—

- (a) a registered medical practitioner within the meaning of the Medical Practitioners Act 2007, 5
- (b) a registered dentist within the meaning of the Dentists Act 1985,
- (c) a registered nurse or registered midwife within the meaning of the Nurses and Midwives Act 2011, or
- (d) a member of one or more of the following designated professions within the meaning of the Health and Social Care Professionals Act 2005, namely: 10
- (i) psychologist;
- (ii) social care worker;
- (iii) social worker;
- (iv) such other designated profession, within the meaning of section 3 of that Act, as the Minister, following consultation with the Minister for Health, may prescribe. 15

#### **Age assessment in Member State other than the State**

**55. The Determining Authority—**

- (a) may determine the age of an applicant on the basis of an age assessment that was carried out in a Member State other than the State in accordance with the law of the European Union, and 20
- (b) shall notify the applicant and, if applicable, the applicant’s parent, an adult responsible for the applicant, a provisional representative person designated or appointed in respect of the applicant, or a representative person appointed in respect of the applicant— 25
  - (i) of a determination referred to in *paragraph (a)*, and
  - (ii) of the applicant’s right to request a further age assessment in accordance with *section 56*,

in an age-appropriate manner and in a language that the applicant and, if applicable, the parent or person, understands or is reasonably supposed to understand. 30

#### **Request by applicant for further age assessment**

**56.** (1) An applicant may request a further age assessment following a determination referred to in *section 53(2)(a)*, *53(2)(b)*, *53(2)(c)*, *54(5)(a)*, *54(5)(b)*, *54(5)(c)* or *55(a)* and the effect of the determination concerned shall be suspended until the Determining Authority makes a determination under *subsection (6)*. 35

(2) A request under *subsection (1)* shall be made in writing in accordance with *subsection (9)* and within 10 working days of the notification referred to—

- (a) in relation to a determination following an age assessment, in *section 53(3)*,
- (b) in relation to a determination following an age assessment and a medical examination to determine age, in *section 54(6)*, or
- (c) in relation to a determination based on an age assessment in a Member State other than the State, in *section 55(b)*. 5

(3) A request under *subsection (1)* may include submissions of the applicant, the applicant's parent, an adult responsible for the applicant, a provisional representative person designated or appointed in respect of the applicant or a representative person appointed in respect of the applicant that are relevant to the request for a further age assessment. 10

(4) Following a request made by an applicant in accordance with *subsection (1)*, a further age assessment shall be carried out by a person—

- (a) who was not involved in a multi-disciplinary assessment carried out under *section 53* in respect of the applicant or a medical assessment to determine age under *section 54* in respect of the applicant, and 15
- (b) in accordance with regulations, if any, made under *section 60(3)*.

(5) A further age assessment carried out in accordance with *subsection (4)* shall take into consideration any submissions made in accordance with *subsection (3)*.

(6) The Determining Authority shall, following a further age assessment carried out in accordance with this section determine, subject to *sections 57* and *59*, that the applicant—

- (a) is a minor and shall be considered to be a minor for the purposes of this Act,
- (b) is not a minor, and shall be considered not to be a minor for the purposes of this Act, or
- (c) where the further age assessment is not conclusive, shall be presumed to be a minor for the purposes of this Act. 25

(7) The Determining Authority shall notify the applicant and, if applicable, the applicant's parent, an adult responsible for the applicant, a provisional representative person designated for the applicant or a representative person appointed for the applicant, in a language that the applicant and, if applicable, the parent or person, understands or is reasonably supposed to understand, of the determination under *subsection (6)*. 30

(8) Without prejudice to the power of the Determining Authority to arrange for a further age assessment to be carried out in relation to an applicant under *section 57* and subject to the age of the applicant being verified under *section 59*, a determination under *subsection (6)* shall be final. 35

(9) The Minister shall publish the form in which a further age assessment shall be requested in accordance with *subsection (2)* on a website maintained by or on behalf of the Minister or the Government.

## Decision by Determining Authority to arrange further age assessment

57. Following a determination that an applicant is a minor under *paragraph (a) or (c) of section 53(2), paragraph (a) or (c) of section 54(5), paragraph (a) of section 55 or paragraph (a) or (c) of section 56(6)*, the Determining Authority may arrange for a further age assessment to be carried out in accordance with this Chapter to determine the age of an applicant where—

- (a) the Child and Family Agency has reasonable grounds for believing that the applicant is not a minor and that accommodating the applicant in reception facilities appropriate for minors may give rise to child safeguarding concerns, or
- (b) an Appeals Officer, within the meaning of *Part 11*, has reasonable grounds for believing that the applicant is not a minor where the determination concerned was made prior to a decision being taken by the Determining Authority at first instance.

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## Estimated date of birth

58. (1) The Determining Authority may, subject to *subsection (2)(b)*, determine an estimated date of birth for an applicant that is based on—

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- (a) the results of a multi-disciplinary assessment carried out in relation to the applicant in accordance with *section 53*, or
- (b) if applicable, the results of a multi-disciplinary assessment carried out in relation to the applicant in accordance with *section 53* and the results of the medical examination to determine age carried out in relation to the applicant in accordance with *section 54*, analysed together.

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(2) The estimated date of birth determined under *subsection (1)* shall—

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- (a) be recorded in the applicant's file, and
- (b) subject to *section 59*, be considered to be the applicant's date of birth for the purposes of this Act.

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## Confirmation of age based on verifiable information

59. Where the age of an applicant is verified, the Determining Authority shall, if necessary, vary a determination made under this Chapter in respect of the applicant accordingly and the confirmed age of the applicant shall be reflected on the applicant's file.

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## Regulations (Part 3) (Chapter 3)

60. (1) The Minister shall, after consultation with the Minister for Children, Disability and Equality, prescribe—

- (a) suitable means of multi-disciplinary assessment under *section 53(1)(c)(v)*,
- (b) the qualifications, training or experience required for persons who carry out each type of multi-disciplinary assessment under *section 52(3)(c)(i)*, and
- (c) any additional particulars required in relation to multi-disciplinary assessments under *section 53*.

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(2) The Minister shall, after consultation with the Minister for Children, Disability and Equality and the Minister for Health, prescribe—

- (a) suitable medical means of assessing the age of the applicant under *section 54(3)(c)*,
- (b) the qualifications, training or experience required for persons who carry out each form of assessment under *section 54(3)(d)*, and
- (c) any additional particulars required in relation to the assessments under *section 54*.

(3) The Minister may make regulations for the purpose of prescribing any additional particulars and details required in relation to the request for a further age assessment under *section 56*. 10

#### CHAPTER 4

##### *Consequences of making application*

###### **Right to remain**

61. (1) Subject to *sections 62 and 64* and without prejudice to *section 130*, an applicant shall have the right to remain in the State until the Determining Authority has made a decision on his or her application. 15

(2) An applicant shall—

- (a) not leave or attempt to leave the State without the consent of the Minister,
- (b) inform the Minister of his or her address, telephone number and email address and any change to these within 48 hours of such a change, and 20
- (c) comply with either or both of the following conditions as may be notified in writing to him or her by an immigration officer or an officer of the Minister:

- (i) to reside or remain in a specified district or place in the State;
- (ii) to report at specified intervals to—

- (I) an immigration officer, or
- (II) a specified Garda Síochána station.

(3) The requirement that an applicant shall provide the Minister with his or her address or change of address shall not apply where housing is provided to the applicant by the State unless the applicant ceases to reside in that housing. 30

###### **Limitation on right to remain**

62. (1) A right to remain in the State under *section 61* shall not constitute—

- (a) a permission given under section 4 of the Act of 2004, or
- (b) a right to travel to the territory of another Member State without a valid travel document. 35

(2) Without prejudice to *subsection (1)(a)*, the requirements to register set out in section 9 of the Act of 2004 shall not apply to an applicant who has a right to remain under this Act.

**Duty to cooperate**

63. An applicant shall fully cooperate with the Determining Authority, the Tribunal, the Minister and An Garda Síochána for the duration of the procedure for international protection and, subject to *section 64*, shall remain present and available in the State in accordance with Article 4 of the Qualification Regulation. 5

**Exception from right to remain**

64. Without prejudice to the principle of non-refoulement or to *section 130(3)*, an applicant 10 shall not have the right to remain in the State where—

(a) his or her application is—

(i) a first subsequent application lodged merely in order to delay or frustrate the enforcement of a decision resulting in—

(I) the application being rejected as inadmissible under *section 99(2)*, and 15

(II) the applicant's imminent removal from the State,

or

(ii) a second or further subsequent application following a final decision rejecting a previous subsequent application as inadmissible or unfounded or manifestly unfounded, 20

or

(b) the applicant—

(i) is or will be extradited, surrendered or transferred to another Member State, a third country, the International Criminal Court or an international tribunal for the purpose of conducting a criminal prosecution or for the execution of a custodial sentence or a detention order, or 25

(ii) is considered by the Minister to be a danger to public order or national security, without prejudice to Articles 12 and 17 of the Qualification Regulation.

**International protection applicant card**

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65. (1) The Minister shall, as soon as possible after the lodging of an application, subject to Article 29(5) of the Asylum Procedures Regulation, issue to the applicant a document (in either digital or physical format) (referred to in this section as an “international protection applicant card”).

(2) The international protection applicant card shall contain— 35

(a) the information listed in Article 29(4) of the Asylum Procedures Regulation, and

(b) the date of registration of the relevant application.

(3) The international protection applicant card shall not be proof of identity but shall be considered to be sufficient means for an applicant—

- (a) to identify himself or herself to authorities of the State, and
- (b) to access his or her rights for the duration of the procedure for international protection, whether under this Act, any other enactment or the EU acts. 5

(4) An international protection applicant card shall cease to be valid—

- (a) where the person to whom it is issued no longer has a right to remain in the State in accordance with this Part or *Part 6*, or
- (b) upon the grant to the applicant of refugee status or subsidiary protection status.

(5) An international protection applicant card shall at all times remain the property of the Minister and the person to whom it is issued shall surrender or dispose of it without delay— 10

- (a) where it ceases to be valid under *subsection (4)*, or
- (b) upon request by the Minister.

(6) A person who forges, fraudulently alters, assists in forging or fraudulently altering, or procures the forging or fraudulent alteration of an international protection applicant card shall be guilty of an offence and shall be liable— 15

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years, or both. 20

(7) Where an application is not lodged upon registration, the Minister shall issue a document to the applicant in accordance with Article 29(1) of the Asylum Procedures Regulation. 25

(8) In the case of an applicant who is a minor, an international protection application card, or a document which is issued under *subsection (7)*, issued to one of the parents of the applicant or the adult who has responsibility for his or her care and protection may also be used in respect of the minor for the purposes set out in this Chapter, if appropriate.

## CHAPTER 5

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### *Withdrawal of application*

#### **Explicit withdrawal of application**

66. (1) An applicant may at any time (whether at first instance or on appeal) express an intention to withdraw his or her application by notice in writing addressed to—

- (a) the Determining Authority (at first instance), or 35
- (b) the Tribunal (on appeal).

(2) Where notice is given pursuant to *subsection (1)(a)*, the Determining Authority shall—

- (a) inform the applicant, in accordance with Article 8(2)(c) of the Asylum Procedures Regulation, of the procedural consequences of such a withdrawal in a language the applicant understands or is reasonably supposed to understand, and
- (b) make a declaration that the application has been explicitly withdrawn.

(3) Where notice is given pursuant to *subsection (1)(b)*, the Tribunal shall— 5

- (a) inform the applicant, in accordance with Article 8(2)(c) of the Asylum Procedures Regulation, of the procedural consequences of such a withdrawal in a language the applicant understands or is reasonably supposed to understand, and
- (b) inform the Determining Authority of the withdrawal of the application.

(4) After receiving a notice under *subsection (3)(b)*, the Determining Authority shall 10 adopt a decision declaring that the application has been explicitly withdrawn.

(5) Notwithstanding *subsection (2)(b)* or *(4)*, if, at the stage that the application is explicitly withdrawn by the applicant, the Determining Authority has already found that the applicant does not qualify for international protection, the Determining Authority may still take a decision to reject the application as unfounded or 15 manifestly unfounded.

### **Implicit withdrawal of application**

67. (1) The following are the grounds for implicit withdrawal:

- (a) the applicant, without good cause, has not lodged his or her application in accordance with *section 38* and Article 28 of the Asylum Procedures Regulation, 20 despite having had an effective opportunity to do so;
- (b) the applicant refuses to cooperate by not providing—
  - (i) the information referred to in *paragraphs (a) to (g) of section 37(2)*, or
  - (ii) his or her biometric data to a member of An Garda Síochána, an immigration officer, an officer of the Minister or a designated person, as may be directed, 25 in accordance with *section 15*;
- (c) the applicant refuses to provide his or her address, where he or she has one, unless housing is provided to him or her by the State;
- (d) the applicant has, without justified cause, not attended a personal interview which has been scheduled under *section 106* or, where applicable, *section 93(7)*; 30
- (e) the applicant has, without justified cause, refused to respond to questions during a personal interview to the extent that the outcome of the interview was not sufficient to take a decision on the merits of the application;
- (f) the applicant—
  - (i) has on three separate occasions failed to comply with reporting duties 35 imposed on him or her under *section 61(2)(c)(ii)*, or
  - (ii) does not remain available to the competent authorities, and he or she cannot demonstrate that such failure to remain available was due to specific circumstances beyond his or her control;

(g) the applicant has lodged the application in the State where—

- (i) the State is not the Member State of first entry, or
- (ii) the applicant is in possession of a valid residence document or a valid visa issued by another Member State,

and the applicant does not remain present in the State pending the determination of the Member State responsible under *Part 4* or the implementation of the transfer procedure in accordance with the Asylum and Migration Management Regulation, where applicable.

(2) Where the Determining Authority is of the opinion that any of the grounds in subsection (1) exist, it shall make a declaration that the application has been implicitly withdrawn.

(3) An application may be rejected as unfounded or manifestly unfounded where, at the stage the application is implicitly withdrawn, the Determining Authority has already found that the applicant does not qualify for international protection pursuant to the Qualification Regulation.

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## CHAPTER 6

### *Subsequent application*

#### **Subsequent application**

68. (1) Where an applicant makes a subsequent application, the Determining Authority shall conduct an examination (in this section referred to as a “preliminary examination”) to establish whether any new elements have arisen or have been presented by the applicant in that subsequent application that—

- (a) significantly increase the likelihood of the applicant qualifying as a beneficiary of international protection, or
- (b) where the previous application was rejected as inadmissible, relate to a ground set out in section 99(2) or (3) previously applied to his or her previous application.

(2) A preliminary examination shall be carried out on the basis of—

- (a) a personal interview in accordance with the basic principles and guarantees provided for in Chapter II of the Asylum Procedures Regulation, or
- (b) where it is clear that neither paragraph (a) or (b) of subsection (1) applies, written submissions.

(3) For the purposes of a preliminary examination, an element shall be considered to be new only where the applicant was unable, through no fault on his or her own part, to present those elements in the context of the previous application.

(4) Without prejudice to subsection (3), the Determining Authority need not consider an element which could have been presented in an earlier application to be new unless—

- (a) presentation of the element significantly increases the likelihood of—
  - (i) the application not being inadmissible, or

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- (ii) the applicant qualifying as a beneficiary of international protection,
- or
- (b) the previous application was rejected as implicitly withdrawn in accordance with *section 67* without an examination on its merits.

(5) Where new elements that satisfy the requirements of *paragraph (a)* or *(b)* of *subsection (1)* are presented by the applicant or have arisen as part of a subsequent application, the application shall be further examined on its merits, unless the application is considered to be inadmissible on the basis of another ground provided for in *section 99(3)*. 5

## PART 4

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### ASYLUM AND MIGRATION MANAGEMENT

#### CHAPTER 1

##### *Preliminary and general*

#### **Interpretation (Part 4)**

##### **69. (1) In this Part—**

“determining Member State” means the Member State carrying out the procedure specified in the Asylum and Migration Management Regulation to determine the Member State responsible;

“Member State” means—

- (a) a Member State of the European Union,
- (b) Norway,
- (c) Iceland,
- (d) Switzerland, and
- (e) Liechtenstein;

“person subject to the transfer procedure” means a person referred to in *section 85(1)*;

“transfer decision” means a decision taken by the Minister to transfer an applicant to the requested Member State, where the State is the requesting Member State and the requested Member State has accepted to take charge of, or to take back, that applicant or person.

- (2) A word or expression that is used in this Part and is also used in the Asylum and Migration Management Regulation has the same meaning in this Part as it has in the Asylum and Migration Management Regulation unless the contrary intention appears.
- (3) A reference in this Part to a numbered Article is a reference to the Article so numbered of the Asylum and Migration Management Regulation.

**Minister to share information for purposes of asylum and migration management**

70. (1) The Minister may request, and shall share, information in accordance with Article 51.

(2) The Minister shall ensure that any information shared with the Minister in accordance with *subsection (1)* is only—

- (a) used for the purposes set out in paragraph (1) of Article 51, and
- (b) communicated in accordance with paragraph (7) of that Article.

(3) The Minister shall inform the applicant of, and keep a record of, information exchanged in accordance with Article 51.

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**Minister to provide applicant with information on application of Asylum and Migration Management Regulation**

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71. (1) The Minister shall provide the applicant with information on the application of the Asylum and Migration Management Regulation, in accordance with Articles 19 and 20, on his or her rights pursuant to that Regulation and on his or her obligations set out in Article 17 as well as the consequences of non-compliance set out in Article 18 in either electronic or paper format as soon as possible and in any event by the date when an application for international protection is registered in the State.

(2) Without prejudice to *subsection (1)*, an applicant, and where the applicant is a minor, the parent or representative of the minor, may request information regarding the progress of the procedure and the Minister shall comply with such a request.

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**Minister may request another Member State to take charge of applicant to bring family together**

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72. (1) Where—

- (a) an application for international protection has been registered in the State and the Minister is carrying out the procedure for determining the Member State responsible, or
- (b) the State is the Member State responsible,

the Minister may, at any time before a first decision regarding the substance of an application is taken, with the express consent of the persons concerned to that effect in writing, request another Member State to take charge of the applicant in order to bring together any family relations, on humanitarian grounds based in particular on meaningful links regarding family, social or cultural considerations, even where that other Member State is not responsible according to the criteria laid down in Articles 25 to 28 and Article 34.

(2) The take charge request referred to in *subsection (1)* shall contain all the material in the possession of the Minister necessary to allow the requested Member State to assess the situation.

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## CHAPTER 2

### *Determination of Member State responsible*

#### **Minister to determine Member State responsible**

**73.** (1) Where the State is—

(a) the Member State where an application for international protection is first registered pursuant to the Asylum Procedures Regulation, or

(b) the Member State of relocation,

the Minister shall determine the Member State responsible in accordance with the Asylum and Migration Management Regulation without delay.

(2) If the applicant absconds the Minister shall continue the procedure for determining the Member State responsible. 10

(3) Where the Minister has conducted the procedure for determining the Member State responsible, or the State has become responsible pursuant to Article 16(4), the Minister shall without delay indicate each of the following in Eurodac pursuant to Article 16(1) of the Eurodac Regulation: 15

(a) the State's responsibility pursuant to Article 16(2);

(b) the State's responsibility pursuant to Article 16(3);

(c) the State's responsibility pursuant to Article 16(4);

(d) the State's responsibility due to its failure to comply with the time limits laid down in Article 39; 20

(e) the responsibility of the Member State which has accepted a request to take charge of the applicant pursuant to Article 40;

(f) the State's responsibility pursuant to Article 68(3).

#### **Determination of Member State responsible - assessment whether applicant poses threat to internal security**

**74.** (1) Where—

(a) a security check provided for in Article 15 of the Screening Regulation and sections 30 and 31 has not been carried out pursuant to that Regulation, and

(b) the State is the first Member State in which the application for international protection was registered, 30

the Minister shall examine whether there are reasonable grounds to consider that the applicant poses a threat to internal security as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III of the Asylum and Migration Management Regulation. 35

(2) Where—

- (a) a security check provided for in Article 15 of the Screening Regulation and *sections 30 and 31* has been carried out,
- (b) the State is the first Member State in which the application for international protection was registered, and
- (c) the Minister has justified reasons to examine whether there are reasonable grounds to consider that the applicant poses a threat to internal security,

the Minister shall carry out the examination as soon as possible after the registration of the application, before applying the criteria for determining the Member State responsible pursuant to Chapter II or the clauses set out in Chapter III of Part III of the Asylum and Migration Management Regulation.

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- (3) Where the security check carried out in accordance with *subsection (1)* or *(2)* shows that there are reasonable grounds to consider that the applicant poses a threat to internal security, the State shall be the Member State responsible, and Article 39 shall not apply.

#### **Personal interview for determining Member State responsible**

- 75. (1) In order to facilitate the procedure for determining the Member State responsible and to enable the applicant to properly understand the information received in accordance with *section 71*, the Minister shall conduct a personal interview with the applicant (referred to in this section as an “Article 22 interview”) in accordance with Article 22 for the purpose of applying Article 39.
- (2) At the Article 22 interview, the applicant shall be given the opportunity to present duly motivated reasons to the Minister in order for the Minister to consider applying Article 35(1).
- (3) The Minister shall fix, and notify the applicant in writing of, the time and place of the Article 22 interview and shall ensure that the interview takes place in a timely manner and, in any event, before any take charge request is made pursuant to Article 39.

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#### **Offence of forging or altering recording or summary of Article 22 interview**

- 76. A person who forges, fraudulently alters, assists in forging or fraudulently altering, or procures the forging or fraudulent alteration of, an audio recording of an Article 22 interview or a written summary thereof, or utters such a summary or recording knowing it to be forged or fraudulently altered, shall be guilty of an offence and shall be liable—
  - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both, or
  - (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years, or to both.

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## **Circumstances in which Article 22 interview may be omitted**

77. (1) The Minister may omit an Article 22 interview in any of the following circumstances:

- (a) the applicant has absconded;
- (b) the applicant has not attended the Article 22 interview and has not provided justified reasons for his or her absence;
- (c) the applicant, after having received the information referred to in *section 71*, has already provided the information relevant to determine the Member State responsible by other means.

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(2) Where the Minister omits an Article 22 interview in the circumstances referred to in *subsection (1)(c)* the Minister shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible within the period referred to in Article 39(1) including duly motivated reasons for the authority to consider the need for an Article 22 interview.

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## CHAPTER 3

### *Transfers*

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## **Request by State to other Member State to take charge of, or take back, applicant**

78. The Minister may, and as the case may be, shall submit—

- (a) a take charge request, or
- (b) a take back notification,

in accordance with the Asylum and Migration Management Regulation and shall carry out the functions of the State in relation to such a notification or request in accordance with that Regulation.

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## **Functions of Minister where State is transferring Member State**

79. Where the State is the transferring Member State under the Asylum and Migration Management Regulation, the Minister shall perform the functions of the transferring Member State in accordance with that Regulation.

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## **Minister to take transfer decision**

80. Where the State is the determining Member State and the Minister has made—

- (a) a take charge request as regards the applicant referred to in Article 36(1), point (a) that has been accepted, or
- (b) a take back notification as regards persons referred to in Article 36(1), point (b) and (c),

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the Minister shall take a transfer decision in accordance with the Asylum and Migration Management Regulation.

## **Notification of transfer decision**

81. Where the Minister takes a decision under *section 80* to transfer an applicant to the Member State responsible or the Member State of relocation, the Minister shall notify, and provide or communicate information to—

(a) the person concerned, and 5

(b) any legal adviser or other counsellor representing the person concerned,

in accordance with Article 42.

## **Appeal against transfer decision**

82. (1) Where the Minister takes a transfer decision under *section 80*, the person concerned may appeal to the Tribunal against the decision by notice in writing within a period of one week from the date of receipt of the notification of the decision under *section 81*. 10

(2) On an appeal under *subsection (1)*, the findings that the Tribunal may make shall be limited to the following:

(a) whether the transfer would, for the person concerned, result in a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter; 15

(b) whether there are circumstances subsequent to the transfer decision that are decisive for the correct application of the Asylum and Migration Management Regulation and this Part;

(c) whether Articles 25 to 28 and 34 have been infringed, in the case of persons taken charge of pursuant to Article 36(1), point (a). 20

(3) An appeal shall specify, in writing, the grounds of appeal and indicate whether the appellant wishes the Tribunal to hold an oral hearing for the purpose of his or her appeal.

(4) On receipt of a notice under *subsection (1)*, the Tribunal shall transmit a copy of the notice to the Minister and notify the Minister of the making of the appeal. 25

(5) The Minister shall without delay, following receipt of a copy of the notice under *subsection (1)*, cause the Tribunal to be provided with originals of any documents, reports, or representations in writing submitted to the Minister in relation to the transfer decision and shall cause the Tribunal to be provided with an indication of the nature and source of any other information relating to the transfer decision that has come to the notice of the Minister in the course of the making of the transfer decision. 30

(6) The Tribunal may direct that the Minister do the following:

(a) cause such inquiries as the Tribunal considers necessary or expedient for the purpose of deciding the appeal to be made with another Member State;

(b) cause the Tribunal to be furnished with such further information as the Tribunal considers necessary or expedient for the purpose of deciding the appeal. 35

(7) Where the Tribunal grants a request to remain under *section 83*, the Tribunal shall endeavour to decide on the substance of the appeal within one month of granting the request.

(8) The Minister may, in consultation with the Chief Appeals Officer and having regard to the need to observe fair procedures, prescribe procedures for and in relation to appeals and requests to remain under this Part, including the holding of oral hearings and, in doing so, may prescribe different procedures in respect of different classes of appeals and different classes of requests to remain. 5

(9) In relation to an appeal under this section against the making of a transfer decision, the Tribunal may—  
(a) affirm the transfer decision, or  
(b) set aside the transfer decision.

(10) The Tribunal's decision shall be in writing and shall include the reasons for the decision. 10

(11) Where the Tribunal makes a decision under *subsection (9)* it shall send a copy of the decision to the person concerned and his or her legal representative (if any) and to the Minister within one month of the notice under *subsection (1)*. 15

#### **Request to remain in State pending appeal**

83. (1) A person who appeals a transfer decision under *section 82* (referred to in this section as the “person concerned”) may within the period of one week referred to in that section and in accordance with regulations (if any) under *section 140*, submit a request in writing to the Tribunal to be allowed to remain in the State (in this Part referred to as a “request to remain”) pending the outcome of his or her appeal. 20

(2) A request to remain shall—  
(a) specify, in writing, the grounds on which the request is made, and  
(b) indicate whether the person concerned wishes the Tribunal to hold an oral hearing for the purpose of determining the request.

(3) The Tribunal may, without prejudice to the principle of non-refoulement— 25  
(a) grant a request to remain, or  
(b) refuse a request to remain.

(4) A decision to refuse a request to remain shall state the reasons on which it is based.

(5) The Tribunal shall, within 5 days of the date of the request under *subsection (1)* take a decision under *subsection (3)* and send a copy of the decision to— 30  
(a) the person concerned and his or her legal representative (if any), and  
(b) the Minister.

(6) Where the person concerned does not make a request under *subsection (1)*, an appeal against, or review of, the transfer decision shall not suspend the implementation of the transfer decision. 35

(7) Notwithstanding *subsection (6)*, the Minister shall not implement a transfer decision—

- before the expiry of the period in which an appeal against the transfer decision may be lodged under *section 82(1)*, and
- where a request to suspend the implementation of the transfer decision is made under *subsection (1)*, before the expiry of the period in which the Tribunal is to take a decision under *subsection (5)*.

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### **Additional functions of Minister in relation to transfer decision**

**84.** The Minister shall—

- consult with the Member State responsible before an applicant or another person as referred to in Article 36(1), points (b) and (c) is transferred from the State to that state, and
- ensure that the transfer be carried out as soon as practically possible and within 6 months of the acceptance of the take charge request, of the confirmation of the take back notification by another Member State or of the final decision on an appeal of a transfer decision where the person concerned makes a request to remain.

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### **Transfer of applicant from State to Member State responsible**

**85.** (1) Where the Minister takes a transfer decision referred to in Article 42(1), the applicant concerned may be transferred in accordance with Article 46 where he or she—

- does not make a request to remain,
- is unsuccessful in his or her request to remain,
- does not appeal under *section 82*, or
- appeals under *section 82* and the Tribunal affirms the transfer decision.

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(2) The Minister shall, where necessary, in order to facilitate the transfer of a person subject to the transfer procedure, issue to the person a *laissez-passer* or such other travel document as the Minister considers appropriate.

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### **Powers of immigration officer, etc. for purposes of facilitating transfer**

**86.** (1) An immigration officer or a member of An Garda Síochána may, for the purpose of facilitating the transfer of a person the subject of a transfer decision, by notice in writing require the person to comply with one or more than one of the following conditions:

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- that he or she present himself or herself to such immigration officer or member of An Garda Síochána at such date, time and place as may be specified in the notice;
- where, and only for so long as, it is reasonably necessary to facilitate his or her transfer, that he or she surrender his or her passport and any other travel document that he or she holds;

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- (c) that he or she cooperate in any way necessary to enable an immigration officer or a member of An Garda Síochána to obtain a passport or other travel document, *laissez-passer*, travel ticket or other document required for the purpose of such transfer;
- (d) that he or she reside or remain in a particular place in the State pending his or her transfer. 5

(2) A person who is the subject of a transfer decision shall comply with a requirement under *subsection (1)*.

#### Arrest and detention of applicant subject of transfer decision

87. (1) Where the Minister takes a decision under *section 80* to transfer an applicant to the Member State responsible or the Member State of relocation and an immigration officer or a member of An Garda Síochána considers on the basis of an individual assessment of the individual case— 10

- (a) that specific reasons or circumstances exist to believe that there is a serious risk that the person might abscond, or 15
- (b) that the protection of national security or public order so requires,

the officer or member (in this section referred to as the “arresting officer or member”) may, in order to ensure transfer procedures in accordance with the Asylum and Migration Management Regulation and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively, arrest and detain the person concerned in accordance with this section without warrant. 20

(2) The arresting officer or member shall detain the person concerned for as short a period as possible and for no longer than the time reasonably necessary to facilitate the transfer of the person under the Asylum and Migration Management Regulation or to complete the required administrative procedures with due diligence until the transfer is carried out. 25

(3) A person arrested in accordance with *subsection (1)* may be taken by an immigration officer or a member of An Garda Síochána to a prescribed place of detention and detained— 30

- (a) in a prescribed place of detention under warrant of the arresting officer or member and in the custody of the officer or member of An Garda Síochána for the time being in charge of the place, and
- (b) without prejudice to *subsection (2)*, for a period not exceeding 5 weeks.

(4) For the purpose of arresting a person under *subsection (1)*, an immigration officer or member of An Garda Síochána may enter (if necessary by use of reasonable force) and search any premises (including a dwelling) where the person is or where the immigration officer or member, with reasonable cause, suspects the person to be. 35

(5) Where the premises where the person is, or where the immigration officer or member suspects the person to be, is a dwelling the immigration officer or member shall not, unless acting with the consent of an occupier of the dwelling or other person who appears to the immigration officer or member to be in charge of the dwelling, enter that dwelling unless— 40

(a) the person ordinarily resides at the dwelling, or

(b) the immigration officer or member believes on reasonable grounds that the person is within the dwelling.

(6) The matters to which an officer or member referred to in *subsection (1)* may have regard, in considering whether there is a serious risk that the person subject to the transfer procedure might abscond, include the following:

(a) whether the person, in the purported discharge of his or her duty to establish his or her identity, has misrepresented or omitted facts, whether or not by the use of false documents;

(b) whether the person has failed to comply with a requirement under *section 160*; 10

(c) whether the person, having been informed of arrangements for his or her transfer, has failed to cooperate with those arrangements;

(d) whether the person has explicitly expressed an intention not to comply with arrangements for his or her transfer;

(e) whether the person has previously failed to comply with the law of the State, or 15 of another state, relating to the entry or presence of foreign nationals in the State or, as the case may be, in that state.

(7) Subject to *subsection (8)*, *subsections (1)* and *(3)* shall not apply to a person subject to the transfer procedure who is under the age of 18 years.

(8) If and for so long as the immigration officer or member of An Garda Síochána concerned has reasonable grounds for believing that the person subject to the transfer procedure is not under the age of 18 years, the provisions of *subsections (1)* and *(3)* shall apply as if he or she had attained the age of 18 years. 20

(9) An immigration officer or member of An Garda Síochána may, for the purpose of the transfer, detain a person subject to the transfer procedure in accordance with *subsection (10)* and place him or her on a vehicle that is soon to leave the State, and to make the necessary arrangements to place the person on that vehicle, and the person shall be deemed to be in lawful custody while so detained and until the vehicle leaves the State. 25

(10) A person who is detained under *subsection (9)* may, for the purposes of that subsection, be detained— 30

(a) for a period no longer than 35 days,

(b) for a period or periods each not exceeding 12 hours, in a vehicle, for the purpose of bringing the person to the port from which the vehicle referred to in *subsection (9)* is due to leave the State, or 35

(c) for a period or periods each not exceeding 12 hours, within the port referred to in paragraph (b).

(11) The master or person in charge of a vehicle that is about to leave the State shall, if so directed by an immigration officer or member of An Garda Síochána, receive a person subject to the transfer procedure on board the vehicle and afford the person so received proper accommodation and maintenance during the journey concerned. 40

## CHAPTER 4

### *Procedures where State is Member State responsible*

#### **Request by other Member State to State to take charge of applicant, or take back, for international protection**

88. Where the State receives a take charge request or a take back notification in accordance with Article 35, 39 or 41 the Minister shall carry out the functions of the State in relation to such request or notification in accordance with the Asylum and Migration Management Regulation. 5

#### **Procedure where State takes charge of, or takes back, applicant for international protection**

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89. (1) This section applies to each of the following persons:

(a) an applicant whose application was registered in a different Member State of whom the State takes charge under the conditions laid down in Articles 39, 40 and 46;

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(b) an applicant or a third-country national or a stateless person in relation to whom the State has received a notification from another Member State that the State is the Member State responsible;

(c) an applicant or a third-country national or a stateless person whom the State takes back under the conditions laid down in Articles 41 and 46;

(d) an admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit him or her in accordance with the Union Resettlement and Humanitarian Admission Framework Regulation, or which granted international protection or humanitarian status under a national resettlement scheme whom the State takes back under the conditions laid down in Articles 41 and 46. 20

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(2) The Determining Authority shall examine or complete the examination of the application for international protection of a person to whom this section applies in accordance with the Asylum Procedures Regulation.

(3) The Determining Authority shall, as soon as practicable after commencing the examination of an application of a person to whom this section applies, send the person, and his or her legal representative, if any, a notice in writing informing him or her of the effect of *subsection (2)*. 30

## PART 5

### EXAMINATION OF APPLICATIONS FOR INTERNATIONAL PROTECTION

#### CHAPTER 1

##### *Medical examination for indications of past persecution or serious harm*

###### **Determining Authority may request medical examination for indications of past persecution or serious harm** 5

90. (1) Where the Determining Authority deems it relevant for the examination of an application for international protection, it shall, subject to the applicant's consent, request a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm. 10

(2) In the case of a minor, the medical examination referred to in *subsection (1)* shall only be carried out with the consent of the minor's parent, guardian or such other adult who has responsibility for the care and protection of the minor or in the case of an unaccompanied minor, the provisional representative person or representative person. 15

(3) The medical examination referred to in *subsection (1)* shall be free of charge for the applicant and be paid for from public funds. 15

(4) The registered medical practitioner who undertakes the medical examination referred to in *subsection (1)* shall have access to the results of any previous checks carried out in accordance with *sections 27 and 28* and such checks may be taken into account for that medical examination. 20

(5) Where no medical examination is carried out in accordance with *subsection (1)* the Determining Authority shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs and symptoms that might indicate past persecution or serious harm. 25

(6) The results of the medical examinations referred to in *subsection (1)* or *subsection (5)* shall be submitted to the Determining Authority and to the applicant as soon as possible and shall be assessed by the Determining Authority along with the other elements of the application. 25

(7) The medical examination referred to in this section shall—

- (a) be undertaken only by a registered medical practitioner,
- (b) be the least invasive possible, and
- (c) be performed in a way that respects the applicant's dignity.

(8) An applicant's—

- (a) refusal to undergo a medical examination, or
- (b) decision to undergo a medical examination on his or her own initiative, where such an examination does not take place within a suitable time-frame, taking into account the availability of appointments for medical examinations,

shall not prevent the determining body, or the Tribunal, from taking a decision on the application for international protection or appeal, as the case may be.

## CHAPTER 2

### *Examination Procedure*

#### **Examination of applications**

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91. (1) The Determining Authority shall examine and take decisions on applications for international protection in accordance with the basic principles and guarantees set out in Chapter II of the Asylum Procedures Regulation.

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(2) The Determining Authority shall take decisions on applications after an appropriate examination as to the admissibility of an application or the merits of an application as the case may be.

(3) The Determining Authority shall examine applications objectively, impartially and on an individual basis.

(4) For the purpose of examining an application, the Determining Authority shall take the following into account:

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(a) the relevant statements and documentation presented by the applicant in accordance with Article 4(1) and (2) of the Qualification Regulation and *section 39*;

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(b) relevant, precise and up-to-date information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, obtained from relevant and available national, European Union and international sources, including children's rights organisations and, where available, the common analysis on the situation in specific countries of origin and the guidance notes referred to in Article 11 of the European Union Agency for Asylum Regulation;

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(c) where applying the concepts of first country of asylum or safe third country, relevant, precise and up-to-date information relating to the situation prevailing in the third country being considered as a first country of asylum or a safe third country at the time of taking a decision on the application, including information and analysis on safe third countries referred to in Article 12 of the European Union Agency for Asylum Regulation;

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(d) where applying the concept of safe country of origin, in accordance with *section 13*, any serious grounds submitted by the applicant for considering the country not to be a safe country of origin in his or her particular circumstances;

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(e) the individual position and personal circumstances of the applicant, including factors such as the applicant's background, age, gender, gender identity and sexual orientation, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

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(f) whether the activities that the applicant was engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm, as referred to in Article 5 of the Qualification Regulation, if returned to that country; 5

(g) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship;

(h) provided that the state, being the country of origin or, in the case of stateless persons, of habitual residence, or agents of the state are not the actors of persecution or serious harm, whether the internal protection alternative referred to in Article 8 of the Qualification Regulation applies. 10

(5) For the purposes of Article 12(5) and Article 17(5) of the Qualification Regulation, the Determining Authority and the Tribunal shall take into account a minor's capacity to be considered responsible under criminal law in accordance with section 52 of the Children Act 2001 as if the minor had committed the crime concerned in the State. 15

(6) The staff of the Determining Authority examining applications and taking decisions shall—

(a) have the appropriate knowledge and have received training, including the relevant training under Article 8 of the European Union Agency for Asylum Regulation, in the relevant standards applicable in the field of asylum and refugee law, 20

(b) have 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, and 25

(c) be able, where necessary, to submit queries to the Asylum Agency in accordance with Article 10(2), point (b), of the European Union Agency for Asylum Regulation.

(7) Documents assessed by the Determining Authority as relevant for the examination of applications shall be translated, where necessary, for such examination. 30

(8) The applicant may, at his or her own cost, ensure the translation of documents to which *subsection (7)* does not apply.

(9) For subsequent applications, the Determining Authority may make the applicant responsible for the translation of documents.

**Determining Authority may prioritise examination of applications for international protection** 35

92. The Determining Authority may prioritise the examination of an application for international protection in particular where—

(a) it considers that the application is likely to be well-founded,

- (b) the applicant is an applicant with special reception needs as referred to in the Reception Conditions Directive or is in need of special procedural guarantees, in particular where he or she is an unaccompanied minor, 5
- (c) there are reasonable grounds to consider the applicant as a danger to the national security or public order of the State, 5
- (d) the application is a subsequent application, 5
- (e) the applicant—
  - (i) has been subject to a decision in accordance with the Reception Conditions Directive to reduce or withdraw a daily expenses allowance or other material reception conditions, or 10
  - (ii) has engaged in criminal behaviour, 10
- (f) the applicant does not possess identity documents and has not provided a reasonable explanation for the absence of such documents, 15
- (g) the applicant has failed to provide a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin, 15
- (h) the applicant has failed to provide a full and true explanation of how he or she travelled to and arrived in the State, 15
- (i) the application was made other than at the frontier of the State and is not grounded on events which have taken place since the applicant's arrival in the State and the applicant has failed to provide a reasonable explanation to show why he or she did not make an application for international protection, or, as the case may be, an application under section 13 of the Act of 2015, immediately on arriving at the frontier of the State, 20
- (j) the applicant has forged, destroyed or disposed of any identity or other documents relevant to his or her application, and has not provided a reasonable explanation for so doing, 25
- (k) the applicant has adduced manifestly false evidence in support of his or her application, or has otherwise made false representations, either orally or in writing, 30
- (l) the applicant, without reasonable cause, has made an application following the notification of a proposal under section 3(3)(a) of the Act of 1999, 30
- (m) the applicant has failed to comply with the requirements of *section 63*, 30
- (n) the applicant is a person in respect of whom the Child and Family Agency is providing care and protection, 35
- (o) the applicant, without reasonable cause, has failed to comply with *section 61(2)* or a requirement under *section 126*, 35
- (p) the applicant is from a safe country of origin, 35

- (q) the country of origin of the applicant is a country in respect of which there are a large number of applications and there is a need to ensure that these and all other applications are dealt with in an efficient manner.

### CHAPTER 3

#### *Personal interviews*

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#### **Requirement to give applicant opportunity of personal interview**

93. (1) Where an application for international protection is lodged in accordance with *section 38*—

- (a) the adult responsible referred to in that provision shall be given the opportunity of a personal interview pursuant to *sections 99 and 106*, and

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- (b) provided that *subsection (4)(b)* does not apply, the applicant shall be given the opportunity to participate in that interview.

(2) Personal interviews shall be conducted in accordance with the conditions established in this Chapter.

(3) The admissibility interview, may be omitted where the Determining Authority considers that the application is not inadmissible on the basis of the evidence available.

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(4) The admissibility interview or the substantive interview, as applicable, may be omitted where—

- (a) the Determining Authority is able to take a positive decision with regard to the refugee status on the basis of the evidence available,

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- (b) the Determining Authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond the applicant's control,

- (c) in the case of a subsequent application, the preliminary examination referred to in *section 68* is carried out on the basis of a written statement,

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- (d) the Determining Authority considers the application inadmissible pursuant to *section 99(3)(c)*,

- (e) in the case of an application by a minor, a person carrying out an assessment under *section 28(7)* has assessed that a personal interview would not be in the best interests of the minor.

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(5) Where the personal interview is omitted pursuant to *subsection (4)(b)*—

- (a) the omission shall not adversely affect the decision of the Determining Authority, and

- (b) the Determining Authority shall give the applicant an effective opportunity to submit further information in writing.

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(6) When in doubt as to the fitness or ability of the applicant to be interviewed, the Determining Authority shall consult a medical professional to establish whether the applicant is temporarily unfit or unable to be interviewed or whether his or her situation is of an enduring nature and where, following consultation with that medical

professional, it is clear that the condition making the applicant unfit or unable to be interviewed is of a temporary nature, the Determining Authority shall postpone the personal interview until such time as the applicant is fit or able to be interviewed.

(7) Where the applicant is unable to attend the personal interview owing to specific circumstances beyond his or her control, the Determining Authority shall, without prejudice to *section 67*, reschedule the personal interview. 5

(8) Without prejudice to *sections 99 and 106* and provided that sufficient efforts have been made to ensure that the applicant has been afforded the opportunity of a personal interview, the absence of a personal interview shall not prevent the Determining Authority from taking a decision on the application for international protection. 10

### **Requirements for personal interviews**

94. (1) Personal interviews as provided for in *sections 99 and 106* shall be conducted in accordance with the conditions established in this Chapter. 15

(2) The personal interviews shall be conducted under conditions which ensure appropriate privacy and confidentiality and which allow applicants to present the grounds for their applications in a comprehensive manner. 15

(3) The applicant shall be present at the personal interview and shall be required to respond in person to the questions asked. 20

(4) The Determining Authority may hold the personal interview by video conference where duly justified by the circumstances, in which case the Determining Authority shall ensure the necessary arrangements for the appropriate facilities, procedural and technical standards, legal assistance and interpretation taking into account guidance from the Asylum Agency. 20

(5) The Determining Authority shall ensure that an interpreter who is able to ensure appropriate communication between the applicant and the person conducting the interview is provided whenever necessary for the personal interviews and communication shall take place 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. 25

(6) Personal interviews shall be conducted by the staff of the Determining Authority. 30

(7) Where there is a disproportionate number of third-country nationals or stateless persons who make an application within the same period of time, making it unfeasible to conduct timely personal interviews of each applicant, the Determining Authority may be assisted temporarily by the staff of other authorities of the State who shall receive in advance the relevant training which shall include the elements listed in Article 8 of the European Union Agency for Asylum Regulation to conduct such interviews or by the Asylum Agency in accordance with Article 5 of the Asylum Procedures Regulation. 35

(8) The Determining Authority shall ensure that the person conducting the interview is competent to take account of the personal and general circumstances surrounding the application, including the situation prevailing in the applicant's country of origin, and the applicant's cultural origin, age, gender, gender identity, sexual orientation, vulnerability and special procedural needs. 40

## Conduct of personal interview

95. (1) The following may be present at a substantive interview:

- (a) the High Commissioner, whenever he or she so requests;
- (b) in the case of an unaccompanied minor, the provisional representative person or representative person;
- (c) the applicant's legal representative or, with the consent of the applicant, a person nominated by that legal representative;
- (d) a cultural mediator.

(2) The presence of a cultural mediator may be provided by the Determining Authority during the personal interviews.

(3) The Determining Authority shall give preference to interpreters and cultural mediators that have received training, such as training referred to in Article 8(4), point (m), of the European Union Agency for Asylum Regulation.

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## Legal assistance at personal interview

96. (1) An applicant shall be allowed to be assisted by a legal adviser in the personal interview, including when it is held by video conference.

(2) Where a legal adviser participates in the personal interview, the legal adviser may only intervene at the end of the personal interview.

(3) The absence of the legal adviser shall not prevent the Determining Authority from conducting the interview.

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## Report and recording of personal interviews

97. (1) The Minister shall by regulations require the Determining Authority or any other authority or experts assisting the Determining Authority in accordance with section 94(7) with conducting the personal interviews to produce, in such form as the Minister shall prescribe—

- (a) a thorough and factual report containing all the main elements of the personal interview,
- (b) a transcript of the interview, or
- (c) a transcript of the recording of such an interview.

(2) The document referred to in subsection (1) (referred to in this section as the “personal interview report”) shall be included in the applicant’s file.

(3) The personal interviews shall be recorded using audio means of recording.

(4) The applicant shall be informed in advance of the fact that a recording is being made and the purpose thereof and particular attention shall be paid to the requirements of applicants in need of special procedural guarantees in relation to the recording.

(5) The Determining Authority shall include the recording under subsection (3) in the applicant’s file.

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(6) 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 personal interview report at the end of the personal interview before the Determining Authority takes a decision. 5

(7) For the purposes of *subsection (6)*, the applicant shall be informed of the entire content of the personal interview report, with the assistance of an interpreter, where necessary. 10

(8) The applicant shall be requested to confirm that the content of the personal interview report correctly reflects the personal interview. 10

(9) Where the applicant refuses to confirm the content, the reasons for that refusal shall be entered in the applicant's file but the refusal shall not prevent the Determining Authority from taking a decision on the application. 15

(10) Where there is doubt as to the statements made by the applicant during the personal interview, the audio recording shall prevail. 15

(11) The applicant and, in the case of an unaccompanied minor, the provisional representative person or representative person and, where applicable, the applicant's representative and his or her legal advisers shall have access to the personal interview report as soon as possible after the interview and in any case in due time before the Determining Authority takes a decision. 20

(12) A person who forges, fraudulently alters, assists in forging or fraudulently altering or procures the forging or fraudulent alteration of—

- (a) a personal interview report produced by the Determining Authority or any other authority or experts assisting the Determining Authority, or
- (b) an audio recording of a personal interview, 25

shall be guilty of an offence.

(13) A person guilty of an offence under *subsection (12)* shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years, or to both. 30

#### CHAPTER 4

##### *Decisions on applications*

##### **Decision on applications for international protection and notification of decision**

98. (1) A decision on an application for international protection (referred to in this Chapter as a “decision on an application”) shall be given by the Determining Authority in writing and shall be notified (by a notification referred to in this Act as a “*section 98 notification*”) to— 35

- (a) the applicant, and

(b) where a representative or legal adviser legally represents the applicant, such representative or legal adviser,  
as soon as possible in accordance with *section 4*.

(2) In the case of applications on behalf of minors or dependent adults and where the applications are all based on the exact same grounds as the application of the adult responsible for that minor or dependent adult, the Determining Authority may, subject to *subsection (3)*, following an individual assessment for each applicant, take a single decision covering all applicants. 5

(3) Where to take a single decision covering all applicants in accordance with *subsection (2)* 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, the Determining Authority shall issue and notify a separate decision in accordance with *subsection (1)* to the person concerned. 10

(4) Where an application is rejected as inadmissible, as unfounded or as manifestly unfounded with regard to refugee status or subsidiary protection status, as explicitly withdrawn or as implicitly withdrawn, the reasons in fact and in law for the rejection shall be stated in the decision. 15

(5) The *section 98* notification shall—  
 (a) be in writing, 20  
 (b) inform the applicant of the result of the decision, and  
 (c) where an application is rejected as inadmissible, as unfounded or as manifestly unfounded with regard to refugee status or subsidiary protection status or as implicitly withdrawn, inform the applicant of his or her entitlement to appeal to the Tribunal against the decision, and of the procedures specified in *Part 6* in relation to such an appeal. 25

(6) Where the applicant is not assisted by a legal adviser, the information specified in paragraphs (b) and (c) of *subsection (5)* shall be provided in a language that the applicant understands or is reasonably supposed to understand.

(7) Where the applicant is assisted by a legal adviser who legally represents the applicant—  
 (a) the information referred to in *subsection (5)(b)* may be provided solely to that legal adviser without being translated into a language which the applicant understands or is reasonably supposed to understand, and  
 (b) the fact of whether or not international protection is granted shall be communicated, in writing, for information to the applicant in a language which he or she understands or is reasonably supposed to understand, together with general information on how to challenge the decision. 30 35

## Assessment of admissibility of application

99. (1) The Determining Authority shall assess the admissibility of an application in accordance with the basic principles and guarantees provided for in Chapter II of the Asylum Procedures Regulation.

(2) The Determining Authority shall reject an application as inadmissible where— 5

- (a) the application is a subsequent application, and
- (b) no new relevant elements as referred to in Article 55 of the Asylum Procedures Regulation relating to—
  - (i) the examination of whether the applicant qualifies as a beneficiary of international protection in accordance with the Qualification Regulation, or 10
  - (ii) the inadmissibility ground previously applied,

have arisen or have been presented by the applicant.

(3) The Determining Authority may reject an application as inadmissible where any of the following grounds applies: 15

(a) a country which is not a Member State is considered to be a first country of asylum for the applicant, unless it is clear that the applicant will not be admitted or readmitted to that country;

(b) a country which is not a Member State is considered to be a safe third country for the applicant, unless it is clear that the applicant will not be admitted or readmitted to that country; 20

(c) a Member State other than the State has granted the applicant international protection;

(d) the International Criminal Court or an international tribunal has provided safe relocation for the applicant to a Member State or third country, or is unequivocally undertaking actions to that effect, unless new relevant circumstances have arisen which have not been taken into account by the court or tribunal or where there was no legal possibility to raise circumstances relevant to internationally recognised human rights standards before that court or tribunal; 25

(e) the applicant concerned—

(i) was issued with— 30

(I) a deportation order,

(II) a return order under section 51A of the Act of 2015,

(III) a return decision under *section 154 or 156*, or

(IV) a return decision in accordance with Article 6 of Directive 2008/115/EC,

and 35

(ii) made his or her application more than 7 working days from the date on which the applicant received that order or decision,

provided that he or she had been informed of the consequences of not making an application within that time limit and that no new relevant elements have arisen

since the end of that period that were not previously considered by the Minister (under section 3(3)(b) of the Act of 1999 or otherwise).

(4) Without prejudice to *subsection (3)*, before a decision is taken by the Determining Authority on the inadmissibility of an application the Determining Authority shall give the applicant the opportunity of a personal interview on admissibility (referred to in this Act as an “admissibility interview”).

(5) The Determining Authority may fix the time and place of the admissibility interview.

(6) In the admissibility interview, the applicant shall be given an opportunity to provide reasons as to why the inadmissibility grounds provided for in *subsections (2)* and *(3)* are not applicable to him or her.

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#### **Duration of examination to determine whether application is inadmissible**

**100.** (1) The examination to determine whether an application is inadmissible in accordance with *section 99* shall be concluded as soon as possible and no later than two months from the date on which the application is lodged.

(2) In the case referred to in *section 99(3)(e)*, the Determining Authority shall conclude the examination within ten working days.

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(3) An application shall not be deemed to be admissible solely by reason of the fact that no decision on inadmissibility is taken within the time limits set out in this section.

(4) The Determining Authority may extend the time limits provided for in *subsection (1)* by no more than two months where any of the following applies:

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(a) a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it unfeasible to conclude the admissibility procedure within the set time limits;

(b) complex issues of fact or law are involved;

(c) the delay can be attributed clearly and solely to the failure of the applicant to comply with his or her obligations under Article 9 of the Asylum Procedures Regulation.

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#### **Decision to reject application as inadmissible**

**101.** (1) Where the Determining Authority rejects an application as inadmissible as a result of the application of the concept of first country of asylum, the *section 98* notification shall—

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(a) inform the applicant of that fact, and

(b) be accompanied by a document informing the authorities of the third country in question, in the language of that country, that the application has not been examined in substance as a consequence of the application of the concept of first country of asylum.

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(2) Where the Determining Authority rejects an application as inadmissible as a result of the application of the concept of safe third country, the *section 98* notification shall—

(a) inform the applicant of that fact, and

(b) be accompanied by a document informing the authorities of the third country in question, in the language of that country, that the application has not been examined in substance as a consequence of the application of the concept of safe third country.

**Finding that applicant's country of origin is safe country of origin**

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**102.** Where as part of a decision on an application for international protection the Determining Authority makes a finding that the applicant's country of origin is a safe country of origin, that fact shall be referred to in the *section 98* notification.

**Rejection of application and issuance of return decision**

**103.** Where a return decision is issued on foot of a decision on an application for international protection the *section 98* notification shall state that fact. 10

**Examination of merits of application**

**104.** An application shall not be examined on the merits where—

(a) the Minister determines, in accordance with *Part 4*, that another Member State is the Member State responsible, 15  
(b) an application is rejected as inadmissible, or  
(c) an application is explicitly or implicitly withdrawn, without prejudice to *section 66(5)* and *section 67(3)*.

**Determining Authority may decide not to grant refugee status**

**105.** (1) Where, in the course of an examination under *section 104*, or of an appeal under *section 129* but before a decision is taken under *section 106* or, as the case may be, on the appeal under *section 137*— 20

(a) reasonable grounds exist for the Determining Authority to regard the applicant as a danger to the security of the State, or  
(b) the Determining Authority becomes aware that the applicant has been convicted by a final judgment of a particularly serious crime and is satisfied that the applicant constitutes a danger to the community of the State, 25

the Determining Authority may decide not to grant refugee status to the applicant.

(2) Where the Determining Authority takes a decision referred to in *subsection (1)*, *section 107* shall not apply. 30

**Decision on merits of application**

**106.** (1) Subject to *subsection (2)*, when examining an application on the merits, the Determining Authority shall take a decision on whether the applicant qualifies as a refugee and, if not, it shall determine whether the applicant is eligible for subsidiary protection in accordance with the Qualification Regulation. 35

(2) Where the Determining Authority decides not to grant refugee status to an applicant in accordance with *section 105(1)*, the Determining Authority shall determine whether the applicant is eligible for subsidiary protection in accordance with the Qualification Regulation. 5

(3) Before the Determining Authority takes a decision on the merits of an application for international protection, the applicant shall be given the opportunity of a personal interview on the substance of his or her application (referred to in this Act as a “substantive interview”). 10

(4) The Determining Authority may fix the time and place of the substantive interview. 15

(5) The substantive interview may be conducted at the same time as the admissibility interview provided the applicant has been informed of such a possibility in advance and has been able—

- (a) where he or she is assisted by a legal adviser, to consult with his or her legal adviser, or
- (b) where *paragraph (a)* does not apply, to consult with a person entrusted with providing legal counselling. 20

(6) In the substantive interview, the applicant shall be given the opportunity to—

- (a) present the elements needed to substantiate his or her application in accordance with the Qualification Regulation, and
- (b) provide an explanation regarding elements which might be missing or any inconsistencies or contradictions in his or her statements. 25

(7) In the substantive interview, the applicant shall provide the elements referred to in Article 4(2) of the Qualification Regulation as completely as possible.

(8) The decision of the Determining Authority on the merits of an application shall be that—

- (a) the applicant qualifies as a refugee,
- (b) the applicant does not qualify as a refugee and is eligible for subsidiary protection in accordance with the Qualification Regulation, or
- (c) the applicant does not qualify as a refugee and is not eligible for subsidiary protection in accordance with the Qualification Regulation. 30

(9) Where the Determining Authority makes a decision on the merits of an application, the decision shall—

- (a) refer to—

- (i) the elements which substantiate the application raised by the applicant in his or her application, at his or her personal interview or through submissions to the Determining Authority no later than 5 days from the date of the personal interview or in accordance with *section 39(3)*, and 35
- (ii) such other matters specified in *section 91(4)* that the Determining Authority considers appropriate,

and 40

(b) set out the reasons for the decision.

#### **Grant of refugee status following decision that person qualifies as refugee**

**107.** Subject to *section 105(2)*, where the Determining Authority or, on appeal, the Tribunal, makes a decision that a person qualifies as a refugee that decision shall state that the person is granted refugee status in accordance with Article 13 of the Qualification Regulation. 5

#### **Grant of subsidiary protection status following decision that person is eligible for subsidiary protection**

**108.** Where the Determining Authority or, on appeal, the Tribunal, makes a decision that a person is eligible for subsidiary protection in accordance with the Qualification Regulation, the decision shall state that the person is granted subsidiary protection status in accordance with Article 18 of that Regulation. 10

#### **Rejection of application as unfounded**

**109.** (1) The Determining Authority shall reject an application as unfounded where it has established that the applicant does not qualify for international protection pursuant to the Qualification Regulation. 15

(2) The Determining Authority may declare an unfounded application to be manifestly unfounded if, at the time of the conclusion of the examination, any of the circumstances referred to in *subsection (1)* or *(4)* of *section 115* apply.

#### **Duration of examination procedure on merits**

**110.** (1) The Determining Authority shall ensure that an examination procedure on the merits, provided that it is not under the accelerated examination procedure or the asylum border procedure, is concluded as soon as possible and no later than six months from the date on which the application is lodged, without prejudice to an adequate and complete examination. 20 25

(2) The Determining Authority may extend the time limit of six months referred to in *subsection (1)* by a period of not more than six months where—

(a) a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it unfeasible to conclude the procedure within the six-month time limit, 30

(b) complex issues of fact or law are involved,

(c) the delay can be attributed clearly and solely to the failure of the applicant to comply with his or her obligations under Article 9 of the Asylum Procedures Regulation.

(3) Where an applicant is subject to a transfer procedure to the State as laid down in Article 46 of the Asylum and Migration Management Regulation, the time limit referred to in *subsection (1)* shall start to run from the date on which the application is lodged in accordance with *section 38*. 35

(4) The Determining Authority may postpone concluding the examination procedure where it cannot reasonably be expected to decide within the time limits laid down in *subsection (1)* due to an uncertain situation in the country of origin which is expected to be temporary.

(5) In cases where the Determining Authority postpones concluding the examination procedure under *subsection (4)*, the Minister shall inform the Commission and the Asylum Agency as soon as possible of the postponement of procedures for that country of origin. 5

(6) In cases where the Determining Authority postpones concluding the examination procedure under *subsection (4)*, the Determining Authority shall— 10

- (a) conduct reviews of the situation in that country of origin at least every four months,
- (b) where available, take into account reviews of the situation in that country of origin carried out by the Asylum Agency, and
- (c) inform the applicants concerned, in a language which they understand or are reasonably supposed to understand and as soon as possible, of the reasons for the postponement. 15

**Examination procedure to conclude within 21 months of lodging of application**

111. In any event, the Determining Authority shall conclude the examination procedure within 21 months from the lodging of an application. 20

**Duration of examination procedure where court annuls decision of Determining Authority and refers back**

112. The Minister shall by regulations prescribe time limits shorter than the time limits set out in *section 100, 110 and 111* for the conclusion of the examination procedure in cases where a court or tribunal annuls the decision of the Determining Authority and refers the case back. 25

**Decision that applicant qualifies as refugee**

113. Where the decision of the Determining Authority is that the applicant qualifies as a refugee, the *section 98* notification shall include information on the rights and obligations relating to refugee status. 30

**Decision that applicant does not qualify as refugee and is eligible for subsidiary protection**

114. Where the decision of the Determining Authority is that the applicant does not qualify as a refugee and is eligible for subsidiary protection, the *section 98* notification shall, in particular, include information on the rights and obligations relating to subsidiary protection. 35

**Accelerated examination procedure**

**115.** (1) Without prejudice to *section 122*, the Determining Authority shall, in accordance with the basic principles and guarantees provided for in Chapter II of the Asylum Procedures Regulation, accelerate the examination on the merits of an application for international protection where—

(a) the applicant, in lodging his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection in accordance with the Qualification Regulation, 10

(b) the applicant has made clearly inconsistent or contradictory or clearly false or obviously improbable representations or representations which contradict relevant and available country of origin information, thus making his or her claim clearly unconvincing as to whether he or she qualifies as a beneficiary of international protection in accordance with the Qualification Regulation, 15

(c) the applicant, after having been provided with the full opportunity to show good cause, is considered to have intentionally misled the authorities by presenting false information or documents or by withholding relevant information or documents, particularly with respect to his or her identity or nationality, that could have had a negative impact on the decision or there are clear grounds to consider that the applicant has, in bad faith, destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality, 20

(d) the applicant makes an application merely to delay, frustrate or prevent the enforcement of a decision for his or her removal from the territory of the State, 25

(e) a third country may be considered to be a safe country of origin for the applicant,

(f) there are reasonable grounds to consider the applicant a danger to the national security or public order of the State or the applicant had been forcibly expelled for serious reasons of national security or public order under the national law of a Member State, 30

(g) the application is a subsequent application which is not inadmissible,

(h) the applicant entered the territory of the State unlawfully and, without good reason, has not made an application as soon as possible, given the circumstances of his or her entry, 35

(i) the applicant entered the territory of the State lawfully and, without good reason, has not made an application as soon as possible, given the grounds of his or her application, without prejudice to the need of international protection arising *sur place*, or

(j) the applicant is a national, or in the case of stateless persons, a former habitual resident, of a third country for which the proportion of decisions by the Determining Authority granting international protection is, according to the latest 40

available yearly Union-wide average Eurostat data, 20 per cent or lower, unless the Determining Authority assesses that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or that the applicant belongs to a category of persons for whom the proportion of 20 per cent or lower cannot be considered to be representative for their protection needs, taking into account, *inter alia*, the significant differences between first instance and final decisions. 5

(2) Where the Asylum Agency has provided a guidance note on a country of origin in accordance with Article 11 of the European Union Agency for Asylum Regulation showing that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data, the Determining Authority shall use that guidance note as a reference for the application of *paragraph (j) of subsection (1)*. 10

(3) Where the Determining Authority considers that the examination of the application involves issues of fact or law that are too complex to be examined under an accelerated examination procedure, it may continue the examination on the merits in accordance with *sections 110 and 112* and, where it does so, shall inform the applicant concerned accordingly of the change in the procedure. 15

(4) The accelerated examination procedure may be applied to unaccompanied minors only where—

- (a) the applicant comes from a third country that may be considered to be a safe country of origin, 20
- (b) there are reasonable grounds to consider the applicant as a danger to the national security or public order of the State or the applicant had been forcibly expelled for serious reasons of national security or public order under the national law of a Member State, 25
- (c) the application is a subsequent application which is not inadmissible,
- (d) the applicant, after having been provided with the full opportunity to show good cause, is considered to have intentionally misled the authorities by presenting false information or documents or by withholding relevant information or documents, particularly with respect to his or her identity or nationality, that could have had a negative impact on the decision or there are clear grounds to consider that the applicant has, in bad faith, destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality, 30
- (e) the applicant is a national, or in the case of stateless persons, a former habitual resident, of a third country for which the proportion of decisions granting international protection by the Determining Authority, according to the latest available yearly Union-wide average Eurostat data, 20 per cent or lower, unless the Determining Authority assesses a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or that the applicant belongs to a category of persons for whom the proportion of 20 per cent or lower cannot be considered to be representative for their protection needs, taking into account, *inter alia*, significant differences between first instance and final decisions. 35 40

(5) Where the Asylum Agency has provided a guidance note on a country of origin in accordance with Article 11 of the European Union Agency for Asylum Regulation showing that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data, the Determining Authority shall use that guidance note as a reference for the application of *paragraph (e) of subsection (4)*. 5

#### **Duration of accelerated examination procedure**

**116.** The Determining Authority shall conclude the accelerated examination procedure as soon as possible and no later than three months from the date on which the application is lodged.

## CHAPTER 6

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### *Asylum Border Procedure*

#### **Conditions for applying asylum border procedure**

**117.** (1) Following the screening carried out in accordance with *Chapter 2 of Part 2*, where applicable, and provided that the applicant has not yet been authorised to enter the State, the Minister may, subject to *section 125*, in accordance with the basic principles and guarantees of Chapter II of the Asylum Procedures Regulation, examine an application in a border procedure (referred to in this Chapter as the “asylum border procedure”) in accordance with this Act where that applicant is an applicant who does not fulfil the conditions for entry to the State and to whom any of the paragraphs of section 4(3) of the Act of 2004 applies. 15

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(2) The asylum border procedure may take place—

- (a) following an application made at an external border crossing point or in a transit zone;
- (b) following apprehension in connection with an unauthorised crossing of the external border; 25
- (c) following disembarkation in the State after a search and rescue operation;
- (d) following relocation in accordance with Article 67(11) of the Asylum and Migration Management Regulation.

(3) Subject to *section 125(3)*, the Minister shall not authorise an applicant subject to the asylum border procedure to enter the State without prejudice to *section 118* and *section 125(3)*. 30

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(4) Any measure taken to prevent unauthorised entry to the State shall be in accordance with the Reception Conditions Directive.

(5) In this section, “external border crossing point” means a port or a screening centre.

#### **Deadlines under asylum border procedure**

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**118.** (1) The asylum border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the application.

(2) Without prejudice to *subsection (1)*, the maximum duration of the asylum border procedure shall be 12 weeks from when the application is registered until the applicant no longer has a right to remain and is not allowed to remain.

(3) Where—

(a) a person is transferred to the State pursuant to Article 67(11) of the Asylum and Migration Management Regulation, and 5

(b) the Determining Authority is applying the asylum border procedure,  
the Determining Authority may extend the 12 week period to 16 weeks.

(4) Following the expiration of the period of 12 weeks referred to in *subsection (2)*, or 16 weeks, where extended in accordance with *subsection (3)*, the Minister shall authorise 10 the applicant to enter the State except where *Chapter 2 of Part 9* applies.

(5) By way of derogation from *subsection (4)*, the Minister shall not authorise the applicant to enter the State where:

(a) the applicant has no right to remain on the territory of a Member State in accordance with *section 61*; 15

(b) the applicant has no right to remain on the territory of a Member State in accordance with *section 131* or *section 83* and has not requested to be allowed to remain for the purposes of an appeal procedure within the applicable time limit;

(c) the applicant has no right to remain on the territory of a Member State in accordance with *section 131* or *section 83* and a court or tribunal has decided that the applicant is not to be allowed to remain pending the outcome of an appeal procedure. 20

### **Prioritisation of examination of applications in asylum border procedure**

**119.** (1) Subject to *subsection (2)*, where the asylum border procedure is applied to minors and their family members, the Determining Authority shall give priority to the examination of their applications. 25

(2) Where the number of applicants exceeds the number that corresponds to the adequate capacity of the State, the Determining Authority shall prioritise the following categories of applications:

(a) applications of third-country nationals or, in the case of stateless persons, of former habitual residents in a third country who, in the event of a negative decision, have a higher prospect of being returned, as applicable, to their country of origin, to their country of former habitual residence, to a safe third country or to a first country of asylum, within the meaning of this Act; 30

(b) applications of certain third-country nationals or, in the case of stateless persons, of former habitual residents in a third country who are considered, on serious grounds, to pose a danger to the national security or public order of the State; 35

(c) without prejudice to *paragraph (b)*, applications of certain third-country nationals or, in the case of stateless persons, of former habitual residents in a third country who are not minors and their adult family members. 40

(3) The Minister may give priority to the examination of applications of persons specified in *paragraph (a) to (c) of subsection (2)* when the conditions for applying *subsection (2)* have not been met.

### **Application by person deemed to be national security risk**

**120.** At any point during the administrative procedure, an applicant who is deemed a national security risk shall be placed in the asylum border procedure regardless of whether his or her application was being examined under a different procedure in accordance with this Act. 5

### **Mandatory application of asylum border procedure**

**121.** (1) The Determining Authority shall examine an application in the asylum border procedure in the cases referred to in *section 117(1)* where any of the circumstances referred to in *section 115(1)(c), (f) or (j)* apply, and without prejudice to *section 125*. 10

(2) Where the adequate capacity of the State is reached, *subsection (1)* shall no longer apply insofar as it requires an application to be examined in the asylum border procedure in the cases referred to in *section 117(1)* where the circumstances referred to in *section 115(1)(j)* apply. 15

(3) Where the circumstances referred to in *section 115(1)(f)* apply and without prejudice to *section 126*, the Determining Authority shall take appropriate measures to maintain as far as possible family unity in the asylum border procedure.

(4) For the purposes of *subsection (3)*, in order to maintain family unity, members of that applicant's family means, in so far as the family already existed before the applicant arrived in the State, the following members of the applicant's family who have also made an application in the State: 20

- (a) the spouse of the applicant or his or her civil partner;
- (b) the minor children of couples as referred to in *paragraph (a)* or of the applicant, regardless of whether they were born in or out of wedlock or adopted; 25
- (c) where the applicant is a minor, the father, mother or other adult who takes responsibility for the care and protection of the minor;
- (d) where the applicant is a minor, the sibling or siblings of the applicant, provided they are minors. 30

### **Application of special procedures to applicants in need of special procedural guarantees**

**122.** Where the Determining Authority, including on the basis of the assessment of another relevant national authority, considers that the necessary support referred to in Article 21(1) of the Asylum Procedures Regulation cannot be provided within the framework of the accelerated examination procedure referred to in *section 115* or the asylum border procedure referred to in *section 117*, paying particular attention to victims of torture, rape or other serious forms of psychological, physical, sexual violence or gender-based violence, the Determining Authority shall not apply or shall cease to apply those procedures to the applicant. 35

**Determination of Member State responsible and relocation where asylum border procedure is applicable**

123. Where the conditions for the asylum border procedure apply the Minister shall determine the Member State responsible as part of the asylum border procedure, without prejudice to the deadlines established in *section 118*. 5

**Application of asylum border procedure where applicant is transferred to State**

124. (1) Where—

(a) an applicant is transferred to the State in accordance with Article 67(11) of the Asylum and Migration Management Regulation, and

(b) the conditions for applying the border procedure are met in the Member State from which the applicant is transferred, 10

the Determining Authority may apply the asylum border procedure without prejudice to the deadlines established in *section 118*.

(2) Where *subsection (1)* applies, the Minister may extend the deadline established in *section 118* by a period of up to four weeks. 15

(3) Where—

(a) an applicant is transferred to the State in accordance with Article 67(11) of the Asylum and Migration Management Regulation,

(b) the conditions for applying the border procedure are met in the Member State from which the applicant is transferred, and 20

(c) the Determining Authority deems the applicant to be a national security risk,

the Determining Authority shall apply the asylum border procedure without prejudice to the deadlines established in *section 118*.

**Exceptions to asylum border procedure**

125. (1) The Determining Authority shall only apply the asylum border procedure to an unaccompanied minor in the circumstances referred to in *section 115(4)(b)*. 25

(2) Where there is doubt as to the applicant's age, the competent authorities shall promptly carry out an age assessment in accordance with *Chapter 3 of Part 3*.

(3) The Determining Authority shall not, or shall cease to, apply the asylum border procedure at any stage of the procedure where— 30

(a) the Determining Authority considers that the grounds specified—

(i) in *section 99* for rejecting an application as inadmissible, and

(ii) in *section 115* for applying the accelerated examination procedure,

are not, or are no longer applicable,

(b) the necessary support cannot be provided to applicants with special reception needs, including minors, in accordance with the Reception Conditions Directive, at the locations referred to in *section 126*, 35

- (c) the necessary support cannot be provided to applicants in need of special procedural guarantees in accordance with the Reception Conditions Directive at the locations referred to in *section 126*,
- (d) there are relevant medical reasons for not applying the asylum border procedure, including mental health reasons, or
- (e) the guarantees and conditions for detention laid down in the Reception Conditions Directive are not, or are no longer, met and the asylum border procedure cannot be applied to the applicant without the use of detention.

(4) In the circumstances referred to in *subsection (3)(a)*, the Minister shall authorise the applicant to enter the State and apply the appropriate procedure provided for in *Parts 3 and 5*. 10

#### **Restrictions on freedom of movement during asylum border procedure**

**126.** (1) During the examination of an application subject to the asylum border procedure, applicants shall be required, in accordance with the Reception Conditions Directive, to reside in designated locations within the State fully taking into account the State's specific geographical circumstances. 15

(2) Without prejudice to Article 47 of the Asylum Procedures Regulation, the Minister 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 the Reception Conditions Directive. 20

(3) Any requirement to reside at a particular place in accordance with this section shall not be regarded as an authorisation to enter the State.

(4) Where an applicant subject to the asylum border procedure needs to be transferred to another location for the purposes of the procedure, or transferred for the purpose of receiving medical treatment, such travel shall not in itself constitute an entry to the State. 25

#### **Minister to notify where number of applications in border procedure reaches maximum**

**127.** Where the number of applications that have been examined in the border procedure in the State within one calendar year is equal to or exceeds the maximum number of applications set out in respect of the State in an implementing act referred to in Article 47(1) of the Asylum Procedures Regulation the Minister shall notify the Commission. 30

## PART 6

### APPEALS TO TRIBUNAL

#### Definitions (Part 6)

128. In this Part—

“appeal” means an appeal in accordance with *section 129*;

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“related decision” means—

- (a) a decision referred to in *section 129(1)(a), (b) or (c)*, or
- (b) a declaration referred to in *section 129(1)(d)*.

#### Appeals

129. (1) An applicant may, in accordance with this Part and with regulations (if any) under *section 140*, appeal to the Tribunal against—

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- (a) a decision under *section 98* to reject an application as inadmissible,
- (b) a decision under *section 98* to reject an application as unfounded or manifestly unfounded where the applicant is eligible for subsidiary protection but does not qualify as a refugee,
- (c) a decision under *section 98* to reject an application as unfounded or manifestly unfounded where the applicant does not qualify as a refugee and is not eligible for subsidiary protection,
- (d) a declaration under *section 67(2)* that an application has been implicitly withdrawn, or
- (e) a return decision under *section 154* or *156*.

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(2) Subject to *subsection (3)*, an appeal under any paragraph of *subsection (1)*, other than *paragraph (e)*, shall be brought by notice in writing within a period of 1 month from the date of receipt by an applicant of a *section 98* notification.

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(3) Where an appeal under any paragraph of *subsection (1)*, other than *paragraph (e)*, is from a decision or declaration in respect of an application that was considered in the accelerated examination procedure under *Chapter 5* of *Part 5* or the asylum border procedure under *Chapter 6* of *Part 5*, the appeal shall be brought by notice in writing within a period of 10 days from the date of receipt by an applicant of a *section 98* notification.

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(4) Where an appeal under *subsection (1)(e)* is brought by an applicant who has brought an appeal against a related decision, the appeal under *subsection (1)(e)* shall be brought by notice in writing jointly with the appeal against the related decision—

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- (a) subject to *paragraph (b)*, within a period of 1 month from the date of receipt by the applicant of a *section 98* notification, and
- (b) where the related decision is in respect of an application that was considered in the accelerated examination procedure under *Chapter 5* of *Part 5* or the asylum

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border procedure under *Chapter 6 of Part 5*, within a period of 10 days from the date of receipt by the applicant of a *section 98* notification.

(5) Where an appeal under *subsection (1)(e)* is brought by an applicant who has not brought an appeal against a related decision, the appeal under *subsection (1)(e)* shall be brought by notice in writing within a period of 10 days from the date of receipt by the applicant of a *section 98* notification. 5

(6) A notice of appeal under *subsection (2), (3), (4) or (5)* shall specify, in writing, the grounds of appeal and indicate whether the applicant wishes the Tribunal to hold an oral hearing for the purpose of the appeal.

(7) On receipt of a notice under *subsection (2), (3), (4) or (5)*, the Tribunal shall transmit a copy of the notice to the Determining Authority and notify the High Commissioner of the making of the appeal. 10

(8) An appeal may be accompanied by additional documents.

(9) Where an applicant submits documents, including additional documents, with the appeal or within the period of time permitted under this section for the appeal, the Tribunal shall arrange for the translation of the documents in accordance with Article 67(5) of the Asylum Procedures Regulation where it is of the opinion that— 15

- (a) the documents are relevant to the appeal, and
- (b) the documents have not been translated in accordance with *Part 5*.

#### **Right to remain pending appeal**

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**130.** (1) Subject to *subsections (2) and (3)*, an applicant shall have the right to remain in, and shall not be removed from, the State—

- (a) until the expiry of the period referred to in *section 129(2), (3), (4)(a), (b) or (5)*, as the case may be, within which the applicant may make an appeal, and

- (b) where an appeal is made, subject to *section 136(6)(a)*, pending the outcome of the appeal. 25

(2) *Paragraphs (b) and (c) of section 61(2) and sections 62 and 63* shall apply to a right to remain under this Part as they apply to a right to remain under *section 61*.

(3) Without prejudice to the principle of non-refoulement or *section 64*, an applicant shall not have the right to remain in the State where— 30

- (a) a decision is made to reject his or her application as unfounded or manifestly unfounded and the application was considered in—

  - (i) the accelerated examination procedure under *Chapter 5 of Part 5*, or

  - (ii) subject to *subsection (4)*, the asylum border procedure under *Chapter 6 of Part 5*, 35

- (b) subject to *subsection (5)*, a decision is made under *section 98* to reject his or her application as inadmissible where one of the following circumstances applies to the person who is the subject of the application:

(i) a country which is not a Member State is considered to be a first country of asylum for the person, unless it is clear that the person will not be admitted or readmitted to that country;

(ii) the International Criminal Court or an international tribunal has provided safe relocation for the person to a Member State or third country, or is unequivocally undertaking actions to that extent, unless new relevant circumstances have arisen which have not been taken into account by the Court or tribunal or where there was no legal possibility to raise circumstances relevant to internationally recognised human rights standards before such Court or tribunal; 10

(iii) the person—

(I) was issued with—

(A) a deportation order,

(B) a return order under section 51A of the Act of 2015,

(C) a return decision under *section 154* or *156*, or 15

(D) a return decision in accordance with Article 6 of Directive 2008/115/EC,

and

(II) made his or her application more than 7 days from the date on which the person received the order or decision, as the case may be, 20

provided that he or she had been informed of the consequences of not making an application within that time limit and that no new relevant elements have arisen since the expiry of that period that were not considered by the Minister (under section 3(3)(b) of the Act of 1999 or otherwise);

(iv) his or her application was a subsequent application where no new relevant elements as referred to in Articles 55(3) and (5) of the Asylum Procedures Regulation relating to— 25

(I) the examination of whether the applicant qualifies as a beneficiary of international protection in accordance with the Qualification Regulation, or 30

(II) the inadmissibility ground previously applied,

have arisen or have been presented by the person,

(c) a declaration is made under *section 67(2)* that his or her application has been implicitly withdrawn, or

(d) a decision is made under *section 98* to reject his or her subsequent application as unfounded or manifestly unfounded. 35

(4) *Subsection (3)(a)(ii)* shall not apply to an application by an unaccompanied minor.

(5) *Subsection (3)(b)* shall not apply to an application by an unaccompanied minor that was considered in the asylum border procedure under *Chapter 6 of Part 5*.

## **Request to Tribunal to be allowed to remain pending appeal**

**131.** (1) Notwithstanding *section 130(3)*, a person referred to in any of the paragraphs of that section may, in accordance with regulations (if any) under *section 140*, submit a request in writing to the Tribunal to be allowed to remain in the State (in this Act referred to as a “request to remain”) pending the outcome of his or her appeal. 5

(2) A request to remain shall—

- (a) be submitted within 10 days from the date of the notice of the decision that is under appeal,
- (b) specify, in writing, the grounds on which the request is made, and
- (c) indicate whether the person wishes the Tribunal to hold an oral hearing for the purpose of determining the request. 10

(3) Notwithstanding *section 130(3)*, a person referred to in any of the paragraphs of that section shall have the right to remain in, and shall not be removed from, the State—

- (a) until the expiry of the period referred to in *subsection (2)(a)* within which the person may submit a request to remain, and 15
- (b) where the person submits such a request in accordance with this section, pending a decision in respect of the request by the Tribunal under *subsection (5)*.

(4) Before deciding whether to grant a request to remain, the Tribunal shall consider the following:

- (a) the request; 20
- (b) all material furnished to the Tribunal that is relevant to the decision as to whether to grant the request;
- (c) any observations made to the Tribunal by the Determining Authority or the High Commissioner;
- (d) where an oral hearing has been held, the evidence adduced and any representations made at the hearing; 25
- (e) such other matters as the Tribunal considers relevant in making a decision under *subsection (5)* in relation to the request.

(5) The Tribunal may, subject to *subsection (6)* and without prejudice to the principle of non-refoulement— 30

- (a) grant a request to remain, or
- (b) refuse a request to remain.

(6) Without prejudice to the principle of non-refoulement, the Tribunal shall not grant a request to remain where the appeal is in relation to a subsequent application and the Tribunal is of the opinion that the appeal to which the request relates was brought for the purpose of delaying or frustrating the enforcement of a return decision made under *Part 9*. 35

(7) Without prejudice to a complete and fair examination of an appeal, where an applicant submits a request to remain and his or her application was considered in the asylum border procedure under *Chapter 6* of *Part 5*, a decision under *subsection (5)* in 40

relation to the request shall, having regard to the maximum duration of that procedure as provided for in that Chapter, be taken within a period that is as short as possible but in any event no later than 5 days from the date of the receipt by the Tribunal of the request submitted to it in accordance with this section.

(8) The Tribunal shall as soon as practicable send a copy of a decision under subsection (5) and the reasons for it to— 5

- an applicant and his or her legal representative (if any), and
- the Determining Authority.

(9) The Tribunal shall have the power to decide *ex officio* whether or not a person to whom any of the paragraphs of section 130(3) apply is to be allowed to remain in the State pending the outcome of an appeal brought by the person. 10

### **Provision of information, submission of documents to Tribunal**

**132.** (1) The Determining Authority shall, for the purposes of an appeal, furnish the Tribunal with copies of the documents provided to an applicant under section 98. 15

(2) The Tribunal may, for the purposes of its functions under this Act, request the Determining Authority to make such further inquiries and to furnish the Tribunal with such further information as the Tribunal considers necessary within such period as may be specified by the Tribunal.

(3) The Determining Authority shall furnish the Tribunal with observations in writing concerning any matter arising on the grounds of appeal whenever so requested by the Tribunal and a copy of such observations shall be furnished to an applicant and his or her legal representative (if any). 20

(4) The transcript of, or the transcript of the recording of, a personal interview shall be admissible as evidence in an appeal.

(5) The Tribunal may, for the purposes of its functions, request the applicant to submit such additional documents as it considers necessary within such period as may be specified by the Tribunal. 25

(6) Section 129(9) shall apply to additional documents submitted by an applicant to the Tribunal in accordance with a request under subsection (5).

### **Oral hearing**

**133.** (1) The Tribunal shall make a decision under section 137 in respect of an appeal without holding an oral hearing unless subsection (2) applies. 30

(2) The Tribunal may hold an oral hearing for the purposes of making a decision under section 137 in respect of an appeal where, having had regard to the guidelines issued under section 182(2), the Appeals Officer to whom the appeal is assigned is of the opinion that a full and *ex nunc* examination of both facts and points of law cannot be achieved without an oral hearing. 35

(3) Where an applicant has indicated under section 129(6) that he or she wishes the Tribunal to hold an oral hearing for the purpose of his or her appeal, the applicant may withdraw the indication not later than 3 days before such an oral hearing. 40

(4) Subject to *subsections (5) and (6)*, an oral hearing shall be held in private unless, upon application by or on behalf of the applicant, the Tribunal determines that, due to the existence of special circumstances, the proceedings (or part thereof) should be conducted otherwise than in private. 5

(5) The High Commissioner may be present at an oral hearing for the purpose of observing the proceedings. 10

(6) In conducting an oral hearing, the Tribunal shall—

- (a) permit the applicant to be present at the hearing and to present his or her case to the Tribunal in person or through a legal representative, 15
- (b) permit an officer of the Minister or another person nominated by the Determining Authority to be present at and to participate in the hearing and, in person or through a legal representative, to explain to the Tribunal the decision that is the subject of the appeal,
- (c) where necessary for the purpose of ensuring appropriate communication during the hearing, provide the applicant with the services of an interpreter, 15
- (d) conduct the oral hearing as informally as is practicable, and consistent with fairness and transparency,
- (e) ensure that the oral hearing proceeds with due expedition, and
- (f) allow for the examination and cross-examination of the applicant and any witnesses. 20

(7) Where a notice of appeal under *section 129(2), (3), (4) or (5)* includes a request to the Tribunal to direct the attendance of a witness before the Tribunal, the Tribunal shall, in respect of each such witness (having regard to the nature and purpose of the evidence proposed to be given by the witness as indicated in the notice of appeal), determine whether he or she should be directed to attend before the Tribunal in accordance with *subsection (8)*. 25

(8) For the purposes of an oral hearing, the Tribunal may—

- (a) direct in writing any person, other than the Minister or an officer of the Minister, whose evidence is required by the Tribunal to attend before the Tribunal on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his or her possession or control specified in the direction, 30
- (b) direct any such person to produce any specified document or thing in his or her possession or control,
- (c) give any other directions for the purpose of an appeal that appear to the Tribunal to be reasonable and just, and 35
- (d) take evidence on oath or on affirmation and for that purpose may cause persons attending before it to swear an oath or make an affirmation.

(9) *Paragraphs (a) and (b) of subsection (8) and section 132(2)* shall not apply to a document or thing relating to information which the Minister or the Minister for 40

Foreign Affairs and Trade directs (which he or she is hereby empowered to do) be withheld in the interest of national security or public policy.

(10) Subject to *subsection (11)*, a witness whose evidence has been or is to be given before the Tribunal shall be entitled to the same privileges and immunities as a witness in a court. 5

(11) Where information has been supplied to the Minister, a Department of State or other branch or office of the public service by or on behalf of the government of another state subject to an undertaking (express or implied) that the information would be kept confidential, the information shall not be produced or further disclosed other than in accordance with the undertaking or with the consent of the other state. 10

### **Recording of oral hearing**

**134.** (1) An oral hearing shall be recorded using audio means of recording.

(2) An applicant shall be informed in advance of the fact that a recording is being made and the purpose thereof and particular attention shall be paid to the requirements of applicants in need of special procedural guarantees in relation to the recording. 15

(3) The Tribunal shall include a transcript of a recording under *subsection (1)* in an applicant's file.

(4) A person shall not forge, fraudulently alter, assist in forging or fraudulently altering or procure the forging or fraudulent alteration of an audio recording of an oral hearing.

(5) A person who contravenes *subsection (4)* shall be guilty of an offence and shall be liable— 20

(a) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 5 years, or both. 25

### **Examination by Tribunal**

**135.** (1) Before reaching a decision under *section 137*, the Tribunal shall carry out a full and *ex nunc* examination of facts and points of law, including an examination of the international protection needs pursuant to the Qualification Regulation.

(2) Without prejudice to the generality of *subsection (1)*, during an examination under that subsection the Tribunal shall consider the following: 30

(a) the decision under appeal;

(b) the notice of appeal;

(c) all relevant material furnished to the Tribunal under this Part;

(d) any observations made to the Tribunal by the Determining Authority or the High Commissioner; 35

(e) where an oral hearing has been held, the evidence adduced and any representations made, at that hearing;

- (f) the principle of non-refoulement;
- (g) such other matters as the Tribunal considers relevant to the appeal.

(3) During an examination under *subsection (1)* the Tribunal may refuse to take into account any documents that—

- (a) are not submitted within—
  - (i) the period of time specified for the appeal under *section 129(2), (3), (4) or (5)*, as the case may be, or
  - (ii) such period as may be specified under *section 132(5)*,
 or
- (b) are not translated in accordance with this Act. 10

### **Withdrawal and deemed withdrawal of appeal**

**136.** (1) An applicant may, at any time before the making by the Tribunal of its decision under *section 137* in relation to his or her appeal, withdraw the appeal by sending a notice of withdrawal in writing to the Tribunal. 15

(2) Where an applicant fails to attend an oral hearing at the date and time fixed for the hearing then, unless the applicant, not later than 3 days from that date, furnishes the Tribunal with an explanation for not attending the oral hearing which the Tribunal considers reasonable in the circumstances, his or her appeal shall be deemed to be withdrawn. 20

(3) Where—
 

- (a) in the opinion of the Tribunal an applicant has failed, or is failing, in his or her duty under *section 63* to cooperate, or
- (b) the Minister notifies the Tribunal that he or she is of the opinion that the applicant is in breach of *paragraph (a), (b) or (c) of section 61(2)* or a requirement under *section 126*, 25

 the Tribunal shall send to the applicant or his or her legal representative (if any) notice in writing of the opinion referred to in *paragraph (a) or (b)*.

(4) The Tribunal, in its notice under *subsection (3)*, shall—
 

- (a) require the applicant to confirm in writing, within 2 weeks of the date of the notice, that he or she wishes to continue with his or her appeal, 30
- (b) remind the applicant of his or her duty under *section 63* to cooperate and to comply with any requirements under *section 61(2)* or *126* that have been or may be imposed on him or her, and
- (c) inform the applicant of the consequences specified in *subsection (5)*.

(5) Where an applicant—
 

- (a) does not furnish the confirmation referred to in *subsection (4)(a)*, or
- (b) having furnished such a confirmation, in the opinion of the Tribunal, or as the case may be, in the opinion of the Determining Authority or the Minister, fails or

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continues to fail to comply with any of the obligations referred to in subsection (4)(b),

his or her appeal shall be deemed to be withdrawn and subsection (6) shall apply accordingly.

(6) Where an appeal is withdrawn or deemed to be withdrawn pursuant to this section— 5

- (a) the applicant shall not have the right to remain in the State,
- (b) any consideration of the appeal by the Tribunal shall be terminated,
- (c) section 135 shall not apply in respect of the appeal, and
- (d) the Tribunal, as soon as practicable, shall—
  - (i) notify the applicant and his or her legal representative (if any) of the fact that the appeal is withdrawn or deemed to be withdrawn and of the reasons for it,
  - (ii) notify the Determining Authority of the fact that the appeal is withdrawn or deemed to be withdrawn and of the reasons for it, and
  - (iii) inform the High Commissioner of the fact that the appeal is withdrawn or deemed to be withdrawn.

(7) A notification under subsection (6)(d)(i) shall be in a language that the applicant understands or is reasonably supposed to understand. 15

### Decision of Tribunal

137. (1) In relation to an appeal under section 129(1)(a) against a decision to reject an application as inadmissible, the Tribunal may decide to— 20

- (a) affirm the decision, or
- (b) set aside the decision.

(2) In relation to an appeal under section 129(1)(b) against a decision to reject an application as unfounded or manifestly unfounded where the applicant is eligible for subsidiary protection but does not qualify as a refugee, the Tribunal may decide to— 25

- (a) affirm the decision, or
- (b) set aside the decision and decide that the applicant qualifies as a refugee.

(3) In relation to an appeal under section 129(1)(c) against a decision to reject an application as unfounded or manifestly unfounded where the applicant does not qualify as a refugee and is not eligible for subsidiary protection, the Tribunal may decide to— 30

- (a) affirm the decision,
- (b) set aside the decision and decide that the applicant qualifies as a refugee, or
- (c) affirm the decision that the applicant does not qualify as a refugee and set aside the part of the decision that the person is not eligible for subsidiary protection and decide that the applicant is eligible for subsidiary protection.

(4) In relation to an appeal under *section 129(1)(d)* against a declaration under *section 67(2)* that an application has been implicitly withdrawn, the Tribunal may decide to—

- (a) affirm the declaration, or
- (b) set aside the declaration.

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(5) In relation to an appeal under *section 129(1)(e)* against a return decision made under *section 154* or *156*, the Tribunal may decide to—

- (a) affirm the return decision, or
- (b) set aside the return decision.

(6) Where the Tribunal—

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(a) makes a decision under *subsection (1)(b)* or *(4)(b)*, the application shall be remitted to the Determining Authority for examination in accordance with *Part 5*, or

(b) makes a decision under *subsection (5)(b)*, the matter shall be remitted to the Minister.

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(7) The Tribunal shall, in relation to an appeal under *section 129(1)(b)*, decide to make the affirmation referred to in *subsection (2)(a)*, unless it is satisfied, having considered the matters referred to in *section 135(2)*, that the applicant qualifies as a refugee.

(8) The Tribunal shall, in relation to an appeal under *section 129(1)(c)*, decide to make the affirmation referred to in *subsection (3)(a)* unless it is satisfied, having considered the matters referred to in *section 135(2)*, that the applicant qualifies as a refugee or, as the case may be, is a person eligible for subsidiary protection.

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(9) The decision of the Tribunal on an appeal and the reasons for the decision shall be given in writing and shall be notified to the applicant, his or her legal representative (if any), the Determining Authority and the High Commissioner.

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(10) The Tribunal shall furnish the applicant and his or her legal representative (if any) and the High Commissioner whenever so requested by him or her, with—

(a) copies of any reports, observations, or representations in writing or any other document furnished to the Tribunal by the Determining Authority, copies of which have not been previously furnished to the applicant and his or her legal representative (if any), or as the case may be, the High Commissioner, and

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(b) an indication in writing of the nature and source of any other information relating to the appeal which has come to the notice of the Tribunal in the course of an appeal.

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### **Effect of judicial review on right to remain in State**

**138.** Where a person brings an application for judicial review under Order 84 of the Rules of the Superior Courts in respect of a decision of the Tribunal under *section 137*, he or she shall not be entitled to remain in the State solely by virtue of such an application.

## **Duration of appeal to Tribunal**

**139.** Without prejudice to an adequate and complete examination under this Part and in accordance with Article 67(1) of the Asylum Procedures Regulation, the examination by the Tribunal of a decision under appeal shall—

- (a) where the appeal is under *section 129(1)(a)* against a decision to reject an application as inadmissible, be concluded as soon as possible and no later than 2 months from the date on which a notice of an appeal against the decision is received by the Tribunal in accordance with *section 129*, 5
- (b) where the appeal is in respect of an application that was considered in the accelerated examination procedure under *Chapter 5 of Part 5*, be concluded as soon as possible and no later than 3 months from the date on which a notice of an appeal against the decision is received by the Tribunal in accordance with *section 129*, 10
- (c) where the appeal is in respect of an application that was considered in the asylum border procedure under *Chapter 6 of Part 5*, be concluded as soon as possible having regard to the maximum duration of that procedure as provided for in that Chapter, 15
- (d) where the appeal is under *section 129(1)(e)* against a return decision made under *section 154* or *156* and no appeal has been brought against the related decision, be concluded as soon as possible and no later than 28 days from the date on which a notice of an appeal against the decision is received by the Tribunal in accordance with *section 129*, and, 20
- (e) in every other case, be concluded as soon as possible and no later than 6 months from the date on which a notice of an appeal against the decision is received by the Tribunal in accordance with *section 129*. 25

## **Procedures for appeals and requests to remain**

**140.** The Minister may, in consultation with the Chief Appeals Officer and having regard to the need to observe fair procedures, prescribe procedures for and in relation to appeals and requests to remain, including the holding of oral hearings and, in doing so, may prescribe different procedures in respect of different classes of appeals and different classes of requests to remain.

## **PART 7**

### **CONTENT OF INTERNATIONAL PROTECTION**

#### **Definition (Part 7)**

**141.** (1) In this Part, “travel document” means a document issued by the Minister under *section 146*. 35

(2) A word or expression that is used in this Part and is also used in the Qualification Regulation has the same meaning in this Part as it has in that Regulation unless the contrary intention appears.

## **Application of Part 7**

**142.** (1) A beneficiary of international protection shall—

(a) have the rights and obligations specified in Chapter VII of the Qualification Regulation, including the rights specified in this Part, and

(b) have access to such rights upon the grant of, and for so long as he or she holds, 5 either—

(i) refugee status, or

(ii) subsidiary protection status.

(2) In the application of Chapter VII of the Qualification Regulation and *sections 143 to 146*—

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(a) account shall be taken of the special needs of—

(i) any vulnerable person, including persons under the age of 18 years (whether or not accompanied),

(ii) disabled persons,

(iii) elderly persons,

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(iv) pregnant women,

(v) single parents with children under the age of 18 years or adult dependent children,

(vi) victims of human trafficking,

(vii) persons with serious illnesses,

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(viii) persons with mental disorders, and

(ix) persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence,

and

(b) to a minor, the best interests of the minor shall be a primary consideration.

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## **Information for beneficiaries of international protection**

**143.** A beneficiary of international protection shall be entitled to be provided with information on the application of the Qualification Regulation, in accordance with Article 22 of that Regulation, on his or her rights and obligations specified in Annex I to that Regulation, in either electronic or paper format as soon as practicable after becoming a beneficiary of international protection.

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## **Extension to beneficiaries of international protection of certain rights**

**144.** (1) Without prejudice to *section 142*, a beneficiary of international protection shall be entitled—

(a) subject to *section 145*, to reside in the State,

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- (b) subject to *section 146*, to the same rights of travel in, to or from the State as those to which Irish citizens are entitled,
- (c) to seek and enter employment, to engage in any business, trade or profession, to have access to education and training and to recognition of qualifications in the State in the like manner and to the like extent in all respects as an Irish citizen, 5
- (d) to receive, upon and subject to the same conditions applicable to Irish citizens, the same medical care and the same social welfare benefits as those to which Irish citizens are entitled,
- (e) to access accommodation under conditions at least equivalent to third-country nationals lawfully residing in the State who are generally in the same 10 circumstances, and
- (f) to access integration measures and where required, obliged to participate in such measures.

(2) In this section, “social welfare benefits” includes any payment or services provided under the Social Welfare Acts or the Health Acts 1947 to 2024. 15

#### **Permission for beneficiaries of international protection to reside in State**

**145.** (1) A beneficiary of international protection shall be given a permission to reside in the State.

(2) A permission given under this section shall—

- (a) where the beneficiary of international protection was granted refugee status, be 20 for a specified period of at least 3 years, and
- (b) where the beneficiary of international protection was granted subsidiary protection status, be for a specified period of at least 1 year.

(3) Upon receipt of a permission under this section, the beneficiary of international protection to whom it is given shall comply with section 9 of the Act of 2004. 25

(4) Subject to *subsection (5)*, a permission under this section shall be renewed—

- (a) in the case of a permission given under *subsection (2)(a)*, for at least 3 years, and
- (b) in the case of a permission given under *subsection (2)(b)*, for at least 2 years.

(5) The Minister may revoke or refuse to renew a permission given to a beneficiary of international protection under this section where— 30

- (a) his or her refugee status has been withdrawn in accordance with *section 152(1)*, or
- (b) his or her subsidiary protection status has been withdrawn in accordance with *section 152(2)*.

#### **Travel document**

**146.** (1) Subject to *subsection (2)*, the Minister, on application by a beneficiary of international protection, shall, in accordance with Article 25 of the Qualification Regulation, issue a travel document to the beneficiary of international protection. 35

(2) *Subsection (1)* shall not apply where—

- (a) the Minister has required a person (whether or not the applicant) to provide such information or documents as the Minister reasonably requires for the purposes of his or her functions under this section and in connection with an application under *subsection (1)* and the person concerned—
  - (i) refuses to provide the information or documents,
  - (ii) knowingly or recklessly provides information or documents that are false or misleading in a material respect, or
  - (iii) makes a statutory declaration, or swears an affidavit, that is false knowing it to be false or being reckless as to whether it is false,
- (b) the person concerned is a person in respect of whom subsidiary protection status has been granted and who is able to obtain a passport, or
- (c) the Minister considers that there are compelling reasons of national security or public policy for not issuing a travel document to the person.

(3) An application under *subsection (1)* shall be in writing and shall be—

- (a) in such form, and accompanied by such information, as the Minister may specify, and
- (b) accompanied by such fee (if any) as may be prescribed by the Minister.

(4) The Minister shall ensure that, as soon as practicable, a copy of the form and requirements specified under *subsection (3)(a)* are published on a website maintained by or on behalf of the Minister or the Government.

(5) A travel document shall be issued in the form specified in Article 25(3) of the Qualification Regulation.

### **Cancellation and surrender of travel document**

**147.** (1) The Minister may cancel a travel document if—

- (a) the Minister becomes aware of a fact or a circumstance, whether occurring before or after the issue of the travel document, that would have required him or her to refuse to issue the travel document on the basis that *section 146(1)* did not apply to the person had the Minister been aware of the fact or the circumstance before the travel document was issued,
- (b) the Minister is notified that the travel document is, without lawful authority or reasonable excuse, in the possession or control of another person, or
- (c) the Minister is notified by the person, or by another person duly authorised to act on his or her behalf, that the travel document has been lost or stolen.

(2) Where a travel document is cancelled under *subsection (1)*, the Minister shall inform the person by notice in writing of the cancellation and the grounds for it.

(3) Where a travel document is cancelled under *subsection (1)*, the person shall, if he or she is in possession or control of the travel document, surrender it as soon as practicable to the Minister.

(4) Where a travel document is cancelled under *subsection (1)*, the Minister may, if appropriate, require by notice in writing the person who is in possession or control of the travel document to surrender it to the Minister within such period as may be specified in the notice.

(5) A person who, without lawful authority or reasonable excuse, has a travel document other than a travel document that was issued to him or her in his or her possession or control shall, as soon as practicable, surrender it to the Minister or deliver it to a Garda Síochána station.

(6) An applicant for a travel document shall, if so required by the Minister, surrender a travel document that was issued to him or her (whether or not it is valid) to the Minister before another travel document may be issued to him or her.

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### Offences relating to travel document

**148.** (1) A person who, whether in the State or elsewhere—

(a) in connection with an application for the issue of a travel document (whether or not to himself or herself or another person), provides information or documents that are, and that he or she knows or believes to be or is reckless as to whether they are, false or misleading in a material respect,

(b) has, without lawful authority or reasonable excuse, in his or her possession or control a travel document that is, and that he or she knows or believes to be, a false travel document,

(c) uses, or attempts to use, a travel document that was not issued to him or her, knowing or believing that it was not issued to him or her, as evidence of identity (whether or not in connection with travel abroad),

(d) uses, or attempts to use, a travel document that is, and that he or she knows or believes to be, a false travel document as evidence of identity (whether or not in connection with travel abroad),

(e) uses, or attempts to use, a travel document that has been cancelled, or is required to be surrendered to the Minister, under *section 147*, knowing or believing that the travel document has been so cancelled or has been required to be so surrendered, as evidence of identity (whether or not in connection with travel abroad),

(f) permits—

(i) a travel document that was issued to him or her, or

(ii) a travel document other than a travel document that was issued to him or her that he or she has in his or her possession or control,

to be falsely used by another person as evidence of that person's identity (whether or not in connection with travel abroad), or is reckless regarding such use by another person of the travel document,

(g) sells, or attempts to sell, a travel document (whether or not a travel document that was issued to him or her),

(h) wilfully damages or destroys a travel document (whether or not a travel document that was issued to him or her),

(i) knowingly makes, or attempts to make, a travel document that is false,

(j) without lawful authority or reasonable excuse, makes or has in his or her possession or control a machine, stamp, implement, paper or any other material, which to his or her knowledge is or has been specially designed or adapted for the making of a travel document that is false with the intention that it would be so used, or

(k) is required by *subsection (3), (4) or (5)* of *section 147* to surrender a travel document to the Minister, or is required in the alternative by the said *subsection (5)* to deliver a travel document to a Garda Síochána station, but, without reasonable excuse, does not do so in accordance with the requirement, 10 shall be guilty of an offence.

(2) A person guilty of an offence under *paragraph (b), (c), (h), (j) or (k)* of *subsection (1)* shall be liable— 15

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €10,000 or to imprisonment for a term not exceeding 5 years, or both.

(3) A person guilty of an offence under *paragraph (a), (d), (e), (f), (g)* or *(i)* of *subsection (1)* shall be liable— 20

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 10 years, or both. 25

(4) Where an offence under this section is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 30

(5) Where the affairs of a body corporate are managed by its members, *subsection (4)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate. 35

(6) In this section, “false travel document” means—

(a) a travel document that is false, or

(b) a travel document that is issued following the provision in connection with the application for the travel document of information or documents that are false or misleading in a material respect. 40

## Meaning of “false” and “making”

149. (1) A travel document is false for the purposes of *section 148* if it—

- (a) purports to have been issued by the Minister who did not in fact issue it, or
- (b) purports to have been altered in any respect by the Minister who did not in fact alter it in that respect.

(2) A person shall be treated for the purposes of *section 148* as making a travel document that is false if he or she alters a travel document so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

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## Proceedings relating to offences under *section 148* committed outside State

150. (1) Proceedings for an offence under any paragraph of *section 148(1)* in relation to an act committed, or an omission made, outside the State may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

(2) Where a person is charged with an offence referred to in *subsection (1)*, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by or with the consent of the Director of Public Prosecutions.

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## PART 8

### VOLUNTARY RETURN AND WITHDRAWAL OF INTERNATIONAL PROTECTION

#### Option to voluntarily return

151. (1) Subject to *subsection (9)*, the Minister may, by notice in writing, inform a person—

- (a) who withdraws his or her application under *section 66* that he or she may, within such period as may be specified in the notice, comply with *subsection (4)*, or
- (b) at any stage during the administrative procedure, that he or she may opt to voluntarily return to his or her country of origin, country of former habitual residence, or to a country where he or she is entitled to reside, as applicable, under the conditions specified in this section.

(2) The notice issued with the return decision under *section 154(3)* or *section 156(3)* to a person who is subject to this section shall include information regarding voluntary return and the person subject to that notice shall have 5 days from the date on which the notice is sent to comply with *subsection (4)*.

(3) When the decision of the Tribunal is the one referred to in *section 137(3)(a)*, the Minister may, by notice in writing, inform the person subject to that decision that he or she may comply with *subsection (4)* and that person shall have 5 days from the date on which that notice is sent to comply with that subsection.

(4) A person complies with this subsection where he or she confirms to the Minister, in accordance with this section, that he or she will return voluntarily to the country set out in his or her return decision or to a country where he or she is entitled to reside and the confirmation shall be made in writing in accordance with *subsection (10)*.

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(5) When a person complies with *subsection (4)*, he or she shall voluntarily leave the State no later than 30 days from the date of the confirmation referred to in *subsection (4)*.

(6) During the period leading up to the voluntary return, the person referred to in *subsection (5)* shall—

- (a) make himself or herself available to the competent authorities in accordance with the requirements set out in *section 160*,
- (b) where requested by the Minister to do so, surrender any valid travel document that he or she possesses to the Minister for as long as the Minister considers necessary to prevent the person absconding,
- (c) where requested by the Minister to do so, commit in writing to undertake certain actions to facilitate his or her voluntary return, and
- (d) shall comply with any commitments made under *paragraph (c)*.

(7) Where the person fails to comply with any of the requirements referred to in *subsection (6)* the Minister may withdraw the option to return voluntarily.

(8) When the person voluntarily returns to the country set out in his or her return decision or to a country where he or she is entitled to reside, he or she shall confirm the return to the Minister in such manner as may be directed by the Minister.

(9) Where the Minister is of the opinion that—

- (a) there are reasonable grounds for regarding the person concerned as a danger to the security of the State, or
- (b) the person, having been by a final judgment convicted in the State of a serious offence or outside the State of an offence which if committed in the State would be a serious offence, constitutes a danger to the community of the State,

this section shall not apply to that person.

(10) The Minister shall publish the form in which a confirmation shall be made in accordance with *subsection (4)* on a website maintained by or on behalf of the Minister or the Government.

(11) For the purposes of this section and *section 152*, “competent authorities” include an immigration officer, a member of An Garda Síochána, or an officer of the Minister.

### Withdrawal of international protection

**152.** (1) Subject to *subsection (7)*, the Minister shall withdraw the refugee status of a person where:

- (a) the person has ceased to be a refugee in accordance with Article 11(1) of the Qualification Regulation;
- (b) the person should have been, or is, excluded from being a refugee in accordance with Article 12 of the Qualification Regulation;

(c) the person's misrepresentation of facts, including, where applicable, the use of false documents, or omission of facts was decisive for the granting of refugee status;

(d) there are reasonable grounds for regarding the person as a danger to the security of the State; 5

(e) the person is convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of the State.

(2) Subject to *subsection (8)*, the Minister shall withdraw the subsidiary protection status of a person where:

(a) the person has ceased to be eligible for subsidiary protection in accordance with *section 151*; 10

(b) the person should have been, or is, excluded from being eligible for subsidiary protection in accordance with Article 12 of the Qualification Regulation;

(c) the person's misrepresentation of facts, including, where applicable, the use of false documents, or omission of facts was decisive for the granting of subsidiary protection status. 15

(3) Where new elements or findings arise indicating that there are reasons to reconsider whether the person qualifies for international protection, in particular in the instances referred to in *subsection (1)* or *subsection (2)*, the Minister shall start the examination to withdraw international protection and make a decision in accordance with *subsection (1)*. 20

(4) A withdrawal of international protection, be it—

(a) refugee status as referred to in *subsection (1)*, or

(b) subsidiary protection status as referred to in *subsection (2)*,  
shall operate prospectively from the date of withdrawal. 25

(5) A withdrawal, other than the ones referred to in *subsection (4)*, may operate—

(a) prospectively from the date of withdrawal,

(b) retrospectively to the date on which the decision to grant refugee status or subsidiary protection status was issued, or

(c) from any date between the dates referred to in *paragraphs (a)* and *(b)*, 30  
depending on the circumstances of the case and the matters referred to in *subsection (6)*.

(6) Where the Minister is considering whether to withdraw international protection status retrospectively he or she shall have regard, where applicable, to matters such as:

(a) the individual circumstances and conduct of the person, including the length of time such person has held his or her status; 35

(b) the existence of derived rights, such as whether a child or dependant of the person has derived an autonomous right, entitlement or status from the person's right, entitlement or status;

(c) the extent to which any other person who has derived an autonomous right, entitlement or status within the meaning of *paragraph (b)* has relied on that right, entitlement or status;

(d) whether the person failed to inform the Minister of a material fact which had, or was capable of having, an effect on the validity of his or her status; 5

(e) the date of the conviction referred to in respect of *subsection (1)(e)*;

(f) any other information that the Minister deems relevant in the making of his or her decision.

(7) The Minister shall, on an individual basis, demonstrate that the beneficiary of refugee status— 10

(a) has ceased to be a refugee,

(b) should never have been granted refugee status, or

(c) should no longer be a beneficiary of refugee status,

for any of the reasons set out in *subsection (1)*.

(8) The Minister shall, on an individual basis, demonstrate that the beneficiary of the subsidiary protection status— 15

(a) has ceased to be eligible for subsidiary protection,

(b) should have never been granted subsidiary protection status, or

(c) should no longer be a beneficiary of subsidiary protection status,

for any of the reasons set out in *subsection (2)*. 20

(9) When considering whether to withdraw international protection, in accordance with *subsection (1)* or *(2)*, the Minister shall:

(a) inform the person concerned in writing that his or her qualification as a beneficiary of international protection is being reconsidered and the reasons for such reconsideration; 25

(b) inform the person concerned of the obligation to cooperate with the Minister and other competent authorities, in particular of the fact that he or she shall be required to make a written statement and appear for a personal interview and answer questions therein;

(c) inform the person concerned of the consequences of not cooperating with the Minister and other competent authorities and that failure to submit the written statement and to attend the personal interview without justification shall not prevent the Minister from taking a decision to withdraw international protection; 30

(d) inform the person concerned of the opportunity to submit reasons as to why his or her international protection should not be withdrawn by means of a written statement within 10 working days from the date on which he or she receives the information, referred to in *paragraph (a)*, and in a personal interview at a date set by the Minister; 35

(e) where the person concerned is no longer present in the State, direct that person to attend the personal interview, referred to in *paragraph (b)*, via video link, as provided.

(10) For the purposes of *subsection (9)* and in accordance with the obligations as set out in Article 66 of the Asylum Procedures Regulation, the Minister— 5

- (a) shall obtain relevant, precise and up-to-date information from relevant and available national, European Union and international sources and, where available, take into account the common analysis on the situation in a specific country of origin and the Asylum Agency guidance notes, and 10
- (b) shall not obtain any information from the alleged actors of persecution or serious harm in a manner that would result in such actors being informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration.

(11) A notification of the decision to withdraw international protection shall be given in writing to the person concerned as soon as practicable, and shall include— 15

- (a) the reasons for the withdrawal,
- (b) information relating to the option to appeal the decision in accordance with *Part 6*, and
- (c) the relevant time limits relating to the appeal referred to in *paragraph (b)*.

(12) (a) Where the person fails to adhere to the obligations set out in *subsection (9)* and does not— 20

- (i) submit a written statement,
- (ii) attend the personal interview referred to in *subsection (9)(b)*, or
- (iii) answer questions at that interview,

without due justification, the absence of the written statement or personal interview shall not prevent the Minister from making a decision to withdraw international protection. 25

(b) A refusal to cooperate as referred to in *paragraph (a)* may give rise to a rebuttable presumption that the person no longer wishes to benefit from international protection. 30

(13) This section shall not apply where the person—

- (a) unequivocally renounces his or her recognition as a beneficiary of international protection,
- (b) has become a national of another Member State, or of the State, or
- (c) has subsequently been granted international protection in another Member State. 35

(14) The Minister shall conclude the cases referred to in *subsection (13)* by recording the outcome in the person's file together with an indication of the legal ground for that conclusion, as referred to in *paragraphs (a), (b), or (c)* of that subsection.

## **Appeal of withdrawal of international protection**

**153.** (1) A person to whom a notification under *section 152(1)* is sent may, within 10 working days from the date of the notification, appeal to the Circuit Court against a decision of the Minister to withdraw international protection in accordance with *section 152(1)* or (2), as applicable. 5

(2) The Circuit Court, on the hearing of an appeal under *subsection (1)*, may, as it thinks proper—

(a) affirm the decision of the Minister, or

(b) direct the Minister not to withdraw international protection.

(3) A decision of the Minister made in accordance with *section 152(1)* or (2), as applicable, shall take effect— 10

(a) where no appeal to the Circuit Court is brought against the decision of the Minister, on the date on which the period specified in *subsection (1)* for making such an appeal expires, or

(b) where an appeal to the Circuit Court is brought against the decision of the Minister— 15

(i) from the date on which the Circuit Court, under *subsection (2)(a)*, affirms the decision, or

(ii) from the date on which the appeal is withdrawn.

(4) A decision of the Circuit Court on an appeal under *subsection (1)* shall be final save that, by leave of that Court, an appeal shall lie to the High Court on a point of law. 20

## **PART 9**

### **RETURNS**

#### **CHAPTER 1**

##### *Return decisions*

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## **Return decision where application is inadmissible on certain grounds, unfounded, manifestly unfounded or withdrawn**

**154.** (1) Subject to *sections 159 and 163*, the Minister shall make a return decision in respect of a person in accordance with this section at the same time as the person's application— 30

(a) is rejected by the Determining Authority as—

(i) inadmissible on a ground referred to in *section 99(2)* or *paragraph (c), (d), or (e) of section 99(3)*, or

(ii) unfounded under *section 109(1)*,

or

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(b) is declared by the Determining Authority to be—

- (i) explicitly withdrawn under *section 66*,
- (ii) implicitly withdrawn under *section 67*, or
- (iii) manifestly unfounded under *section 109(2)*.

(2) A person the subject of a return decision under *subsection (1)* shall be required to leave the State and may, while the return decision is in effect, be removed from the State or returned—

- (a) to the person's country of origin,
- (b) in the case of an application rejected as being inadmissible on the ground referred to in *section 99(3)(c)*, to the Member State that granted refugee status or subsidiary protection to the person, or
- (c) in the case of an application rejected as being inadmissible on the ground referred to in *section 99(3)(d)*, to the Member State or third country to which the International Criminal Court or international tribunal has provided, or is unequivocally undertaking actions to provide, safe relocation.

(3) The Minister shall notify, in writing, a person the subject of a return decision under *subsection (1)* and the person's legal representative (if any) of—

- (a) the making of the return decision,
- (b) the reasons for the making of the return decision, and
- (c) the entitlement of the person the subject of the return decision to appeal the return decision under *section 129(1)(e)*.

(4) Where the applicant does not have a legal representative, the notice referred to in *subsection (3)* shall be provided in a language the applicant understands or is reasonably supposed to understand.

### Entry ban notice

155. (1) Where a return decision is made under *section 154* (including a return decision referred to in *section 157*), the Minister shall, by notice in writing to the person the subject of the return decision and the person's legal representative (if any), require the person to remain outside the State.

(2) A notice referred to in *subsection (1)* shall come into effect on the date on which the return decision concerned comes into effect under *section 158*.

(3) Subject to *subsection (5)*, the Minister shall revoke the notice referred to in *subsection (1)* and the return decision concerned where the person—

- (a) confirms the person's intention to return voluntarily to the country specified in the return decision in accordance with *section 151(4)*,
- (b) so returns in accordance with the period in *section 151(5)*, and
- (c) confirms to the Minister, in accordance with *section 151(8)*, the return to that country.

(4) Subject to *subsection (5)*, the Minister may revoke the notice referred to in *subsection (1)* and the return decision concerned where the person can demonstrate to

the satisfaction of the Minister that the person has left the State in compliance with the return decision but in a manner other than that referred to in subsection (3).

(5) *Subsections (3) and (4)* shall not apply where the Minister has reasonable grounds to believe that the person concerned poses a risk to public policy, public order or national security.

(6) Where a return decision is set aside under *section 137(5)* or is revoked under *section 157(2)*, the notice referred to in subsection (1) to which the return decision relates shall no longer have effect.

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### **First country of asylum or safe third country return decision**

**156.** (1) Subject to *sections 159 and 163*, the Minister shall make a return decision in respect of a person in accordance with this section at the same time as the person's application is rejected as inadmissible by the Determining Authority on a ground referred to in *section 99(3)(a)* or *(b)*.

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(2) Where a return decision is made under subsection (1), the person the subject of the return decision shall be required to leave the State and may, while the return decision is in effect, be removed from the State—

(a) in the case of an application rejected as inadmissible on the ground referred to in *section 99(3)(a)*, to the first country of asylum, or

(b) in the case of an application rejected as inadmissible on the ground referred to in *section 99(3)(b)*, to the safe third country.

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(3) The Minister shall notify, in writing, the person the subject of a return decision under subsection (1) and the person's legal representative (if any) of—

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(a) the making of the return decision,

(b) the reasons for the making of the return decision, and

(c) the entitlement of the person the subject of the return decision to appeal the return decision under *section 129(1)(e)*.

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(4) Where the person does not have a legal representative, the notice referred to in subsection (3) shall be provided in a language the person understands or is reasonably supposed to understand.

(5) Subject to subsections (7) and (8), in the case of an application rejected as inadmissible on the ground referred to in *section 99(3)(a)*, a return decision under subsection (1) shall cease to have effect on the earlier of—

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(a) where the first country of asylum does not readmit the person to its territory or the relevant authorities of the first country of asylum do not reply to the Minister in respect of the return within the period of 12 months after the date on which the return decision came into effect under *section 158*, the expiry of that period, or

(b) where the relevant authorities of that first country of asylum reply to the Minister indicating that the country does not intend to readmit the person to its territory, the date of the reply.

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(6) Subject to *subsections (7) and (8)*, in the case of an application rejected as inadmissible on the ground referred to in *section 99(3)(b)*, a return decision under *subsection (1)* shall cease to have effect on the earlier of—

(a) where the safe third country does not admit or readmit the person to its territory or the relevant authorities of the safe third country do not reply to the Minister in respect of the return within the period of 12 months after the date on which the return decision came into effect under *section 158*, the expiry of that period, or 5

(b) where the relevant authorities of the safe third country reply to the Minister indicating that the country does not intend to admit or readmit the person to its territory, the date of the reply. 10

(7) Where a person the subject of a return decision under *subsection (1)* absconds and as a result cannot be removed from the State, the period of 12 months referred to in *subsection (5)(a)* or *(6)(a)* shall be read as a reference to a period of 3 years. 15

(8) Where a person the subject of a return decision under *subsection (1)* brings an application for judicial review in respect of the return decision under Order 84 of the Rules of the Superior Courts and the High Court suspends the operation of the return decision pending the determination of the application—

(a) the period of 12 months referred to in *subsection (5)(a)* or *(6)(a)* shall start to run on the date of the final determination of the application concerned (including where notice of appeal is given, the final determination of the appeal or any further appeal therefrom or the withdrawal of the appeal), or 20

(b) where the person absconds such that the person cannot be removed from the State within that 12 months, the period of 12 months referred to in *subsection (5)(a)* or *(6)(a)* shall be read as a reference to a period of 3 years from the date of the final determination. 25

(9) Where a return decision under *subsection (1)* ceases to have effect in accordance with this section, the Minister shall inform the person the subject of the return decision, in writing, as soon as practicable thereafter, of the person's entitlement to make a request in accordance with *subsection (10)*. 30

(10) Where a return decision under *subsection (1)* ceases to have effect in accordance with this section before the person the subject of the decision is removed from the State, the person's application shall, notwithstanding the fact that the application is rejected as inadmissible on the ground referred to in *section 99(3)(a)* or *(b)*, on the request of the person made in person at the frontier of the State or in the State, be deemed to be admissible. 35

(11) The Minister shall, as soon as practicable after a person makes a request referred to in *subsection (10)*, inform the person and the person's legal representative (if any) in writing of the effect of this section. 40

(12) *Subsection (10)* is without prejudice to the power of—

(a) the Determining Authority to subsequently reject the application as inadmissible on the basis of a ground in *section 99* other than the ground referred to in the return decision, or 40

(b) the Minister to take a transfer decision in relation to the person in accordance with *Part 4*.

#### **Making of return decision before decision under *Part 3 or 5***

**157.** (1) Without prejudice to the continued consideration of the person's application, where a person does not have a right to remain in the State under *section 64(b)(ii)*, the Minister may make a return decision in accordance with *section 154* before the person's application—

(a) is rejected by the Determining Authority as—

(i) inadmissible on a ground referred to in *section 99(2)* or *paragraph (c), (d), or (e) of section 99(3)*, or

(ii) unfounded under *section 109(1)*,

or

(b) is declared by the Determining Authority to be—

(i) explicitly withdrawn under *section 66*,

(ii) implicitly withdrawn under *section 67*, or

(iii) manifestly unfounded under *section 109(2)*.

(2) The Minister may revoke or amend a return decision made under *subsection (1)*.

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#### **Coming into effect of return decision**

**158.** (1) The effect of a return decision under *section 154* or *156* shall be automatically suspended for as long as the person the subject of the return decision has a right to remain or is allowed to remain in the State in accordance with *Part 6*.

(2) Without prejudice, in the case of a subsequent application, to *section 61*, a return decision shall come into effect for the purposes of this Act—

(a) in the case of a return decision made under *section 154* or *156*, when the person the subject of the return decision no longer has the right to remain in, and may be removed from, the State in accordance with *Part 6*, or

(b) in the case of a return decision made under *section 157*, on the date on which the return decision is made.

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#### **Exceptions to making of return decision**

**159.** (1) The Minister shall not make a return decision under *section 154* or *156* in respect of a person where—

(a) the person is the subject of a deportation order,

(b) there is a return decision in respect of the person in being under *section 154* or *156*, or

(c) subject to *subsection (3)*, the person is a member of a class or classes of persons prescribed under *subsection (2)*.

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(2) The Minister may, for the purposes of *subsection (1)(c)*, prescribe a class or classes of persons, being persons to whom such permission to remain in the State (given in accordance with the law of the State and being valid) as may be specified has been given.

(3) Notwithstanding *subsection (1)(c)* and subject to *subsection (4)*, the Minister shall make a return decision in respect of a person referred to in *subsection (1)(c)* where the Minister is of the opinion that it is in the interests of public policy, public order or national security to do so.

(4) The Minister shall not make a return decision referred to in *subsection (1)* in respect of a person referred to in *subsection (1)(c)* where the person is a person—

- (a) to whom Regulation 3(1) or 20(12) of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015) applies, or
- (b) referred to in Regulation 5 or 6 of the European Union (Withdrawal Agreement) (Citizens' Rights) Regulations 2020 (S.I. No. 728 of 2020).

(5) In making regulations under *subsection (2)*, the Minister shall have regard to—

- (a) the nature and purposes of the permission,
- (b) the period for which a person to whom the permission is given may remain in the State, and
- (c) the type of conditions that may be attached to such a permission.

**Requirements on person subject of return decision**

**160.** (1) An immigration officer or a member of An Garda Síochána may, for the purpose of facilitating the removal from the State or return of a person the subject of a return decision under this Chapter that has come into effect under *section 158*, by notice in writing require the person to do one or more than one of the following:

- (a) present (either in person or electronically) to an immigration officer or a member of An Garda Síochána at such date, time and, where in person, place, as may be specified in the notice;
- (b) where, and only for so long as, it is reasonably necessary to facilitate the removal from the State or return of the person, surrender the person's passport and any other travel document that the person holds;
- (c) cooperate in any way necessary to enable an immigration officer or a member of An Garda Síochána to obtain a passport or other travel document, travel ticket or other document required for the purpose of such removal from the State or return;
- (d) reside or remain in a particular place in the State pending the person's removal from the State or return.

(2) A notice under *subsection (1)* shall be in a language that the person understands or may reasonably be supposed to understand.

(3) A person to whom a notice is given under *subsection (1)* shall comply with the notice.

## Arrest and detention (Part 9)

161. (1) An immigration officer or a member of An Garda Síochána (in this section referred to as an “arresting officer or member”) may arrest without warrant a person the subject of a return decision under this Chapter that has come into effect under *section 158* and detain the person in accordance with *subsection (2)*—

(a) where the arresting officer or member, with reasonable cause, suspects—

- (i) having regard to the matters referred to in *subsection (5)*, that there is a risk of the person absconding,
- (ii) that the person is avoiding or intends to avoid the removal of the person from the State or the return, or is frustrating or intends to frustrate the removal or return,
- (iii) that the person poses a threat to public policy, public order or national security, or
- (iv) that the person is failing to comply with a requirement under *section 160*,

(b) where the person is serving a term of imprisonment in a prison or place of detention, immediately on completion by the person of the term of imprisonment, or

(c) for the purpose of facilitating or effecting the removal from the State or return of the person.

(2) A person arrested under *subsection (1)* may, under warrant of the arresting officer or member, be taken by an immigration officer or a member of An Garda Síochána to and be detained—

- (a) in a place prescribed by the Minister (in this section referred to as a “place of detention”), in the custody of the person for the time being in charge of the place,
- (b) for a period or periods each not exceeding 12 hours, in a vehicle, for the purpose of bringing the person to the port from which the ship, train, road vehicle or aircraft referred to in *subsection (3)* is soon to leave the State, or
- (c) for a period or periods each not exceeding 12 hours, within the port referred to in *paragraph (b)*.

(3) An immigration officer or a member of An Garda Síochána may make the necessary arrangements to place the person detained under *subsection (2)* on, and place the person on, a ship, train, road vehicle or aircraft that is soon to leave the State and the person shall be deemed to be in lawful custody while so detained and until the ship, train, road vehicle or aircraft leaves the State.

(4) The master or person in charge of a ship, train, road vehicle or aircraft that is soon to leave the State shall, if so directed by an immigration officer or a member of An Garda Síochána, receive a person the subject of a return decision under this Chapter on board the ship, train, road vehicle or aircraft and afford the person proper accommodation and maintenance during the journey concerned.

(5) The matters to which an arresting officer or member referred to in *subsection (1)(a)(i)* may have regard, in considering whether there is a risk of the person absconding, include the following:

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- (a) whether the person has misrepresented or omitted facts, whether or not by the use of false documents, in the processing of the person's application or during the return or removal procedure;
- (b) whether the person has failed to comply with a requirement under *section 160*;
- (c) whether the person, having been informed of arrangements for the return or removal from the State, has failed to cooperate with those arrangements;
- (d) whether the person has explicitly expressed an intention not to comply with arrangements for the return or removal;
- (e) whether the person has previously failed to comply with the law of the State, or of another state, relating to the entry or presence of non-nationals in the State or, as the case may be, that state.

(6) Subject to *subsection (7)*, *subsections (1)* and *(2)* shall not apply to a person who is under the age of 18 years.

(7) If and for so long as the arresting officer or member has reasonable grounds for believing that a person is not under the age of 18 years, the provisions of *subsections (1)* and *(2)* shall apply as if the person had attained the age of 18 years.

(8) Where a person detained under this section institutes court proceedings challenging the validity of the return decision concerned, the court hearing those proceedings or any appeal therefrom may, on application to it, determine whether the person shall continue to be detained or shall be released, and may make any such release subject to such conditions as it considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more than one of the following conditions:

- (a) that the person reside or remain in a particular district or place in the State;
- (b) that the person report to a specified Garda Síochána station or immigration officer at specified intervals;
- (c) that the person surrender any passport or travel document in the person's possession.

(9) Subject to *subsections (10)* and *(11)* and *section 162*, a person shall not be detained under this section for a period or periods exceeding 12 weeks in aggregate.

(10) The following periods shall be excluded in reckoning an aggregate period for the purpose of *subsection (9)*—

- (a) any period during which the person is remanded in custody pending a criminal trial or serving a sentence of imprisonment,
- (b) any period spent by the person in a vehicle referred to in *subsection (2)*, and
- (c) if the person has instituted court proceedings challenging the validity of the return decision concerned, any period spent by the person in a place of detention between the date of the institution of the proceedings and the date of their final determination including, where notice of appeal is given, the period between the giving of the notice and the final determination of the appeal or any further appeal therefrom or the withdrawal of the appeal or, as appropriate, the expiry of the ordinary time for instituting any such appeal.

(11) Periods of detention of a person may be aggregated for the purposes of *subsection (9)* only where the person concerned has, between the expiry of the earliest occurring period and the commencement of the latest occurring period, not left the State.

**Continuance of detention under section 161**

**162.** (1) *Subsection (2)* applies to a person the subject of a return decision under this Chapter who—

- (a) has previously been detained under *section 161*, and
- (b) not having left the State since the expiry of the most recent period of detention referred to in paragraph (a), is arrested and detained under *section 161*.

(2) Where the aggregate of the period or periods of a person's detention referred to in *subsection (1)(a)* and the period of detention referred to in *subsection (1)(b)* is 12 weeks, the person may continue to be detained under *section 161* only with the leave of a judge of the District Court. 10

(3) Where the detention of a person is authorised under *subsection (2)*, the period of detention referred to in *subsection (1)(a)* shall be excluded in reckoning, for the purposes of *section 161(9)*, the period of detention referred to in *subsection (1)(b)*. 15

(4) Where a person has previously been detained under *section 161*, and the period, or the aggregate of the periods, of the previous detention is 12 weeks or more, and the person is arrested and detained under *section 161*, the person shall—

- (a) as soon as practicable, be brought before a judge of the District Court, and 20
- (b) continue to be detained under that section only with the leave of a judge of the District Court.

(5) Where a person who was detained under *section 168* is subsequently detained under *section 161* in respect of the same return decision, and the period or aggregate of the periods of the detention is 18 weeks or more, the person shall— 25

- (a) as soon as practicable, be brought before a judge of the District Court, and
- (b) continue to be detained only with the leave of a judge of the District Court.

**Prohibition of refoulement**

**163.** (1) A person shall not be expelled or returned in any manner whatsoever to the frontier of a territory— 30

- (a) where, in the opinion of the Minister—
  - (i) the life or freedom of the person would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or
  - (ii) there is a real risk that the person would be subject to the death penalty, torture or other inhuman or degrading treatment or 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, 35

or

(b) where the Minister is of the opinion that the expulsion or return of the person would be prohibited under any enactment or rule of law as being in breach of the person's fundamental rights.

(2) Without prejudice to *subsection (1)*, a return decision shall not be made under *section 154, 156 or 157* where the Minister is of the opinion referred to in *subsection (1)*. 5

(3) For the purposes of *subsection (1)*, the Minister shall have regard to—

- (a) the information, if any, submitted by the person under *subsection (4)*, and
- (b) any relevant information presented by the person including any statement made 10 by the person at any interview conducted for the purposes of this Act.

(4) Where a person becomes aware of a change of circumstances that would be relevant to the opinion referred to in *subsection (1)*, the person shall inform the Minister as soon as practicable of the change.

## CHAPTER 2

15

### *Return border procedure*

#### **Application of Chapter 2 of Part 9**

**164.** (1) Subject to *subsection (2)*, this Chapter shall apply to a person where—

- (a) the person's application was considered in the asylum border procedure under *Chapter 6 of Part 5*, and 20
- (b) the person has received a return decision under *section 154 or 156* and the decision has come into effect in accordance with *section 158*.

(2) This Chapter shall cease to apply to a person upon the earlier of—

- (a) the expiry of the period of 12 weeks from the date on which the return decision comes into effect under *section 158*, or 25
- (b) the person being removed from the State or returned or otherwise leaving the State.

#### **Requirements on person to whom Chapter applies**

**165.** (1) An immigration officer, an officer of the Minister or a member of An Garda Síochána, by notice in writing to a person to whom this Chapter applies— 30

- (a) shall require the person to reside in a designated centre for a period specified in the notice, and
- (b) may require the person to comply with one or more than one of the following conditions:

- (i) present (either in person or electronically) to an immigration officer, officer of the Minister or a member of An Garda Síochána at such date, time and, 35 where in person, place, as may be specified in the notice;

- (ii) where, and only for so long as, it is reasonably necessary to facilitate the removal from the State or return of the person, surrender the person's passport and any other travel document that the person holds;
- (iii) cooperate in any way necessary to enable an immigration officer, an officer of the Minister or a member of An Garda Síochána to obtain a passport or other travel document, travel ticket or other document required for the purpose of such removal from the State or return.

(2) A notice under *subsection (1)* shall be in a language that the person concerned understands or may reasonably be supposed to understand.

(3) A person to whom a notice under *subsection (1)* is given shall comply with the notice. 10

#### **Designated centre**

**166.** Where the Minister is satisfied that a premises is suitable for the purposes of a requirement to reside under *section 165*, the Minister may designate the premises for that purpose (in this Chapter referred to as a "designated centre").

#### **Refusal of authorisation to enter State**

**167.** A person to whom this Chapter applies shall not be authorised to enter the State under section 4 of the Act of 2004 and a requirement on the person to reside referred to in *section 165* or the fact of the person's detention (if any) under *section 168* shall not be considered to be an authorisation to enter the State under that section 4.

#### **Arrest and detention under return border procedure**

**168.** (1) An immigration officer or a member of An Garda Síochána (in this section referred to as the "arresting officer or member") may, as a measure of last resort, arrest without warrant a person to whom this Chapter applies and detain the person in accordance with *subsection (2)* where the arresting officer or member is of the opinion, based on reasonable grounds—

- (a) that the measures referred to in *section 165* cannot be applied effectively to the person, and
- (b) that the arrest and detention of the person is necessary as—
  - (i) having regard to the matters referred to in *subsection (7)*, there is a risk of the person absconding,
  - (ii) the person is avoiding the removal or frustrating the removal from the State or return, or
  - (iii) the person poses a risk to public policy, public security or national security.

(2) A person arrested under *subsection (1)* may, under warrant of the arresting officer or member, be taken by an immigration officer or a member of An Garda Síochána to and be detained—

- (a) for a period not exceeding 12 weeks (or until this Chapter ceases to apply to the person, if earlier), in a place prescribed by the Minister, in the custody of the person for the time being in charge of the place,

- (b) for a period or periods each not exceeding 12 hours, in a vehicle, for the purpose of bringing the person to the port from which the ship, train, road vehicle or aircraft referred to in *subsection (3)* is soon to leave the State, or
  - (c) for a period or periods each not exceeding 12 hours, within the port referred to in *paragraph (b)*.

(3) An immigration officer or a member of An Garda Síochána may make the necessary arrangements to place the person detained under *subsection (2)* on, and place the person on, a ship, train, road vehicle or aircraft that is soon to leave the State, and the person shall be deemed to be in lawful custody while so detained and until the ship, train, road vehicle or aircraft leaves the State.

(4) The master or person in charge of a ship, train, road vehicle or aircraft that is soon to leave the State shall, if so directed by an immigration officer or a member of An Garda Síochána, receive a person to whom this Chapter applies on board the ship, train, road vehicle or aircraft and afford the person so received proper accommodation and maintenance during the journey concerned.

(5) Subject to *subsection (6)*, *subsections (1)* and *(2)* shall not apply to a person who is under the age of 18 years.

(6) If and for so long as the arresting officer or member has reasonable grounds for believing that the person is not under the age of 18 years, the provisions of *subsections (1)* and *(2)* shall apply as if the person had attained the age of 18 years.

(7) The matters referred to in *subsection (1)(b)(i)* to which the arresting officer or member may have regard, in considering whether there is a risk of the person absconding, include the following:

- (a) whether the person has misrepresented or omitted facts, whether or not by the use of false documents, in the processing of the person's application or during the return or removal procedure;
- (b) whether the person has failed to comply with a requirement under *section 165*;
- (c) whether the person, having been informed of arrangements for the return or removal from the State, has failed to cooperate with those arrangements;
- (d) whether the person has explicitly expressed an intention not to comply with arrangements for the return or removal;
- (e) whether the person has previously failed to comply with the law of the State, or of another state, relating to the entry or presence of non-nationals in the State or, as the case may be, that state.

#### **Cessation of return border procedure**

**169.** Where this Chapter ceases to apply to a person in accordance with *section 164(2)*, *sections 160, 161 and 162* shall apply to the person subject to the modification that, notwithstanding *section 160*, an immigration officer or a member of An Garda Síochána shall, for the purpose of facilitating the removal from the State or return of the person, by notice in writing require the person to do one or more than one of the matters referred to in *paragraphs (a) to (d) of section 160(1)*.

**Power to enter premises**

170. (1) Subject to *subsection (2)*, for the purpose of arresting a person under *section 161* or *168*, an immigration officer or a member of An Garda Síochána may enter (if necessary by use of reasonable force) and search any premises (including a dwelling) where the person is or where the officer or member, with reasonable cause, suspects the person to be. 5

(2) Where the premises referred to in *subsection (1)* is a dwelling, the immigration officer or member of An Garda Síochána shall not, unless acting with the consent of an occupier of the dwelling or other person who appears to the officer or member to be in charge of the dwelling, enter that dwelling unless—

- (a) the person referred to in *subsection (1)* ordinarily resides at the dwelling, or
- (b) the officer or member believes on reasonable grounds that that person is within the dwelling. 10 15

**Issue of travel document for purpose of return**

171. The Minister may, in order to facilitate and effect the return, or removal from the State, of a person the subject of a return decision under *section 154*, *156* or *157*, issue to the person a *laissez-passer* or such other travel document as the Minister considers appropriate. 20

**Review of detention under Part 9**

172. (1) A person who is detained under *section 161* or *168* for more than 4 weeks may request, in writing, a review of the detention for the purposes of determining whether the grounds on which the person is detained under *section 161* or *168* continue to apply. 25

(2) A review requested under *subsection (1)* shall be carried out—

- (a) where the person is detained under warrant of a member of An Garda Síochána, by a member of An Garda Síochána who is more senior than the first-mentioned member and, in any event, is at least of the rank of Superintendent, or
- (b) where the person is detained under warrant of an immigration officer, by an officer of the Minister who is of a grade more senior than the immigration officer, and is otherwise of a grade determined by the Minister. 30

(3) The person may, when making the request, offer in writing the reasons that the person is of the view the grounds for the detention under *section 161* or *168* no longer apply.

(4) If the person detained has a legal representative, the legal representative may request the review on behalf of the person. 35

(5) The member of An Garda Síochána or officer of the Minister carrying out the review shall consider—

- (a) the grounds on which the person is detained,
- (b) the reasons set out by the person under *subsection (3)* (if any), and
- (c) any change in circumstances that has occurred since the detention began and that is relevant to the person's continued detention.

(6) The member of An Garda Síochána or officer of the Minister carrying out the review, may, having considered the matters referred to in *subsection (5)*, direct the release of the person if the member or officer considers that there are no grounds for continuing to detain the person under *section 161* or *168*. 5

## PART 10

### HUMANITARIAN ADMISSION FRAMEWORK, PROGRAMME REFUGEES, TEMPORARY PROTECTION AND CRISIS AND *FORCE MAJEURE* 10

#### **Programme Refugees**

**173.** (1) For the purposes of this Part, a "programme refugee" means a person, whether or not such person is a refugee within the meaning of the definition of "refugee" in *section 2*— 15

- (a) to whom permission to enter and remain in the State under the Union Resettlement and Humanitarian Admission Framework Regulation in accordance with *subsection (3)* has been given by the Minister and whose name is entered by the Minister in the register referred to in *subsection (6)*,
- (b) to whom permission to enter and remain in the State under the Union Resettlement and Humanitarian Admission Framework Regulation in accordance with *subsection (4)* has been given by the Minister and whose name is entered by the Minister in the register referred to in *subsection (6)*,
- (c) to whom permission to enter and remain in the State for resettlement has been given by the Government or the Minister in accordance with other governmental programmes or humanitarian schemes, and whose name is entered in the register referred to in *subsection (6)*, other than—
  - (i) those referred to in *paragraph (e)*, or
  - (ii) those granted temporary protection,
- (d) who, on the date on which this section comes into operation, is a programme refugee within the meaning of section 59 of the Act of 2015, or 30
- (e) to whom permission to enter and remain in the State on an *ad hoc* temporary basis as a refugee has been given by the Government or the Minister.

(2) During such period as he or she is entitled to remain in the State pursuant to a permission given by the Government or the Minister— 35

- (a) under *paragraphs (a) or (b) of subsection (1)*, *Part 7* shall apply to a programme refugee, or

(b) under *paragraphs (c), (d), or (e) of subsection (1), sections 144(1), 145 and 146* shall apply to a programme refugee.

(3) For the reception and resettlement in the State of programme refugees admitted under the Union Resettlement and Humanitarian Admission Framework Regulation in accordance with *subsection (1)(a)*, the Minister, after consultation with the Minister for Foreign Affairs and Trade—

(a) shall request the High Commissioner to refer to him or her, in accordance with Article 9 of the Union Resettlement and Humanitarian Admission Framework Regulation, such persons as are eligible for admission in accordance with paragraphs (1), (3) and (4) of Article 5 of that Regulation, and

(b) shall follow the admission procedure as set out in Article 9 of the Union Resettlement and Humanitarian Admission Framework Regulation.

(4) For the reception and humanitarian admission into the State of programme refugees admitted under the Union Resettlement and Humanitarian Admission Framework Regulation in accordance with *subsection (1)(b)*, the Minister, after consultation with the Minister for Foreign Affairs and Trade—

(a) may request the High Commissioner, the Asylum Agency or another relevant international body to refer to him or her, in accordance with Article 9 of the Union Resettlement and Humanitarian Admission Framework Regulation, such persons as are eligible in accordance with paragraphs (2), (3) and (4) of Article 5 of that Regulation, and

(b) shall follow the admission procedure as set out in Article 9 of the Union Resettlement and Humanitarian Admission Framework Regulation.

(5) The Minister may, after consultation with the Minister for Foreign Affairs and Trade, enter into agreements with the High Commissioner for the reception and resettlement in the State of programme refugees.

(6) Notwithstanding the repeal of the Act of 2015 by *section 5*, the register established under section 59 of that Act and maintained by the Minister shall continue in being and be maintained by the Minister for the purposes of this Part.

(7) For the reception and resettlement in the State and the humanitarian admission into the State of programme refugees admitted under the Union Resettlement and Humanitarian Admission Framework Regulation in accordance with *paragraphs (a) and (b) of subsection (1)*, the eligibility requirements set out in Article 5, the grounds for refusing admission set out in Article 6 and the consent requirements set out in Article 7 of that Regulation shall apply.

(8) The Minister shall carry out the functions of a Member State in accordance with the admission procedure as set out in Article 9 of the Union Resettlement and Humanitarian Admission Framework Regulation.

(9) In this section, “register” means the register referred to in *subsection (6)* and maintained by the Minister, for the registering of programme refugees.

(10) A word or expression that is used in this section and is also used in the Union Resettlement and Humanitarian Admission Framework Regulation shall have the same meaning as it has in that Regulation unless the context otherwise requires.

## Crisis and *force majeure*

174. (1) Subject to *subsection (7)*, where the Government considers that the State is in a situation of crisis or *force majeure*, the Government may, at the request of the Minister, by order declare that the State is in such a situation and—

- (a) authorise the Minister to submit a reasoned request to the European Commission in accordance with Article 2 or 8 of the Crisis and Force Majeure Regulation, 5
- (b) authorise the Minister to make a request referred to in Article 5(2) of that Regulation, or
- (c) authorise the Minister to make the notification under Article 10(6) of that Regulation. 10

(2) Where a Council implementing decision is made in respect of the situation of crisis or *force majeure* under Article 4(3) of the Crisis and Force Majeure Regulation, the Minister may, in accordance with the terms of the decision, make such regulations as are necessary for the purpose of applying the derogations under Article 10, 11, 12 or 13 of that Regulation that the State is authorised by that decision to apply. 15

(3) Where the making of a notification referred to in Article 10(6) of the Crisis and Force Majeure Regulation is authorised under *subsection (1)* and the notification is made by the Minister to the European Commission, the Minister may make regulations for the purposes of applying the derogation referred to in Article 10(1) of that Regulation for a period not exceeding 10 days from the day following the date of the submission of the reasoned request concerned under Article 2 of that Regulation. 20

(4) Without prejudice to the generality of *subsections (2)* and *(3)*, the regulations—

- (a) may modify the application of provisions of this Act for the purpose of applying the derogations under Article 10, 11, 12 or 13 of the Crisis and Force Majeure Regulation, 25
- (b) shall comply with the Crisis and Force Majeure Regulation, in particular Article 5(3) thereof, and
- (c) may provide for the matters referred to in Article 15 of the Crisis and Force Majeure Regulation.

(5) Subject to *subsection (7)*, where, as a result of the measures required to support a Member State facing a situation of crisis included in a Council implementing decision under Article 4 of the Crisis and Force Majeure Regulation, the Government considers that the State is facing a situation of crisis it may, at the request of the Minister, by order—

- (a) declare that the State is facing such a situation, and 35
- (b) authorise the Minister to submit a request, in accordance with Article 9(7) of the Crisis and Force Majeure Regulation, under Article 2 of that Regulation.

(6) Notwithstanding *Part 5*, where a recommendation is made by the European Commission under Article 14(1) of the Crisis and Force Majeure Regulation, and the Determining Authority omits the substantive interview under *Part 5* for the purposes of the consideration of an application the subject of the recommendation or prioritises the examination of an application the subject of that recommendation in accordance 40

with *section 92*, the Determining Authority shall conclude the examination of the merits of the application no later than 4 weeks from the lodgement of the application.

(7) Where an order is proposed to be made under *subsection (1)* or *(5)*, a draft of the order and a draft of the reasoned request referred to in *subsection (1)(a)*, request referred to in *subsection (1)(b)*, notification referred to in *subsection (1)(c)* or request referred to in *subsection (5)(b)*, as the case may be, shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft order has been passed by each such House. 5

(8) In this section, the “Crisis and Force Majeure Regulation” means Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024<sup>18</sup> addressing situations of crisis and *force majeure* in the field of migration and asylum and amending Regulation (EU) 2021/1147. 10

(9) A word or expression that is used in this section and is also used in the Crisis and Force Majeure Regulation shall have the same meaning as it has in that Regulation unless the context otherwise requires. 15

## PART 11

### TRIBUNAL

#### CHAPTER 1

##### *Definitions (Part 11)*

###### **Definitions (Part 11)**

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**175.** In this Part—

“appeal” means an appeal within the meaning of *Part 6*;

“Appeals Officer” means—

(a) the Chief Appeals Officer,

(b) a Deputy Chief Appeals Officer, and

(c) a person appointed by the Minister under *section 179(7)* to be an Appeals Officer, other than a Deputy Chief Appeals Officer, of the Tribunal; 25

“business”, other than in *section 186(8)*, means—

(a) the determination of appeals and appeals under *section 82*,

(b) the determination of requests to remain and requests to remain within the meaning of *Part 9*, and 30

(c) any additional tasks assigned to an Appeals Officer by the Chief Appeals Officer in order to fulfil any other functions conferred on the Tribunal by or under the EU acts, this Act and any other enactment;

18 OJ L, 2024/1359, 22.5.2024.

“Deputy Chief Appeals Officer” means a person appointed by the Minister under *section 179(7)* to be a Deputy Chief Appeals Officer of the Tribunal;

“designated member of staff” means a member of staff appointed under *section 187(3)* to be a designated member of staff for the purposes of any of the provisions of this Part;

“Director” has the meaning given to it by *section 186(1)*;

5

“establishment day of the Tribunal” means the day appointed under *section 176*;

“International Protection Appeals Tribunal” means the Tribunal established by section 61 of the Act of 2015;

“member of staff” has the meaning given to it by *section 187(1)*.

## CHAPTER 2

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### *Establishment of Tribunal*

#### **Establishment day of Tribunal**

**176.** The Minister shall, by order, appoint a day to be the establishment day of the Tribunal for the purposes of this Part.

#### **Establishment of Tribunal**

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**177.** There shall stand established on the establishment day of the Tribunal a body to be known in the Irish language as *An Binse um Achomhairc i dtaobh Tearmainn agus Filleadh* or (notwithstanding section 9D(1) of the Official Languages Act 2003), in the English language as the Tribunal for Asylum and Returns Appeals (in this Act referred to as the “Tribunal”), to perform the functions conferred on it by or under the EU acts, this Act and any other enactment.

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## CHAPTER 3

### *Tribunal*

#### **Functions of Tribunal**

**178.** (1) The Tribunal shall have the following functions:

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- (a) to determine appeals and appeals under *section 82*;
- (b) to determine requests to remain and requests to remain within the meaning of *Part 9*;
- (c) to perform such other functions conferred on it by or under the EU acts, this Act and any other enactment.

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(2) The Tribunal shall be—

- (a) inquisitorial in nature, and
- (b) independent in the performance of its functions.

## Composition of Tribunal

179. (1) The Tribunal shall consist of the following Appeals Officers—

- (a) a Chief Appeals Officer, who shall be appointed in a whole-time capacity,
- (b) such number of Deputy Chief Appeals Officers, who shall be appointed in a whole-time capacity, as the Minister, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, considers necessary for the performance of the functions of the Tribunal, 5
- (c) such number of other Appeals Officers, who shall be appointed in a whole-time capacity, as the Minister, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, considers necessary for the performance of the functions of the Tribunal, and 10
- (d) such number of other Appeals Officers, who shall be appointed in a part-time capacity, as the Minister, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, considers necessary for the performance of the functions of the Tribunal. 15

(2) An Appeals Officer referred to in *paragraph (a) or (b) of subsection (1)* shall have had before his or her appointment not less than 5 years' experience as—

- (a) a practising solicitor or practising barrister,
- (b) an Appeals Officer referred to in *paragraph (c) or (d) of subsection (1)*, or
- (c) a member of the International Protection Appeals Tribunal. 20

(3) An Appeals Officer referred to in *subsection (1)(c)* shall be—

- (a) a practising solicitor or practising barrister,
- (b) a member of the International Protection Appeals Tribunal,
- (c) pursuing his or her professional activities as a lawyer in a member state under the relevant home professional title, 25
- (d) practising, in a jurisdiction other than a member state and in accordance with the law of that jurisdiction, in a profession that corresponds substantially to the profession of solicitor or barrister, or
- (e) a legal academic, where the person is, at the time of his or her appointment under *subsection (7)*, a solicitor or qualified barrister. 30

(4) An Appeals Officer referred to in *subsection (1)(d)* shall have had before his or her appointment not less than 2 years' experience—

- (a) as a practising solicitor or practising barrister,
- (b) as a member of the International Protection Appeals Tribunal,
- (c) pursuing his or her professional activities as a lawyer in a member state under the relevant home professional title, 35
- (d) practising, in a jurisdiction other than a member state and in accordance with the law of that jurisdiction, in a profession that corresponds substantially to the profession of solicitor or barrister, or

(e) as a legal academic, where the person is, at the time of his or her appointment under *subsection (7)*, a solicitor or qualified barrister.

(5) The Chief Appeals Officer shall be appointed by the Government on the recommendation of the Service.

(6) Subject to *subsection (2)* and *section 180(9)*, the Service shall identify and recommend a person for appointment by the Government as the Chief Appeals Officer following a competition held by the Service for that purpose under section 47 of the Public Service Management (Recruitment and Appointments) Act 2004. 5

(7) Subject to *subsection (8)*, the Appeals Officers (other than the Chief Appeals Officer) shall be appointed by the Minister. 10

(8) Subject to *subsections (2) to (4)* and *sections 180(9) and (10)*, the Minister shall not appoint an Appeals Officer unless the Service, after holding a competition under section 47 of the Public Service Management (Recruitment and Appointments) Act 2004, has selected him or her for appointment to the position.

(9) The Minister may, before the establishment day of the Tribunal, designate— 15

- (a) a person to be appointed as the first Chief Appeals Officer, and
- (b) persons to be appointed as the first Deputy Chief Appeals Officers.

(10) Where, immediately before the establishment day of the Tribunal—

- (a) a person stands designated by the Minister under *subsection (9)(a)*, that person shall, on that day, stand appointed as the first Chief Appeals Officer for a period of 5 years, and 20
- (b) a person stands designated by the Minister under *subsection (9)(b)*, that person shall, on that day, stand appointed as a first Deputy Chief Appeals Officer for a period of 5 years.

(11) In this section— 25

“home professional title”, “lawyer”, “member state” and “professional activities” have the same meanings as they have in the European Communities (Lawyers’ Establishment) Regulations 2003 (S.I. No. 732 of 2003);

“legal academic” shall be construed in accordance with section 45A(2) of the Courts (Supplemental Provisions) Act 1961; 30

“qualified barrister” has the meaning it has in the Legal Services Regulation Act 2015;

“solicitor” means a person who has been admitted as a solicitor whose name is on the roll of solicitors (within the meaning of the Solicitors Act 1954).

**Terms of appointment and conditions of office of Appeals Officers** 35

**180.** (1) The Chief Appeals Officer, a Deputy Chief Appeals Officer and all other Appeals Officers appointed in a whole-time capacity shall hold office under a contract of service in writing, containing such terms and conditions (including terms and conditions relating to remuneration, allowances, expenses and superannuation) as the

Minister, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, may determine.

(2) Each Appeals Officer appointed in a part-time capacity shall hold office under a contract for services in writing, containing such terms and conditions (including terms and conditions relating to remuneration, allowances, expenses and superannuation) as the Minister, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, may determine. 5

(3) The term of office of the Appeals Officers shall be as follows:

(a) the term of office of the Chief Appeals Officer shall be 5 years and a Chief Appeals Officer may be reappointed to the office for a second term not exceeding 5 years; 10

(b) the term of office of a Deputy Chief Appeals Officer shall be 5 years and a Deputy Chief Appeals Officer may be reappointed to the office for a second term not exceeding 5 years;

(c) the term of office of an Appeals Officer appointed in a whole-time capacity, other than the Chief Appeals Officer and a Deputy Chief Appeals Officer, shall be 7 years and such an Appeals Officer may be reappointed to the office for a second term not exceeding 7 years; 15

(d) the term of office of an Appeals Officer appointed in a part-time capacity shall be 7 years and such an Appeals Officer may be reappointed to the office for a second term not exceeding 7 years. 20

(4) Where it is proposed to reappoint an Appeals Officer, it shall not be necessary for the person to participate in a selection competition undertaken by the Service under *section 179(6) or (8)*, as the case may be.

(5) A person shall not be eligible for appointment as an Appeals Officer if he or she is— 25

(a) nominated as a member of Seanad Éireann,

(b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,

(c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament, 30

(d) elected or co-opted as a member of a local authority,

(e) appointed to judicial office, or

(f) appointed Attorney General.

(6) A person shall be disqualified from holding and shall cease to hold office as an Appeals Officer if he or she— 35

(a) subject to *subsection (7)*, is adjudicated bankrupt,

(b) makes a composition or arrangement with his or her creditors,

(c) is convicted on indictment of an offence, or is convicted outside the State of an offence consisting of acts or omissions which would constitute an offence triable on indictment if done or made in the State, 40

- (d) is convicted of an offence involving fraud or dishonesty,
- (e) is sentenced by a court of competent jurisdiction to a term of imprisonment,
- (f) has a declaration under section 819 of the Act of 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
- (g) is subject or is deemed to be subject to a disqualification order (within the meaning of Chapter 4 of Part 14 of the Act of 2014) whether by virtue of that Chapter or any other provision of that Act or a disqualification outside the State to like effect which corresponds to such a disqualification order.

(7) *Subsection (6)(a)* shall apply only for so long as a person has not obtained a certificate of discharge from bankruptcy. 10

(8) Without prejudice to the generality of *subsection (6)*, that subsection shall be construed as prohibiting the reckoning of a period referred to therein as service with the Tribunal for the purposes of any superannuation benefits payable under this Act or otherwise. 15

(9) If an Appeals Officer appointed in a whole-time capacity—

- (a) dies, resigns, becomes disqualified or is removed from office, or
- (b) is for any reason temporarily unable to continue to perform his or her functions, the Minister may appoint another person to be an Appeals Officer in a whole-time or part-time capacity until an appointment is made in accordance with *section 179(5)* or (7). 20

(10) If an Appeals Officer appointed in a part-time capacity—

- (a) dies, resigns, becomes disqualified or is removed from office, or
- (b) is for any reason temporarily unable to continue to perform his or her functions, the Minister may appoint another person to be an Appeals Officer in a part-time capacity to fill the vacancy so occasioned until an appointment is made in accordance with *section 179(7)*. 25

### **Resignation and removal of Appeals Officers**

**181.** (1) The Chief Appeals Officer may resign from office by notice in writing to the Minister and the resignation shall take effect on the date the Minister receives the notice, or, if a date is specified in the notice and the Government agrees to that date, on that date. 30

(2) An Appeals Officer (other than the Chief Appeals Officer) may resign from office by notice in writing to the Minister and the resignation shall take effect on the date the Minister receives the notice, or, if a date is specified in the notice and the Minister agrees to that date, on that date. 35

(3) The Chief Appeals Officer may be removed from office by the Government where the Government is satisfied that one or more of the following grounds apply to the Chief Appeals Officer:

- (a) he or she has become incapable through ill-health of performing his or her functions;
- (b) he or she has engaged in serious misconduct;
- (c) in the opinion of the Government, he or she has failed without reasonable cause to perform his or her functions for a continuous period of at least 3 months; 5
- (d) he or she has contravened to a material extent a provision of the Ethics in Public Office Acts 1995 and 2001 that, by virtue of a regulation under section 3 of the Ethics in Public Office Act 1995, applies to him or her.

(4) An Appeals Officer (other than the Chief Appeals Officer) may be removed from office by the Minister where the Minister is satisfied that one or more of the grounds specified in any of the paragraphs of *subsection (3)* apply to the Appeals Officer. 10

(5) Where—

- (a) the Government proposes to remove the Chief Appeals Officer from office under *subsection (3)*, or
- (b) the Minister proposes to remove an Appeals Officer from office under *subsection (4)*, 15

the Minister shall give notice in writing to the Appeals Officer concerned of the proposal.

(6) A notice under *subsection (5)* shall include a statement—

- (a) of the reasons for the proposed removal from office, 20
- (b) that the Appeals Officer concerned may, within a period of 30 working days from the giving of the notice or such longer period as the Minister may, having regard to the requirements of natural justice, specify in the notice, make representations to the Government or the Minister, as the case may be, in such form and manner as may be specified by the Minister, as to why the Appeals Officer should not be removed from office, and 25
- (c) that where no representations are received within the period referred to in paragraph (b) or the period specified in the notice, as the case may be—
  - (i) the Government shall, without further notice to the Chief Appeals Officer, proceed with the removal from office in accordance with *subsection (3)*, or 30
  - (ii) the Minister shall, without further notice to the Appeals Officer, proceed with the removal from office of the Appeals Officer in accordance with *subsection (4)*.

(7) In considering whether to remove the Chief Appeals Officer from office under *subsection (3)* or an Appeals Officer from office under *subsection (4)*, the Government or the Minister, as the case may be, shall take into account— 35

- (a) any representations made by the Appeals Officer concerned under *subsection (6)(b)* within the period referred to in that paragraph or the period specified in the notice, as the case may be, and

(b) any other matter the Government or the Minister, as the case may be, considers relevant for the purpose of the decision.

(8) Where, having taken into account the matters referred to in *subsection (7)*—

- (a) the Government decide to remove the Chief Appeals Officer from office, or
- (b) the Minister decides to remove an Appeals Officer from office,

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the Minister shall give notice in writing to the Appeals Officer concerned of the decision and the reasons for that decision.

(9) Where the Government decide to remove a Chief Appeals Officer from office in accordance with this section, they shall prepare a statement of the reason or reasons for such removal and cause that statement to be laid before each House of the Oireachtas as soon as practicable after the decision is made.

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(10) For the purposes of *subsection (4)*, the reference in *subsection (3)(c)* to the opinion of the Government shall be construed as a reference to the opinion of the Minister.

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**Functions of Chief Appeals Officer**

**182.** (1) The Chief Appeals Officer shall have the following functions:

- (a) to ensure that the functions of the Tribunal are performed efficiently;
- (b) to ensure that the business assigned to each Appeals Officer is disposed of as expeditiously as may be consistent with fairness and natural justice.

(2) The Chief Appeals Officer may, with a view to promoting high professional standards, issue to the other Appeals Officers guidelines on—

- (a) the practical application and operation of the provisions of this Act or regulations made under this Act that relate to the functions of the Tribunal,
- (b) developments in the law relating to international protection,
- (c) without prejudice to the generality of *paragraphs (a) and (b)*, the practical application and operation of *section 133(2)* and developments in the law relating to Article 67(3) of the Asylum Procedures Regulation, and
- (d) without prejudice to a complete and fair examination of an appeal and in the interests of swift and fair procedures, the practical application and operation of *section 139*.

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(3) The Chief Appeals Officer may—

- (a) request the Director to re-assign business from one Appeals Officer to a different Appeals Officer if, in the opinion of the Chief Appeals Officer, such re-assignment is warranted by the inability or unwillingness to transact that business by the Appeals Officer to whom the business was originally assigned and such a request shall contain reasons for same,
- (b) require an Appeals Officer to prepare a report of his or her determination of each appeal within a period specified in the guidelines referred to in *subsection (2)*, and

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- (c) require an Appeals Officer to prepare a report on any aspect of the transaction of the business assigned to the Appeals Officer.

(4) The Chief Appeals Officer shall accord priority to an appeal or a request to remain—

- (a) upon a request by the Minister under *section 217*,
- (b) where the appeal or request is in respect of an application to which the asylum border procedure under *Chapter 6 of Part 5* applied, or
- (c) when he or she is of the opinion that it is in the interests of justice to do so.

(5) Without prejudice to *section 178(2)(b)*, the Chief Appeals Officer may from time to time convene a meeting with an Appeals Officer or Appeals Officers for the purpose of discussing matters relating to the transaction of the business assigned to the Officer or Officers, including, in particular, such matters as divergences in the transaction of business by the Officers.

(6) The Chief Appeals Officer may make provision for training programmes for Appeals Officers.

**Delegation of functions of Chief Appeals Officer** 15

**183.** (1) Subject to *subsection (2)*, the Chief Appeals Officer may, in writing, delegate any of his or her functions—

- (a) to a Deputy Chief Appeals Officer, or
- (b) any other Appeals Officer appointed in a whole-time capacity.

(2) A delegation under this section may— 20

- (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
- (b) be made subject to conditions or restrictions, and
- (c) be revoked or varied by the Chief Appeals Officer at any time.

(3) The delegation of a function under this section does not preclude the Chief Appeals Officer from performing the function. 25

(4) Where the Chief Appeals Officer's functions are delegated to a person under this section, any references to the Chief Appeals Officer shall be construed as references to that person.

(5) An act or thing done by a person pursuant to a delegation under this section has the same force and effect as if done by the Chief Appeals Officer. 30

(6) A delegation under this section shall not cease to have effect by reason only of a change in the person lawfully acting as, or performing the functions of, the Chief Appeals Officer.

(7) In any legal proceedings, a certificate purporting to be signed by the Chief Appeals Officer stating that a specified function of the Chief Appeals Officer was, on a specified date, delegated by him or her under this section to a specified person and specifying the conditions or restrictions (if any) imposed on the delegation shall, 35

unless the contrary is shown, be evidence of the matters stated therein without further proof, including proof of the signature of the Chief Appeals Officer.

#### **Power of Deputy Chief Appeals Officer to perform functions of Chief Appeals Officer**

**184.** (1) The Minister shall appoint a Deputy Chief Appeals Officer to perform the functions of the Chief Appeals Officer during any period where—5

- (a) the Chief Appeals Officer is absent or incapacitated, or
- (b) the office of the Chief Appeals Officer is vacant.

(2) Where a Deputy Chief Appeals Officer is performing the functions of the Chief Appeals Officer pursuant to an appointment under *subsection (1)*, references in this Act and any other enactment to the Chief Appeals Officer shall be construed as references to the Deputy Chief Appeals Officer for the duration of such appointment.10

#### **Functions of Appeals Officers**

**185.** (1) A Deputy Chief Appeals Officer and any other Appeals Officer appointed in a whole-time capacity (other than the Chief Appeals Officer) shall perform such of the functions of the Chief Appeals Officer under this Act as the Chief Appeals Officer may assign to him or her.15

(2) An Appeals Officer shall have the function, on behalf of the Tribunal, of transacting the business assigned to him or her under this Act.

(3) An Appeals Officer shall, in the performance of his or her functions under this Act—20

- (a) ensure that the business assigned to him or her is managed efficiently and disposed of as expeditiously as is consistent with fairness and natural justice,
- (b) conduct oral hearings in accordance with this Act and regulations made under this Act,
- (c) accord priority to an appeal or request to remain to which *section 182(4)* applies that is assigned to him or her,25
- (d) have regard to any guidelines issued by the Chief Appeals Officer under *section 182(2)*,
- (e) prepare the report referred to in *paragraph (b)* or *(c)* of *section 182(3)* and provide it to the Chief Appeals Officer when requested to do so,
- (f) attend any meetings convened by the Chief Appeals Officer under *section 182(5)*,30 unless it is impracticable to do so,
- (g) provide such assistance to the Chief Appeals Officer in the performance by the Chief Appeals Officer of his or her functions under this Act as the Chief Appeals Officer may reasonably request, and
- (h) comply with any direction given by the Chief Appeals Officer relating to training and the continued professional development of Appeals Officers.35

## Director of Tribunal

**186.** (1) The Minister shall appoint a person to be the Director of the Tribunal (in this Part referred to as the “Director”).

(2) The Minister may, before the establishment day of the Tribunal, designate a person to be appointed as the first Director. 5

(3) Where, immediately before the establishment day of the Tribunal, a person stands designated under subsection (2), that person shall, on that day, stand appointed as the first Director.

(4) The Director shall have the following functions—

(a) to manage and control generally the staff and administration of the Tribunal, 10

(b) to assign, having regard to *section 182(4)*, to each Appeals Officer the appeals and requests to remain to be determined by him or her,

(c) to bring to the attention of the Chief Appeals Officer any matter relevant to the Chief Appeals Officer’s functions under *section 182(1)* or (4),

(d) to provide the Minister with such information, including financial information, in respect of the performance of his or her functions as the Minister may require, and 15

(e) to perform such other functions (if any) as may be authorised under this Act.

(5) The Director may, including whenever requested by the Chief Appeals Officer, assign to the Chief Appeals Officer— 20

(a) appeals or requests to remain, or

(b) a particular appeal or request to remain,

to be determined by the Chief Appeals Officer under this Act.

(6) The Director may, in accordance with a request made under *section 182(3)(a)*, re-assign any appeal or request to remain. 25

(7) Subject to this Act, the Director shall be independent in the performance of his or her functions.

(8) The Director shall not hold any other office or occupy any position in respect of which remuneration is payable or carry on any business, trade or profession, without the consent of the Minister. 30

## Staff of Tribunal

**187.** (1) The Minister may appoint such and so many persons to be members of staff of the Tribunal (in this Part referred to as “members of staff”) as he or she considers necessary to assist the Tribunal in the performance of its functions and such members of staff 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, Infrastructure, Public Service Reform and Digitalisation, determine. 35

(2) Members of staff shall be civil servants within the meaning of the Civil Service Regulation Acts 1956 to 2005.

(3) Without prejudice to the generality of *subsection (1)*, the Minister may appoint in writing a person who is appointed under this section as a member of staff to be a designated member of staff for the purposes of this Part.

(4) Subject to *subsection (6)*, a designated member of staff shall, at the direction of an Appeals Officer, support Appeals Officers in the transaction of the business assigned to Appeals Officers under this Act. 5

(5) A designated member of staff may, in the performance of the function under *subsection (4)* do any of the following—

(a) such preparatory and procedural work, including research, in relation to an appeal, as an Appeals Officer may require, and 10

(b) all such other things as an Appeals Officer may consider conducive to the transaction of the business assigned to him or her under this Act.

(6) No function conferred on or power vested in a designated member of staff under this Act shall be exercised so as to interfere with the conduct of that part of the business of the Tribunal required by law to be transacted by or before an Appeals Officer or to impugn the independence of an Appeals Officer in the determination of an appeal. 15

#### **Power of member of staff to perform functions of Director**

**188.** (1) The Director may authorise a member of staff, other than a designated member of staff, to perform the functions of the Director during any period where—

(a) the Director is absent or incapacitated, or 20

(b) the position of the Director is vacant.

(2) The Minister may, where the Director has not made an authorisation under *subsection (1)* and where *paragraph (a)* or *(b)* of that subsection applies, authorise a member of staff, other than a designated member of staff, to perform the functions of the Director for the period required. 25

(3) Where a member of staff is performing the functions of the Director pursuant to an authorisation under *subsection (1)* or *(2)*, references in this Act and any other enactment to the Director shall be construed as references to the member of staff for the duration of such authorisation.

#### CHAPTER 4

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#### *Reporting*

#### **Annual report of Tribunal**

**189.** (1) The Director shall, not later than 3 months after the end of each year, prepare and submit to the Minister a report on the activities of the Tribunal during the preceding year (in this section referred to as an “annual report”). 35

(2) The Minister shall cause a copy of an annual report to be laid before each House of the Oireachtas as soon as practicable after he or she receives the report.

(3) The Director shall ensure that, as soon as practicable after a copy of an annual report is laid before each House of the Oireachtas, the report is published on a website maintained by or on behalf of the Tribunal or in such other manner as the Director may specify.

(4) Notwithstanding *subsection (1)*, if, but for this subsection, the first annual report under that subsection would relate to a period of less than 6 months, that annual report shall relate to that period and to the year immediately following that period and shall be prepared as soon as practicable, but not later than 3 months, after the end of that year. 5

**Reports of Chief Appeals Officer**

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**190.** (1) The Chief Appeals Officer may make a report in writing to the Minister in respect of any matters relating to the activities of the Chief Appeals Officer or the performance of his or her functions or those of the Tribunal together with any recommendations that the Chief Appeals Officer considers appropriate that, in his or her opinion, require, due to the gravity of the matters or other exceptional circumstances, a report. 15

(2) Where an Appeals Officer fails to comply with *section 182(3)(b)* or *(c)*, the Chief Appeals Officer may make a report in writing to the Minister in respect of such failure.

(3) The Minister may request the Chief Appeals Officer to make a report in writing to him or her in respect of any matter relating to the functions of the Chief Appeals Officer. 20

(4) The Chief Appeals Officer shall, as soon as practicable after he or she receives a request under *subsection (3)*, comply with the request and submit a report to the Minister.

**Reports of Director**

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**191.** (1) The Director may make a report in writing to the Minister in respect of any matter relating to the functions of the Director.

(2) The Minister may request the Director to make a report in writing to him or her in respect of any matter relating to the functions of the Director.

(3) The Director shall, as soon as practicable after he or she receives a request under *subsection (2)*, comply with the request and submit a report to the Minister. 30

## PART 12

### CHIEF INSPECTOR OF ASYLUM BORDER PROCEDURES

#### CHAPTER 1

##### *Definitions (Part 12)*

###### **Definitions (Part 12)**

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###### **192.** In this Part—

“Advisory Board” has the meaning assigned to it by *section 201*;

“annual report” has the meaning assigned to it by *section 205*;

“applicant” means an applicant for international protection who is located at a designated asylum border facility;

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“asylum border procedure” means the procedures and processes that apply to applicants subject to the asylum border procedure under *Chapter 6* of *Part 5* at the State’s borders who are not yet authorised to enter the territory of the State;

“Charter” means the Charter of Fundamental Rights of the European Union;

“complaint” means a complaint lodged by or on behalf of an applicant, located at a designated asylum border facility where—

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(a) the applicant located at a designated asylum border facility considers that there has been an infringement of his or her fundamental rights, and

(b) the Chief Inspector is the competent supervisory authority in respect of the complaint;

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“data equipment” has the same meaning as it has in the Data Protection Act 2018;

“designated asylum border facility” means—

(a) a location designated by the Minister for the carrying out of the screening procedure, within the meaning of *Part 2*, the asylum border procedure, within the meaning of *Chapter 6* of *Part 5*, or the return border procedure, within the meaning of *Chapter 2* of *Part 9*, or

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(b) any place whether on a land or sea frontier, including an approved port within the meaning of section 6 of the Act of 2004, where a person lands or arrives into the State and where an immigration officer is deployed by the Minister;

“formal investigation” means an investigation, by the Chief Inspector, of a breach, or allegation of a breach, of fundamental rights in relevant activities in relation to the screening of applicants and asylum border procedures and includes the collection and analysis of evidence, the identification of causal factors and the making of recommendations, as necessary;

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“fundamental rights” means—

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(a) the rights, liberties and freedoms conferred on, or guaranteed to, persons by the Constitution,

- (b) the rights, liberties and freedoms conferred on, or guaranteed to, persons by any agreement, treaty or convention to which the State is a party, including the Charter with relevant international law, including the Geneva Convention, with the obligations related to access to international protection, in particular the principle of non-refoulement, and with fundamental rights and the Convention provisions within the meaning of the European Convention on Human Rights Act 2003, and
- (c) without prejudice to the generality of paragraphs (a) and (b), the rights, liberties and freedoms that may reasonably be inferred as being—
  - (i) inherent in persons as human beings, and
  - (ii) necessary to enable a person to live with dignity.

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## CHAPTER 2

### *Establishment of Chief Inspector of Asylum Border Procedures*

#### **Establishment day of Chief Inspector**

193. The Minister shall, by order, appoint a day to be the establishment day of the Chief Inspector for the purposes of this Part.

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#### **Establishment of Office of Chief Inspector**

194. There shall stand established on the establishment day, a body to be known in the Irish language as *Oifig an Phríomh-Chigire Nósanna Imeachta Teorann um Thearmann* (notwithstanding section 9D(1) of the Official Languages Act 2003) or, in the English language, Office of the Chief Inspector of Asylum Border Procedures and the holder of the office shall be known as the Chief Inspector of Asylum Border Procedures and is referred to in this Act as the “Chief Inspector” and shall perform the functions conferred by or under this Act, any other enactments and the EU acts.

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## CHAPTER 3

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### *Appointment and functions of Chief Inspector of Asylum Border Procedures*

#### **Appointment of Chief Inspector**

195. (1) The Government shall appoint a person to be known as the Chief Inspector of Asylum Border Procedures to perform the functions conferred on the Chief Inspector by this Part.

(2) Subject to subsection (1), the Government shall appoint the Chief Inspector on the recommendation of the Service where a competition has been held for that purpose under section 47 of the Public Service Management (Recruitment and Appointments) Act 2004.

(3) Where the Chief Inspector is—

- (a) nominated as a member of Seanad Éireann,

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- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament,
- (d) elected or co-opted as a member of a local authority, 5
- (e) appointed to judicial office, or
- (f) appointed Attorney General,

he or she shall thereupon cease to be the Chief Inspector.

- (4) The term of office of a person appointed as the Chief Inspector shall not exceed 5 years. 10
- (5) A person appointed as the Chief Inspector is eligible for reappointment for a second term but shall not hold office for periods the aggregate of which exceeds 10 years.
- (6) Where a person is being reappointed in accordance with subsection (5), subsection (2) shall not apply.
- (7) The Chief Inspector shall, subject to this Part, be independent in the performance of his or her functions. 15
- (8) A person appointed as the Chief Inspector shall not hold any other office or occupy any position in respect of which remuneration is payable or carry on any business, trade or profession, without the consent of the Minister.
- (9) As soon as practicable after the appointment of a person as the Chief Inspector, the Minister shall cause a notice of the appointment to be published in *Iris Oifigiúil*. 20

#### **Resignation and removal of Chief Inspector**

196. (1) The Chief Inspector may resign from office by notice in writing to the Minister and the resignation shall take effect one month from the date on which the Minister receives the notice, or, if a date is specified in the notice and the Minister agrees to that date, on that date. 25

(2) A person who holds the Office of the Chief Inspector may be removed from office by the Government for stated reasons, including where—

- (a) the person has failed to perform the functions of the office with due diligence and effectiveness, 30
- (b) the person has failed to have due regard to one or more of the functions specified in section 198,
- (c) the person has engaged in conduct that brings discredit on the Office of the Chief Inspector or that may prejudice the proper performance of the functions of the office, or 35
- (d) the removal of the person from office would, in the opinion of the Government, be in the best interests of the State.

(3) A person shall be disqualified from holding and shall cease to hold office as the Chief Inspector if he or she—

- (a) is sentenced by a court of competent jurisdiction to a term of imprisonment,
- (b) is convicted on indictment of an offence,
- (c) is convicted of an offence involving fraud or dishonesty,
- (d) has a declaration made against him or her under section 819 of the Act of 2014 or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
- (e) is subject to, or is deemed to be subject to, a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 whether by virtue of that Chapter or of any other provision of that Act.

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### **Acting Chief Inspector**

**197.** (1) The Minister may authorise a member of staff of the Chief Inspector to perform the functions of the Chief Inspector during any period when the Chief Inspector is absent from duty or absent from the State or is, for any other reason, unable to perform the functions of the Chief Inspector.

(2) Where no Chief Inspector stands appointed, because of a vacancy or otherwise, for the time being under *section 195*, the Minister may authorise a member of staff of the Chief Inspector to perform the functions of the Chief Inspector during the period of that vacancy, but an authorisation under this subsection shall cease upon the appointment of the Chief Inspector under *section 195* whether or not such appointment was made for the purpose of filling that vacancy.

(3) An authorisation under *subsection (2)* shall not remain in force for a period of more than 6 months unless the Minister is satisfied that it is not reasonably practicable for an appointment under *section 195* to be made within that period, in which case he or she may extend that period by such further period as he or she is satisfied is a period within which it is reasonably practicable for an appointment to be made under that section.

(4) The Minister may at any time terminate an authorisation under this section.

(5) A member of staff of the Chief Inspector in respect of whom an authorisation under this section is in force may perform the functions of the Chief Inspector under this Part, and, for that purpose, references to the Chief Inspector in this Part shall be construed as including references to such member of staff.

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### **Functions of Chief Inspector**

**198.** (1) The functions of the Chief Inspector are as follows:

(a) to monitor asylum border procedures and compliance with European Union and international law, including the Charter, in designated asylum border facilities, in line with the independent monitoring mechanism provided for by the Screening Regulation and referred to in Article 43 of the Asylum Procedures Regulation;

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(b) to ensure that complaints regarding, and allegations of breaches of fundamental rights in, designated asylum border facilities are dealt with effectively and without undue delay, and trigger, where necessary, formal investigations as provided for in *section 209*, into such allegations and monitor the progress of such investigations; 5

(c) to carry out regular inspections under *section 207* of all designated asylum border facilities in the State.

(2) The Chief Inspector shall have all such powers as are necessary or expedient for the performance of his or her functions under this section including, but without prejudice to the generality of the foregoing, the following powers— 10

(a) to enter at any time any designated asylum border facility or any part of a designated asylum border facility, and to be accompanied on such visit by such staff of the Office of the Chief Inspector as he or she may consider necessary or expedient for the performance of his or her functions,

(b) to require any person employed in a designated asylum border facility, found in a designated asylum border facility or in the administration of a designated asylum border facility— 15

(i) to furnish the Chief Inspector with such information in the possession of such person as the Chief Inspector may reasonably require for the purposes of his or her functions,

(ii) to make available to the Chief Inspector any record or other document held in a designated asylum border facility in the person's power or control that in the opinion of the Chief Inspector, is relevant to his or her functions, and 20

(iii) where appropriate, to attend before the Chief Inspector for the purposes of *subparagraphs (i) or (ii)*,

(c) to inspect any item and remove said item from the designated asylum border facility if the Chief Inspector considers it necessary or expedient for the purposes of his or her functions under this Part,

(d) where the Chief Inspector considers it necessary to do so in order to preserve for inspection records, documents or any other matter, to secure, for later inspection, and for such period as may reasonably be necessary for the purposes of the exercise of the Chief Inspector's powers under this Part, documents or records accessed or found during the inspection under this Part, and any data equipment, including any computer, in which those documents or records may be held, 25

(e) to examine and take copies in any form of, or extracts from, any record held in a designated asylum border facility that, in the opinion of the Chief Inspector, is relevant to the inspection or investigation and for those purposes take possession of any such record, remove it from the premises and retain it in his or her possession for a reasonable period,

(f) to take photographs, recordings and digital images of the designated asylum border facility, and 35

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(g) to require any person found in a designated asylum border facility to answer such questions as the Chief Inspector may ask related to his or her functions under this Act.

(3) The Chief Inspector shall furnish to the Minister—

(a) such information regarding the performance of his or her functions as the Minister may from time to time request, and 5

(b) annual recommendations in relation to the improvement of fundamental rights compliance at designated asylum border facilities.

(4) The Chief Inspector shall inform the Minister of matters relevant to the accountability of the Government to the Houses of the Oireachtas. 10

(5) The Chief Inspector shall establish and maintain efficient and effective systems and procedures for the investigation of complaints in accordance with *section 208* and 209.

(6) Subject to this Part, the Chief Inspector may make rules governing the procedure to be followed for formal investigations under this section. 15

### **Superannuation of Chief Inspector**

**199.** (1) The Minister may, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, make a scheme or schemes for—

(a) the granting of superannuation benefits to or in respect of the Chief Inspector ceasing to hold office, or 20

(b) the making of contributions to a pension scheme approved of by the Minister, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, which has been entered into by the Chief Inspector. 25

(2) The Minister may, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, make a scheme amending or revoking a scheme made under *subsection (1)*, including a scheme amended under this subsection.

(3) If any dispute arises as to the claim of the Chief Inspector to, or the amount of, any superannuation benefit payable in pursuance of a scheme made under *subsection (1)*, such dispute shall be submitted to the Minister who shall refer it to the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation for determination by him or her. 30

(4) A scheme made under *subsection (1)* shall be carried out by the Minister in accordance with its terms. 35

(5) No superannuation benefit shall be granted by the Minister to or in respect of the Chief Inspector ceasing to hold office otherwise than—

(a) in accordance with a scheme under *subsection (1)*, or

- (b) with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.
- (6) A scheme made under *subsection (1)* shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly but without prejudice to the validity of anything previously done under that scheme prior to the resolution.
- (7) In this section, “superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.

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### Staff of Chief Inspector

**200.** (1) The Chief Inspector may, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, appoint such and so many persons to be members of staff of the Chief Inspector as he or she may determine.

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(2) The terms and conditions of service of a member of staff of the Chief Inspector, and the grade at which he or she serves, shall be determined from time to time by the Chief Inspector with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.

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(3) A member of staff of the Chief Inspector shall be a civil servant of the State within the meaning of the Civil Service Regulation Acts 1956 to 2005.

(4) The Chief Inspector shall be the appropriate authority (within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005) in relation to the members of the staff of the Authority.

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(5) The Chief Inspector shall manage and control generally the staff, administration and business of the Office of the Chief Inspector.

### CHAPTER 4

#### *Governance and accountability of Chief Inspector of Asylum Border Procedures*

### Establishment and role of Advisory Board

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**201.** (1) The Minister shall establish an Advisory Board (in this Part referred to as the “Advisory Board”).

(2) The Advisory Board shall—

(a) consult with, guide and advise the Chief Inspector in relation to his or her duties, and

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(b) when requested to do so by the Chief Inspector, in accordance with *subsection (3)*, consult with, guide and advise the Chief Inspector as so requested, in relation to the performance of his or her functions.

(3) The Advisory Board shall, on request and, if appropriate, on its own initiative, provide advice to the Chief Inspector on—

- (a) the effective functioning and independence of the Chief Inspector, and
- (b) where practicable, on the use by the Chief Inspector of his or her powers under this Part. 5

(4) The Advisory Board may do anything which it considers necessary or expedient to enable it to perform its functions.

(5) Subject to *subsection (6)* and *section 203(1)*, the Advisory Board shall hold such and so many meetings as may be necessary for the due performance of its functions.

(6) The Advisory Board shall, in each year, hold not less than one meeting in each 10 6-month period with the Chief Inspector and the Chief Inspector shall, at those meetings, provide the Board with an update on the performance of his or her functions.

(7) The Advisory Board shall, when requested to do so by the Chief Inspector, meet with the Chief Inspector for the purposes of performing its function under *subsection (3)*. 15

(8) Nothing in this section shall be construed as enabling the Advisory Board to exercise any power or control in relation to the performance, in a particular case or in particular circumstances, of functions conferred on the Chief Inspector by or under this Part.

**Membership of Advisory Board** 20

**202.** (1) The Advisory Board shall consist of a chairperson and *ex officio* members specified in *subsection (2)*.

(2) Each of the following shall, *ex officio*, be a member of the Board (in this section referred to as an “*ex officio* member of the Board”):

- (a) the Ombudsman;
- (b) the Ombudsman for Children;
- (c) the Chairperson of the Child and Family Agency;
- (d) the Chief Commissioner of the Irish Human Rights and Equality Commission;
- (e) the representative for Ireland of the High Commissioner;
- (f) the Chairperson of the Health Information and Quality Authority. 25 30

(3) An *ex officio* member of the Board may nominate, in writing, another official from his or her organisation to perform the functions of such *ex officio* member.

(4) The Minister shall appoint a chairperson of the Advisory Board from amongst one of the *ex officio* members of the Board.

(5) The Minister may, before the coming into operation of this section, designate a person 35 to be appointed as the first chairperson of the Advisory Board.

(6) A member of the Advisory Board nominated under *subsection (3)* shall hold office for the period of 5 years from the date of his or her appointment.

- (7) A member of the Advisory Board nominated under *subsection (3)* whose term of office as a member of the Advisory Board expires shall be eligible for reappointment to the Advisory Board.
- (8) A person who is reappointed to the Advisory Board in accordance with *subsection (6)* shall not hold office for periods the aggregate of which exceeds 10 years. 5
- (9) The Minister may, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, determine the remuneration and expenses, if any, payable to a member of the Advisory Board under this section.

### **Meetings of Advisory Board**

**203.** (1) The Advisory Board shall hold such and so many meetings as may be necessary for the due performance of its functions, but in each year shall hold not less than one meeting in each period of 3 months. 10

(2) The Advisory Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time.

(3) The quorum for a meeting of the Advisory Board shall be 3. 15

(4) At a meeting of the Advisory Board—

- (a) the chairperson of the Advisory Board shall, if present, be the chairperson of the meeting, and
- (b) if and so long as the chairperson of the Advisory Board is not present or if the office of the chairperson is vacant, the members of the Advisory Board who are present shall choose one of their number to act as the chairperson of the meeting. 20

(5) Subject to this Part, the Advisory Board may determine its own procedures.

(6) The Advisory Board may act notwithstanding one or more vacancies among its members.

### **Member ceasing to be member of Advisory Board**

**204.** (1) A member of the Advisory Board may resign from the Advisory Board by notice in writing to the Minister and the resignation shall take effect on the date the Minister receives the notice, or, if a date is specified in the notice and the Minister agrees to that date, on that date. 25

(2) The Minister may at any time remove a member of an Advisory Board from office as a member of the Advisory Board if, in the opinion of the Minister—

- (a) the member has become incapable through ill-health of performing the functions of the office,
- (b) the member has committed serious misconduct, or
- (c) the member's removal appears to the Minister to be necessary for the effective performance by the Advisory Board of its functions. 35

(3) Where a member of the Advisory Board dies, resigns, is removed from office or otherwise ceases to hold office—

- (a) the casual vacancy arising shall be filled by a person appointed in the same manner as the member of the Advisory Board who occasioned the vacancy was appointed, and
- (b) the person appointed to fill the casual vacancy shall hold office for that period of the term of office of the member who occasioned that vacancy that remains unexpired at the date of that person's appointment, and may, in accordance with section 197(3), have his or her appointment extended.

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**Annual report of Chief Inspector**

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**205.** (1) The Chief Inspector shall, not later than 3 months after the end of each year, or before a date as may be specified by the Minister, submit to the Minister an annual report on the performance of the Chief Inspector's functions and on such other related matters during the previous year.

(2) The Minister shall, subject to the submission under *subsection (1)* and *subsection (3)* and *(4)*, then cause a copy of the report to be laid before each House of the Oireachtas as soon as practicable after he or she receives the report.

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(3) Any part of the report to be laid by the Minister before each House of the Oireachtas pursuant to this Act that would—

(a) prejudice the security of a designated asylum border facility or the safety of a person at that facility,

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(b) prejudice the interests of national security, the Chief Inspector having consulted with the Minister in this regard,

(c) purport to assign criminal or civil liability, not determined by a court, tribunal or commission of investigation, to an individual identifiable to the public, or

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(d) prejudice the rights of an individual identifiable to the public to vindicate his or her good name,

shall be omitted, amended or redacted by the Minister so as not to do so.

(4) In any annual report of the Chief Inspector where matters are omitted, amended or redacted under *subsection (3)*, a statement to that effect shall be attached to the report concerned, when it is being laid before each House of the Oireachtas.

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(5) Notwithstanding *subsection (1)*, if, but for this subsection, the first annual report under that subsection would relate to a period of less than 6 months, that annual report shall relate to that period and to the year immediately following that period and shall be prepared as soon as may be, but not later than 3 months, after the end of that year.

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**Accountability to Oireachtas Committees**

**206.** (1) Subject to *subsection (2)*, the Chief Inspector shall, at the request in writing of a committee, attend before it to give account of the general administration of the Office of the Chief Inspector.

(2) The Chief Inspector shall not be required to give account before a committee for any matter which is or has been, or may be at a future date, the subject of proceedings before a court or tribunal in the State.

(3) Where the Chief Inspector is of the opinion that a matter in respect of which he or she is requested to give an account before a committee is a matter to which *subsection (2)* applies, he or she shall inform the committee of that opinion and the reasons for that opinion and, unless the information is conveyed to the committee at a time when the Chief Inspector is before it, the information shall be so conveyed in writing. 5

(4) Where the Chief Inspector has informed a committee of an opinion in accordance with *subsection (3)* and the committee does not withdraw the request referred to in *subsection (1)* in so far as it relates to the subject matter of the opinion— 10

- (a) the Chief Inspector may, not later than 42 days after being informed by the committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (2)* applies, or 15
- (b) the Chairperson of the committee may, on behalf of the committee, make such an application,

and the High Court shall determine the matter.

(5) Pending the determination of an application under *subsection (4)*, the Chief Inspector shall not attend before the committee to give account for the matter that is the subject of the application. 20

(6) If the High Court determines that the matter concerned is one to which *subsection (2)* applies, the committee shall withdraw the request referred to in *subsection (1)*, but if the High Court determines that *subsection (2)* does not apply, the Chief Inspector shall attend before the committee to give account for the matter. 25

(7) In the performance of his or her duties under this section, the Chief Inspector shall not provide information that might facilitate the commission of an offence, prejudice a criminal investigation or prosecution or jeopardise the safety of a person.

(8) With the permission of the Chairperson of a committee making the request under *subsection (1)*, either— 30

- (a) the acting Chief Inspector, or
- (b) a member of staff of the Chief Inspector,

may attend before the committee in place of the Chief Inspector to give an account of the general administration of the Office of the Chief Inspector, and in that case a reference in *subsections (2)* to *(7)* to the Chief Inspector shall be read as including a reference to the person attending in his or her place. 35

(9) In this section, “committee” means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas, other than—

- (a) the Committee of Public Accounts, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann, or 40
- (b) a subcommittee of a committee referred to in *paragraph (a)*.

**Inspections and complaints of designated asylum border facilities**

207. (1) The Chief Inspector shall, in furtherance of the functions of the Office of the Chief Inspector, carry out inspections, including on-the-spot checks and random, unannounced checks at any designated asylum border facility as he or she considers appropriate. 5

(2) The purpose of an inspection carried out under *subsection (1)* is to ensure that fundamental rights are being respected and observed within the designated asylum border facility. 10

(3) The Chief Inspector, in accordance with *subsection (1)*, may be accompanied by such staff of the Office of the Chief Inspector as he or she may consider necessary or expedient for the performance of his or her functions under this section.

(4) The body responsible for the management of each designated asylum border facility to be visited shall facilitate unrestricted access to such designated asylum border facilities by the Chief Inspector. 15

(5) The Minister, any other relevant Minister of the Government and the body responsible for the management of a designated asylum border facility to which the Chief Inspector seeks access shall ensure that the Chief Inspector is provided with all reasonable assistance to interview, where necessary, in private, either personally or through an interpreter, any applicant the Chief Inspector chooses to interview and any other person at the designated asylum border facility whom the Chief Inspector chooses to interview. 20

(6) If a breach of fundamental rights is identified in the course of an inspection under this section, the Chief Inspector may conduct a formal investigation under *section 209*. 25

(7) A complaint concerning any allegation of a breach of fundamental rights within a designated asylum border facility may be made, and shall be referred, to the Chief Inspector.

(8) The Chief Inspector shall ensure that appropriate arrangements are in place—

(a) for receiving, recording and acknowledging the receipt of complaints made under *subsection (7)*, and 30

(b) for recording the referral of those complaints.

(9) The Minister shall ensure that appropriate arrangements are in place—

(a) for receiving, recording and acknowledging the receipt of complaints made under *subsection (7)*, and 35

(b) for recording the referral of those complaints to the Chief Inspector.

(10) The Minister shall, not later than 3 years after the coming into operation of this section and at such further intervals as he or she considers appropriate, review the operation of this section in so far as it requires the referral to the Chief Inspector

under *subsection (7)* of complaints concerning allegations of breaches of fundamental rights within a designated asylum border facility.

### **Recording and handling of complaints**

**208.** (1) On receipt of a complaint under *section 207*, the Chief Inspector shall determine whether the complaint is admissible or inadmissible.

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(2) Where the Chief Inspector has determined that a complaint is an admissible complaint, the Chief Inspector shall determine whether the complaint warrants a formal investigation under *section 209*.

(3) For the purposes of making a determination under *subsection (2)*, the Chief Inspector may make such enquiries as he or she thinks fit.

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(4) On determining that a complaint is admissible, the Chief Inspector shall notify the complainant and the body responsible for the management of the designated asylum border facility of his or her determination.

(5) On determining that a complaint is inadmissible, the Chief Inspector shall—

(a) notify the complainant and include in the notification the reason for the determination, and

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(b) notify the body responsible for the management of the designated asylum border facility, including in the notification a copy of the complaint and the reason for the determination.

(6) In this section and *section 209*, “complainant” means—

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(a) an applicant residing at a designated asylum border facility who lodges a complaint, or

(b) a legal representative who lodges a complaint on behalf of an applicant located at a designated asylum border facility.

### **Formal investigation**

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**209.** (1) Where a formal investigation is determined to be necessary by the Chief Inspector under *section 207*, or *section 208*, the Chief Inspector shall undertake an investigation in accordance with this Part.

(2) For the purposes of *subsection (1)*, the Chief Inspector may—

(a) at all reasonable times enter, if necessary by the use of reasonable force, search and inspect any designated asylum border facility, or premises in which books, documents or records (including records stored in non-legible form) relating to a designated asylum border facility are kept,

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(b) inspect, examine and make copies of, or take extracts from, any such books, documents or records referred to in *paragraph (a)* including, in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form or require that such a copy of or extracts therefrom be provided,

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(c) without prejudice to any other power conferred by this section, require the body responsible for the management of the designated asylum border facility, any employee or any person carrying out services for or on behalf of the designated asylum border facility, or any person found in a designated asylum border facility to give to the Chief Inspector such assistance and information and to produce to the Chief Inspector any books, documents or records referred to in *paragraph (a)* that are in that person's power, possession or procurement, as the Chief Inspector may reasonably require for the purposes of his or her functions under this Part, 5

(d) remove and retain any books, documents or records (including records stored in non-legible form) for such period as the Chief Inspector reasonably considers necessary for the purposes of the performance of his or her functions under this Act, or require any person referred to in *paragraph (c)* to retain and maintain such records for such period as the Chief Inspector reasonably considers necessary for those purposes, 10

(e) require a person referred to in *paragraph (c)* to answer such questions as the Chief Inspector may ask relative to any matter under this Part and to make a declaration as to the truth of the answers to those questions, and 15

(f) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material to afford the Chief Inspector all reasonable assistance in relation to it and assist in the retrieval of information from such data equipment, apparatus or material. 20

(3) When performing a function under this section, the Chief Inspector may be accompanied by such number of other staff of the Office of the Chief Inspector as he or she considers appropriate and, where necessary, members of An Garda Síochána and staff from the Child and Family Agency. 25

(4) The Chief Inspector may direct that an investigation be suspended where—

(a) the subject matter of the investigation is already under investigation by another public body, and

(b) the Chief Inspector is of the opinion that— 30

(i) the continuance of the investigation would interfere or conflict with the functions of the other public body referred to in *paragraph (a)*, or

(ii) in the circumstances it would be more appropriate to await the conclusion of the investigation by the other public body referred to in *paragraph (a)* and any subsequent proceedings. 35

(5) A report shall be submitted by the Chief Inspector to the Minister on the completion of a formal investigation under *subsection (1)* and shall contain all findings and recommendations arising from the investigation and following the suspension of an investigation under *subsection (4)*.

(6) Notwithstanding any other provision of this Part, the Chief Inspector may direct that a formal investigation of a complaint be discontinued if the Chief Inspector is— 40

(a) of the opinion that—

- (i) the complainant has withdrawn the complaint,
- (ii) the complaint is found to be vexatious,
- (iii) the complaint was made in the knowledge that it was false or misleading,
- (iv) further investigation is not necessary or reasonably practicable, or
- (v) continuing with the investigation would interfere or conflict with the functions of another public body,

or

- (b) satisfied that the complaint has been resolved.

(7) Notwithstanding any other provision of this Part, the Chief Inspector may direct that a formal investigation of any other matter under this Part (other than a complaint) be discontinued if he or she is of the opinion that—

- (a) further investigation is not necessary or reasonably practicable, or
- (b) continuing with the investigation would interfere or conflict with the functions of another public body.

(8) Where a direction is made under subsection (6) or (7), the Chief Inspector shall notify such of the following, as are appropriate, of his or her decision and the reason for it:

- (a) the complainant;
- (b) the Minister and the competent authority for a designated asylum border facility;
- (c) any other person the Chief Inspector considers appropriate.

**Other actions by Chief Inspector following formal investigation**

**210.** (1) If the Chief Inspector is of the opinion that a report under section 209 discloses a concern in relation to the fundamental rights of persons in designated asylum border facilities, the Chief Inspector shall provide a copy of the report to the Minister with such recommendations as he or she sees fit and, where it is suspected that a criminal offence is being, or has been, committed, inform a member of An Garda Síochána.

(2) The Minister shall, after being provided with a report under subsection (1), notify the Chief Inspector as soon as practicable of the action (if any) that will be taken on foot of the report and the rationale for same.

(3) *Subsection (1)* is not to be taken to limit the power of the Chief Inspector to forward a report or complaint, at any time, to the Minister that, in the opinion of the Chief Inspector, discloses a concern in relation to the fundamental rights of persons in designated asylum border facilities.

## CHAPTER 6

### *Miscellaneous*

#### **Offences under Part 12**

211. (1) A person shall be guilty of an offence if he or she—

- (a) obstructs or impedes the Chief Inspector or a member of staff of the Chief Inspector in the course of exercising a power conferred on him or her by this Part, 5
- (b) fails or refuses to comply with a requirement of the Chief Inspector or a member of staff of the Chief Inspector under this Part,
- (c) alters, suppresses or destroys any documents, records, statements or other information which the person concerned has been required by the Chief Inspector or a member of staff of the Chief Inspector to produce, or may reasonably expect to be so required to produce, 10
- (d) in purported compliance with a requirement under this section, gives to the Chief Inspector or a member of staff of the Chief Inspector information, documents or records which the person knows to be false or misleading in a material respect, 15
- (e) falsely represents himself or herself to be the Chief Inspector or a member of staff of the Chief Inspector, or
- (f) procures or attempts to procure any action referred to in paragraphs (a) to (e).

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or 20
- (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years, or both.

#### **Prohibition on unauthorised disclosure of confidential information**

212. (1) Subject to subsection (2), a person shall not disclose confidential information obtained by him or her in his or her capacity, or while performing duties as—

- (a) a member of the Advisory Board,
- (b) a member of the staff of the Chief Inspector,
- (c) the Chief Inspector, or
- (d) a person engaged by the Chief Inspector in any other capacity. 30

(2) Subsection (1) shall not operate to prevent the disclosure of confidential information by a person referred to in that subsection where—

- (a) the disclosure is made to the Chief Inspector or a member of the staff of the Chief Inspector in the performance of the functions of the Chief Inspector,
- (b) the disclosure is made in the performance of the functions of the Chief Inspector, 35
- (c) the disclosure is made by or on behalf of the Chief Inspector to the Minister,

- (d) the disclosure is made in compliance with a requirement of this Act or is otherwise required by law;
- (e) the disclosure is made by a person in the circumstances referred to in section 35(2) of the Ethics in Public Office Act 1995;
- (f) the disclosure is a protected disclosure within the meaning of the Protected Disclosures Act 2014; 5
- (g) the disclosure is made to a member of An Garda Síochána and, in the opinion of the person making the disclosure, the information may relate to the commission of an offence.

(3) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable— 10

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years, or both. 15

(4) In this section, “confidential information” includes—

- (a) information that is expressed by the Chief Inspector to be confidential either as regards particular information or as regards information of a particular class or description, and
- (b) proposals of a commercial nature or tenders submitted to the Chief Inspector by contractors, consultants or any other person. 20

## PART 13

### MISCELLANEOUS PROVISIONS

#### Contracts for services

213. (1) The Minister may enter into contracts for services with such and so many persons as he or she considers necessary to assist him or her in the performance of his or her functions under this Act and such contracts with such persons shall contain such terms and conditions as the Minister may, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, determine. 25

(2) The Minister may authorise a person with whom the Minister has entered into a contract for services in accordance with *subsection (1)* to perform any of his or her functions under this Act other than the functions specified in *subsection (3)*. 30

(3) The following functions are specified for the purposes of *subsection (2)*:

- (a) making a declaration under *section 66(2)(b)* that an application has been explicitly withdrawn; 35
- (b) adopting a decision under *section 66(4)* declaring that an application has been explicitly withdrawn;

- (c) making a declaration under *section 67(2)* that an application has been implicitly withdrawn;
- (d) making a decision under *section 98* on an application;
- (e) making a decision under *section 105(1)* not to grant refugee status to an applicant;
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- (f) withdrawing refugee status under *section 152(1)*;
- (g) withdrawing subsidiary protection status under *section 152(2)*;
- (h) any function under *Part 9*, other than a function relating to the facilitation or effecting of the return or removal of a person from the State under that Part.

(4) A reference in *subsection (1)* or *(2)*—

- (a) to the Minister shall include a reference to the Determining Authority, and
- (b) to functions under this Act shall include a reference to functions under the EU acts.

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### **Prohibition on publication or broadcast of certain information**

**214.** (1) A person shall not publish or broadcast, or cause to be published or broadcast, information likely to lead members of the public to identify that a person is an applicant without the consent of that person.

(2) If any information is published or broadcast in contravention of *subsection (1)*, the following persons, namely—

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
- (b) in the case of any other publication, the person who publishes it,
- (c) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

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shall be guilty of an offence and shall be liable—

- (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- (ii) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years, or both.

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(3) Where an offence under this section is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(4) Where the affairs of a body corporate are managed by its members, *subsection (3)* shall apply in relation to the acts and defaults of a member in connection with his or

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her functions of management as if he or she were a director or manager of the body corporate.

(5) Where a person is charged with an offence under *subsection (2)*, it shall be a defence to prove that at the time of the alleged offence the person was not aware, and neither suspected nor had reason to suspect, that the publication or broadcast in question was of such information as is referred to in *subsection (1)*. 5

(6) In this section—  
 “applicant” means a person who is or has been an applicant—  
 (a) under this Act or the Act of 2015, or  
 (b) within the meaning of—10  
 (i) the Act of 1996,  
 (ii) the European Union (Subsidiary Protection) Regulations 2017 (S.I. No. 409 of 2017),  
 (iii) the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013), or15  
 (iv) Regulation 4 of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006);

“broadcast” has the same meaning as it has in section 2 of the Broadcasting Act 2009;  
 “publish” means publish, other than by way of broadcast, to the public or a portion of the public.20

### **Designation of safe countries of origin**

215. (1) The Minister may by order designate a country as a safe country of origin in accordance with the Asylum Procedures Regulation.  
 (2) The designation of a country by order under *subsection (1)* may make exceptions for specific parts of the territory of the country or clearly identifiable categories of persons, or both.25  
 (3) The Minister may make an order under *subsection (1)* only if he or she is satisfied that, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is no persecution and no real risk of serious harm.30  
 (4) In making an assessment under *subsection (3)*, the Minister shall take account of, among other things, the extent to which protection is provided against persecution or serious harm by—  
 (a) the relevant laws and regulations of the country and the manner in which they are applied,35  
 (b) observance of the rights and freedoms laid down in the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture, in particular the rights from which

derogation cannot be made under Article 15(2) of the European Convention on Human Rights,

(c) the absence of expulsion, removal or extradition of the country's own citizens to third countries where, among other things, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country, and 10

(d) provision for a system of effective remedies against violations of those rights and freedoms.

(5) An assessment under *subsection (3)*—

(a) shall be based on a range of relevant and available sources of information, including information from— 15

(i) other Member States,

(ii) the Asylum Agency,

(iii) the European External Action Service,

(iv) the High Commissioner,

(v) the Council of Europe, and 20

(vi) such other international organisations as the Minister considers appropriate, and

(b) shall take into account, where available, the common analysis on the situation in the country and the guidance notes referred to in Article 11 of the European Union Agency for Asylum Regulation. 25

(6) The Minister shall, in accordance with *subsections (3) to (5)* and on a regular basis, review the situation in a country, or part thereof, designated under *subsection (1)*.

(7) The Minister shall notify the European Commission of the making, amendment or revocation of an order under *subsection (1)*.

(8) In this section— 30

“Convention against Torture” means the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by Resolution 39/46 of the General Assembly of the United Nations on 10 December 1984;

“International Covenant on Civil and Political Rights” means the International Covenant on Civil and Political Rights adopted by Resolution 2200A (XXI) of the General Assembly of the United Nations on 16 December 1966. 35

(9) In this section and *section 216*, “country” means a country other than a Member State.

## Designation of safe third countries

216. (1) The Minister may by order designate a country as a safe third country in accordance with the Asylum Procedures Regulation. 5

(2) The designation of a country by order under *subsection (1)* may make exceptions for specific parts of the territory of the country or clearly identifiable categories of persons, or both. 10

(3) The Minister may make an order under *subsection (1)* only if he or she is satisfied that in the country concerned—

- (a) the life and liberty of non-nationals are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion, 15
- (b) non-nationals face no real risk of serious harm,
- (c) non-nationals are protected against refoulement in accordance with the Geneva Convention and against removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law, and
- (d) the possibility exists to request and, where conditions are fulfilled, receive effective protection within the meaning of Article 57 of the Asylum Procedures Regulation. 20

(4) The Minister shall base his or her assessment under *subsection (3)* on a range of relevant and available sources of information, including information from— 25

- (a) other Member States,
- (b) the Asylum Agency,
- (c) the European External Action Service,
- (d) the High Commissioner,
- (e) the Council of Europe, and
- (f) such other international organisations as the Minister considers appropriate. 25

(5) The Minister shall, in accordance with *subsections (3)* and *(4)* and on a regular basis, review the situation in a country, or part thereof, designated under *subsection (1)*. 30

(6) The Minister shall notify the European Commission of the making, amendment or revocation of an order under *subsection (1)*. 30

## Prioritisation by Tribunal of certain appeals and requests to remain

217. (1) Subject to the need for fairness and efficiency, the Minister may, where he or she considers it necessary or expedient to do so, having consulted with the Chief Appeals Officer, request the Chief Appeals Officer to accord priority to an appeal (within the meaning of *Part 6*), an appeal under *section 82*, a request to remain (including such requests within the meaning of *Part 4*). 35

(2) The Minister may, in making a request under *subsection (1)*, have regard to the matters referred to in any of the paragraphs of *section 92* subject to the modification

that references in *paragraph (q)* of that section to applications shall be construed as references to appeals.

### Contingency Plan

**218.** (1) Subject to *subsection (2)*, the Minister shall review the contingency plan and update the plan as the Minister considers necessary. 5

(2) The review and, if applicable, updating of the plan under *subsection (1)* shall be carried out on or before 12 April 2028, at least once every 3 years following that date and whenever necessary having regard to changing circumstances.

(3) The Minister may consult with such persons or bodies as he or she considers appropriate for the purposes of *subsection (1)*. 10

(4) The Minister shall notify the European Union Agency for Asylum whenever the contingency plan is updated in accordance with *subsection (1)*.

(5) The Minister shall inform the European Commission and the European Union Agency for Asylum whenever the contingency plan is activated or deactivated.

(6) The Minister shall provide the European Union Agency for Asylum, on request by the European Union Agency for Asylum, with information on the contingency plan. 15

(7) In this section, “contingency plan” means the plan that was notified by the Minister to the European Union Agency for Asylum in accordance with Article 32 of the Reception Conditions Directive.

## PART 14

20

### TRANSITIONAL PROVISIONS

### Application of Act to certain applications

**219.** (1) *Part 4* shall apply and have effect in relation to applications for international protection registered in accordance with *section 37* on and after 1 July 2026 only. 25

(2) Notwithstanding *subsection (1)* and *Part 4*, where an application is registered in accordance with *section 37* before 1 July 2026, the European Union (Dublin System) Regulations 2018 (S.I. No. 62 of 2018) shall continue to apply and have effect in relation to the application after that time.

(3) Where an application is made by or on behalf of a person under section 15 of the Act of 2015, the person shall not make an application for international protection, and such an application shall not be made or be deemed to have been made on behalf of the person, under *Chapter 1* of *Part 3* unless the person has ceased to be an applicant within the meaning of the Act of 2015. 30

(4) Where an application is made by or on behalf of a person under section 15 of the Act of 2015 and the person has not ceased to be an applicant within the meaning of the Act of 2015 and, notwithstanding *subsection (3)*, an application is purported to be made by or on behalf of the person under *Chapter 1* of *Part 3*, the elements presented 35

as part of that purported application shall be considered to be elements of the application of the person that is in being under section 15 of the Act of 2015.

**Transitional provisions relating to repeals under *section 5***

**220.** (1) A person who is a refugee in relation to whom a refugee declaration is in force and a person eligible for subsidiary protection and in relation to whom a subsidiary protection declaration is in force under the Act of 2015, whether the declaration is given before, on or after 12 June 2026, shall on and after that date be considered to be a beneficiary of international protection for the purposes of the Qualification Regulation and this Act shall apply to that person accordingly. 5

(2) Fingerprints taken under section 19 of the Act of 2015 before the date on which this subsection comes into operation shall, for the purpose of performance of functions under this Act, be considered to have been taken under this Act and this Act shall apply accordingly. 10

(3) Where before the date of coming into operation of this subsection a subsequent application (within the meaning of the Act of 2015) is purported to have been made under the Act of 2015 in respect of which the Minister did not give consent under section 22 of the Act of 2015, section 22(16) of the Act of 2015 shall, on and after that date, continue to apply and have effect in relation to that subsequent application as if that section had not been repealed by *section 5*. 15

(4) Section 51C(5) of the Act of 2015 shall continue to apply and have effect after the date of coming into operation of this subsection subject to the modification that the person the subject of the return order referred to in that section shall be deemed to have made an application for international protection under *Chapter 1* of *Part 3*, and the provisions of this Act shall apply and have effect accordingly. 20

(5) Where immediately before the repeal of section 52 of the Act of 2015 by *section 5* a notice under subsection (4) of that section 52 has been sent to a person and the Minister has not before the repeal made a decision under subsection (7) of that section 52 in relation to the person, that section 52 shall continue to apply and have effect as if that section had not been repealed. 25

(6) Notwithstanding the repeal of section 52 of the Act of 2015 by *section 5*— 30

(a) a decision of the Minister under section 52(7) to revoke a declaration (including a decision given where *subsection (5)* applies) shall be deemed to be a decision of the Minister under *section 152*,

(b) an appeal under section 52(8) of the Act of 2015 that is pending on the date on which this subsection comes into operation shall be determined in accordance with section 52 of the Act of 2015, and that section shall continue to apply and have effect accordingly, and 35

(c) a decision of the Circuit Court under section 52(9) of the Act of 2015 shall be deemed to be a decision of the Circuit Court under *section 153*.

(7) A permission to reside in the State given under section 54 of the Act of 2015 or deemed to have been granted under section 69(2) of the Act of 2015 that is in force immediately before the date on which this subsection comes into operation shall, for 40

the duration of its unexpired term, be deemed to be a permission given to the person under *section 145* and this Act shall apply accordingly.

(8) A travel document issued to a person under section 55 of the Act of 2015 that is in force immediately before the date on which this subsection comes into operation shall, for the duration of its unexpired term, be deemed to be a travel document issued to the person under *section 146* and this Act shall apply accordingly. 5

(9) Where before the date of coming into operation of this subsection an application has been made under section 55 of the Act of 2015 for a travel document, and before that date no document has been issued, this Act shall apply to the application, which shall be considered to be an application under *section 146*. 10

(10) Information provided, or deemed to have been provided, to the Minister under the Act of 2015 or the European Union (Dublin System) Regulations 2018 before the date on which this subsection comes into operation shall, for the purpose of performance of functions under this Act, be considered to have been provided to the Minister under this Act and this Act shall apply accordingly. 15

(11) A record held by the Minister under the Act of 2015 or the European Union (Dublin System) Regulations 2018, or deemed to be held by the Minister, before the date on which this subsection comes into operation shall, for the purpose of performance of functions under this Act, be considered to be held by the Minister under this Act and this Act shall apply accordingly. 20

### **Amendment of section 2 of Act of 2015**

**221.** Section 2(1) of the Act of 2015 is amended—

(a) by the substitution of the following definition for the definition of “international protection”:

“ ‘international protection’ has the meaning it has in the Qualification Regulation;”, 25

(b) by the substitution of the following definition for the definition of “persecution”:

“ ‘persecution’ shall be construed in accordance with the Qualification Regulation;”,

(c) by the substitution of the following definition for the definition of “person eligible for subsidiary protection”:

“ ‘person eligible for subsidiary protection’ has the meaning it has in the Qualification Regulation;”, 30

(d) by the substitution of the following definition for the definition of “protection”:

“ ‘protection’ (except where the context otherwise requires) means protection against persecution or serious harm and shall be construed in accordance with Article 7 of the Qualification Regulation;”, 35

(e) by the insertion of the following definition after the definition of “protection”:

“ ‘Qualification Regulation’ means Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024<sup>19</sup> on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council;”,

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(f) by the deletion of the definition of “qualified person”,

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(g) by the substitution of the following definition for the definition of “refugee”:

“ ‘refugee’ has the meaning it has in the Qualification Regulation;”,

and

(h) by the substitution of the following definition for the definition of “serious harm”:

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“ ‘serious harm’ has the meaning it has in Article 15 of the Qualification Regulation;”.

### **Continued application and effect of Act of 2015**

**222.** The Act of 2015 is amended by the insertion of the following sections after section 2:

#### **“Continued application and effect of Act in relation to certain applications and appeals”**

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**2A.** Notwithstanding the repeal of section 15 effected by *section 5 of the International Protection Act 2026*, where an application is made in accordance with that section 15 before 12 June 2026, this Act shall, subject to the *International Protection Act 2026* and the Qualification Regulation, continue to apply and have effect after the repeal in relation to—

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(a) the application, and

(b) an appeal under Part 6 relating to such an application (including an appeal referred to in section 21(6)).

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#### **Supplementary provisions in relation to continued application and effect of Act**

**2B.** (1) For the purposes of the continued application and effect of this Act in accordance with section 2A—

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(a) an international protection officer shall perform his or her functions under this Act, in particular the making of a recommendation under section 39(3), in accordance with the Qualification Regulation, and

(b) the Tribunal shall perform its functions under this Act, in particular the determination of an appeal under Part 6 (including an appeal

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referred to in section 21(6)), in accordance with the Qualification Regulation.

(2) For the purposes of Article 12(5) and Article 17(5) of the Qualification Regulation, an international protection officer and the Tribunal shall take into account a minor's capacity to be considered responsible under criminal law in accordance with section 52 of the Children Act 2001 as if the minor had committed the crime concerned in the State.”.

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### **Internal protection**

**223.** The Act of 2015 is amended by the substitution of the following section for section 32:

“**32.** An international protection officer may recommend or, as the case may be, the Tribunal may decide, in accordance with Article 8 of the Qualification Regulation, that an applicant is not in need of international protection for a reason referred to in that Article.”.

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### **Amendment of section 21(16) of Act of 2015**

**224.** Section 21 of the Act of 2015 is amended by the substitution of the following subsection for subsection (16):

“(16) In subsection (2)(a), ‘refugee status’ and ‘subsidiary protection status’ shall be construed in accordance with Article 3 of the Qualification Regulation.”.

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### **Amendment of section 27(1) of Act of 2015**

**225.** Section 27(1) of the Act of 2015 is amended by the insertion of the following paragraph after paragraph (a):

“(aa) to remain present and available in the State throughout the examination of the application.”.

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### **Amendment of section 28 of Act of 2015**

**226.** Section 28 of the Act of 2015 is amended—

(a) by the substitution of the following subsection for subsection (3):

“(3) The elements referred to in subsections (1) and (2) consist of the applicant's statements and all the documents submitted by the applicant regarding the matters referred to in point (b) of Article 4(2) of the Qualification Regulation.”,

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and

(b) in subsection (7)—

(i) by the deletion of paragraph (d), and

(ii) in paragraph (e), by the insertion of “taking into account the time at which the applicant applied for international protection” after “established”.

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## PART 15

### AMENDMENTS TO OTHER ACTS OF OIREACHTAS

#### **Amendment of Irish Nationality and Citizenship Act 1956**

**227.** The Irish Nationality and Citizenship Act 1956 is amended—

(a) in section 6B(4)— 5

- (i) by the substitution, in paragraph (b), of “State,” for “State, or”,
- (ii) by the substitution, in paragraph (c), of “subsection,” for “subsection.”, and
- (iii) by the insertion of the following paragraphs after paragraph (c):
  - “(d) it consists of a period during which a person has the right to remain or is allowed to remain in the State in accordance with *section 61, 83, 130(1) or 131* of the *International Protection Act 2026*, or 10
  - “(e) it consists of a period during which a person referred to in *section 64* of the *International Protection Act 2026* does not have the right to remain in the State under that section.”,

and 15

(b) in section 16A(1)—

- (i) by the substitution, in paragraph (b), of “State,” for “State, or”,
- (ii) by the substitution, in paragraph (c), of “subsection,” for “subsection.”, and
- (iii) by the insertion of the following paragraphs after paragraph (c):
  - “(d) it consists of a period during which a person has the right to remain or is allowed to remain in the State in accordance with *section 61, 83, 130(1) or 131* of the *International Protection Act 2026*, or 20
  - “(e) it consists of a period during which a person referred to in *section 64* of the *International Protection Act 2026* does not have the right to remain in the State under that section.”. 25

#### **Amendment of Schedule to Bail Act 1997**

**228.** The Schedule to the Bail Act 1997 is amended by the insertion of the following after paragraph 18A:

“Offences relating to travel documents

18B. Any offence under any paragraph of *section 148(1)* of the *International Protection Act 2026.*”. 30

#### **Amendment of section 3(4A) of Act of 1999**

**229.** Section 3(4A) of the Act of 1999 is amended—

(a) in paragraph (a), by the deletion of “or”, and

(b) by the insertion of the following paragraph after paragraph (a):

“(aa) the person has been, by a final judgment, convicted outside the State of an offence which, were the act or omission constituting that offence done or made in the State, would constitute a serious offence under the law of the State, or”.

5

**Amendment of section 5 of Illegal Immigrants (Trafficking) Act 2000**

**230.** Section 5 of the Illegal Immigrants (Trafficking) Act 2000 is amended—

(a) in subsection (1)—

(i) in paragraph (ok), by the substitution of “International Protection Act 2015,” for “International Protection Act 2015, or”,

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(ii) by the insertion of the following paragraphs after paragraph (ok):

“(ol) a declaration by the Determining Authority under *section 67(2)* of the *International Protection Act 2026* that an application has been implicitly withdrawn,

(om) a transfer decision of the Minister under *section 80* of the *International Protection Act 2026*,

15

(on) a decision of the Tribunal for Asylum and Returns Appeals under *section 82(9)* of the *International Protection Act 2026*,

(oo) a decision of the Determining Authority under *section 98* of the *International Protection Act 2026* to reject an application as inadmissible,

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(op) a decision of the Determining Authority under *section 98* of the *International Protection Act 2026* to reject an application as unfounded or manifestly unfounded where the applicant is eligible for subsidiary protection but does not qualify as a refugee,

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(oq) a decision of the Determining Authority under *section 98* of the *International Protection Act 2026* to reject an application as unfounded or manifestly unfounded where the applicant does not qualify as a refugee and is not eligible for subsidiary protection,

(or) a decision of the Determining Authority under *section 105(1)* of the *International Protection Act 2026* not to grant refugee status,

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(os) a decision of the Tribunal for Asylum and Returns Appeals under *section 137* of the *International Protection Act 2026*,

(ot) a decision of the Minister under *section 152(1)* of the *International Protection Act 2026* to withdraw refugee status or under *section 152(2)* of that Act to withdraw subsidiary protection status,

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(ou) a return decision under *section 154* or *156* of the *International Protection Act 2026*, or”,

and

- (iii) in paragraph (p), by the substitution of “decision, declaration, determination, recommendation, refusal or order” for “decision, determination, recommendation, refusal or order”,
- (b) in subsection (2), by the substitution of “decision, declaration, determination, recommendation, refusal” for “decision, determination, recommendation, refusal” in both places where it occurs, and 5
- (c) in subsection (9)—
  - (i) in paragraph (a), by the substitution of “decision, declaration, determination, recommendation, refusal or order” for “decision, determination, recommendation, refusal or order” in both places where it occurs, and 10
  - (ii) in paragraph (c)—
    - (I) by the substitution of the following definition for the definition of “international protection”:
 

“ ‘international protection’ has the meaning it has in *section 2* of the *International Protection Act 2026*;”, 15

and
    - (II) by the insertion of the following subparagraphs after subparagraph (va) of the definition of “relevant enactment”:
 

“(vb) the *International Protection Act 2026*,

(vc) the European Communities (Free Movement of Persons) 20 Regulations 2015 (S.I. No. 548 of 2015).” 20

#### **Amendment of Act of 2004**

**231.** The Act of 2004 is amended—

- (a) in section 1(1), by the insertion of the following definition:
 

“ ‘Common Travel Area’ means the State, the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man;”, 25
- (b) in section 4(3)(l)(i), by the deletion of “(within the meaning of the International Protection Act 2015)”,
- (c) in section 5(3)—
  - (i) in paragraph (c), by the deletion of “or”,
  - (ii) in paragraph (d), by the substitution of “that Act, or” for “that Act.”, and
  - (iii) by the insertion of the following paragraph after paragraph (d):
 

“(e) a person who has the right to remain in the State in accordance with Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024<sup>20</sup> establishing a common procedure for 35

<sup>20</sup> OJ L, 2024/1348, 22.5.2024

international protection in the Union and repealing Directive 2013/32/EU, and the *International Protection Act 2026.*.”,

(d) in section 7—

(i) in subsection (3), by the substitution of the following paragraphs for paragraph (b):

“(b) An immigration officer or a member of An Garda Síochána may search a non-national of whom a requirement is made under paragraph (a) and any luggage belonging to the non-national or under the non-national’s control with a view to ascertaining whether the non-national is carrying or conveying any documents, where—

(i) it is reasonably necessary for the purpose of the enforcement of section 4, or

(ii) the immigration officer or member of An Garda Síochána reasonably suspects the person has committed an offence.

(ba) An immigration officer or member of An Garda Síochána may examine and retain any document produced under paragraph (a) or found on a search under paragraph (b) for as long as an officer or member considers it reasonably necessary for the purpose of the enforcement of section 4 or for as long as an officer or member reasonably suspects it to be evidence of or relating to any offence.

(bb) A person who is subject to a requirement under paragraph (a) shall, if so required by an immigration officer or a member of An Garda Síochána, provide all reasonable assistance in relation to the operation of devices in which the documents are stored or access to the documents stored in those devices, including—

(i) providing the documents to an immigration officer or a member of An Garda Síochána in a form in which the documents can be taken away from the place and in which the documents are, or can be made, legible and comprehensible,

(ii) giving to the immigration officer or member of An Garda Síochána any password necessary to make the documents concerned legible and comprehensible, or

(iii) otherwise enabling the immigration officer or member of An Garda Síochána to examine the documents in a form in which the document is legible and comprehensible.

(bc) A search of a non-national’s person under paragraph (b) shall be carried out by a person of the same sex as the non-national.

(bd) An immigration officer or a member of An Garda Síochána shall inform the non-national of the reasons for the search before conducting the search.”,

and

(ii) by the insertion of the following subsection after subsection (4):

“(5) The Minister may by regulations provide for—

- (a) the maximum period documents may be retained for under subsection (3)(ba),
- (b) the records that must be kept by the Minister or An Garda Síochána, as the case may be, of searches conducted under subsection (3),
- (c) the information which must be provided by an immigration officer or a member of An Garda Síochána to the person being searched under subsection (3), including information as to how the person being searched can make a complaint in relation to the search or the retention of documents, and
- (d) such other matters as the Minister considers necessary or expedient for the purposes of subsection (3).”,

(e) in section 9—

(i) in subsection (2)(a), by the insertion of “and such additional particulars as may be prescribed” after “the particulars set out in the Second Schedule”,

(ii) in subsection (6)—

(I) in paragraph (a), by the substitution of “the age of 6 years” for “the age of 16 years”, and

(II) by the deletion of paragraph (b),

and

(iii) by the insertion of the following subsections after subsection (7A):

“(7B) Fingerprints shall not be taken for the purposes of registration under this section from a person who is under the age of 18 years, other than in the presence of—

- (a) a parent or guardian, including a person exercising parental responsibility (within the meaning of paragraph 2 of Article 1 of the Hague Convention as set out in the Schedule to the Protection of Children (Hague Convention) Act 2000) in respect of the person who is under the age of 18 years, or

- (b) an employee of, or other person appointed by, the Child and Family Agency.

(7C) A registration officer who is taking the fingerprints of a person who is under the age of 18 years shall—

(a) before the taking of the fingerprints, explain the procedure for the taking of fingerprints to the person,

(b) take that person’s fingerprints in a child-friendly and child-sensitive manner, and

(c) at the time of taking the fingerprints, have completed appropriate training in relation to the taking of fingerprints from persons who are under the age of 18 years.

(7D) An act required to be done under this section by a non-national who is under the age of 18 years may, where appropriate, be done on behalf of the non-national by the non-national's parent or guardian, including a person exercising parental responsibility (within the meaning of paragraph 2 of Article 1 of the Hague Convention as set out in the Schedule to the Protection of Children (Hague Convention) Act 2000) in respect of the child.", 10

and

(f) in section 17A(3), by the substitution of the following definition for the definition of "arrangement relating to the Common Travel Area":

" 'arrangement relating to the Common Travel Area' means an arrangement between the Government and the government of the United Kingdom of Great Britain and Northern Ireland relating to the lawful movement of persons between the territories of the Common Travel Area;". 15

**Amendment of Part 1 of Schedule 1 to National Vetting Bureau (Children and Vulnerable Persons) Act 2012** 20

**232.** Part 1 of Schedule 1 to the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 is amended by the insertion of the following paragraph after paragraph 16:

"17. Any work or activity by a provisional representative person or a representative person, each within the meaning of the *International Protection Act 2026*, as such a provisional representative person or representative person.". 25

**Amendment of section 24 of Prisons Act 2015**

**233.** Section 24 of the Prisons Act 2015 is amended—

(a) in subsection (1)—

(i) in paragraph (a), by the deletion of "or" in the last place where it occurs, 30

(ii) by the substitution of the following paragraph for paragraph (b):

"(b) a removal order under the European Communities (Free Movement of Persons) Regulations (S.I. No. 548 of 2015), or",

(iii) by the insertion of the following paragraph after paragraph (b):

"(c) a return decision under *Part 9 of the International Protection Act 2026*," 35

and

- (iv) by the substitution of “deportation or removal from the State or return, as the case may be” for “deportation or removal, as the case may be, from the State”,
- (b) in subsection (3)(a), by the substitution of “deportation order, removal order or return decision” for “deportation order or removal order”,
- (c) in subsection (12), by the insertion of “or returned” after “deported or removed from the State” in both places where it occurs, and
- (d) in subsection (13)(a), by the insertion of “or returned” after “from the State”.

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### **Amendment of section 12(2) of Data Protection Act 2018**

**234.** Section 12(2) of the Data Protection Act 2018 is amended—

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- (a) by the substitution of the following paragraph for paragraph (a):

“(a) Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024<sup>21</sup> on the establishment of ‘Eurodac’ for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council,”,

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- (b) in paragraph (b), by the substitution of “stateless person (recast), and” for “stateless person (recast).”, and

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- (c) by the insertion of the following paragraph after paragraph (b):

“(c) Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024<sup>22</sup> on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013.”.

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21 OJ L, 2024/1358, 22.5.2024

22 OJ L, 2024/1351, 22.5.2024

SCHEDULE 1  
CONVENTION RELATING TO THE STATUS OF REFUGEES DONE AT GENEVA ON 28 JULY 1951

PREAMBLE

*THE HIGH CONTRACTING PARTIES,*

*Considering* that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination, 5

*Considering* that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms, 10

*Considering* that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement, 15

*Considering* that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation, 15

*Expressing* the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

*Noting* that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of Refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner, 20

*Have agreed as follows:*

CHAPTER I

25

**GENERAL PROVISIONS**

*Article 1*

***Definition of the term "Refugee"***

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who: 30

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section; 35

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a

particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

5

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

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B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in Article 1, Section A, shall be understood to mean either:

(a) "events occurring in Europe before 1 January 1951"; or  
(b) "events occurring in Europe or elsewhere before 1 January 1951", and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

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(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

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C. This Convention shall cease to apply to any person falling under the terms of Section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

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(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

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Provided that this paragraph shall not apply to a refugee failing under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of his nationality;

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(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee failing under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

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D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention. 5

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country. 10

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: 15

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

#### *Article 2*

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#### ***General obligations***

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order. 25

#### *Article 3*

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#### ***Non-discrimination***

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

#### *Article 4*

#### ***Religion***

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The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

*Article 5*

***Rights granted apart from this Convention***

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

*Article 6*

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***The term “in the same circumstances”***

For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

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*Article 7*

***Exemption from reciprocity***

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally. 15
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State. 20
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3. 25
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

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*Article 8*

***Exemption from exceptional measures***

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With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

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*Article 9*

***Provisional measures***

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

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*Article 10*

***Continuity of residence***

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory. 10
2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required. 15

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*Article 11*

***Refugee seamen***

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In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

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CHAPTER II

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***JURIDICAL STATUS***

*Article 12*

***Personal status***

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence. 30
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognised by the law of that State had he not become a refugee. 35

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*Article 13*

***Movable and immovable property***

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

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*Article 14*

***Artistic rights and industrial property***

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has habitual residence.

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*Article 15*

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***Right of association***

As regards non-political and non-profit-making associations and trade unions the Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

*Article 16*

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***Access to courts***

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

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## CHAPTER III

### ***GAINFUL EMPLOYMENT***

#### *Article 17*

##### ***Wage-earning employment***

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment. 5
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting States concerned, or who fulfils one of the following conditions: 10  
  - (a) He has completed three years' residence in the country;
  - (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse;
  - (c) He has one or more children possessing the nationality of the country of residence. 15
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes. 20

#### *Article 18*

##### ***Self-employment***

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies. 25

#### *Article 19*

##### ***Liberal professions***

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognised by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. 30
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible. 35

## CHAPTER IV

### ***WELFARE***

#### *Article 20*

##### ***Rationing***

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals. 5

#### *Article 21*

##### ***Housing***

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. 10

#### *Article 22*

##### ***Public education***

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1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships. 20

#### *Article 23*

##### ***Public relief***

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The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

#### *Article 24*

##### ***Labour legislation and social security***

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters: 30  
(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances

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|---|----|
| where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefit of collective bargaining;   |    |
| (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:   | 5  |
| (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;   | 10 |
| (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.  | 15 |
| 2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.  | 20 |
| 3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question. | 25 |
| 4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.  | 25 |
| <b>CHAPTER V</b>  |    |
| <b><i>ADMINISTRATIVE MEASURES</i></b>   |    |
| <i>Article 25</i>   | 30 |
| <b><i>Administrative assistance</i></b>   |    |
| 1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.   | 35 |
| 2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.   | 35 |
| 3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be   | 40 |

given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
5. The provisions of this article shall be without prejudice to articles 27 and 28.

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*Article 26*

***Freedom of movement***

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

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*Article 27*

***Identity papers***

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

*Article 28*

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***Travel documents***

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.
2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognised and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

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*Article 29*

***Fiscal charges***

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.
2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

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*Article 30*

*Transfer of assets*

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement. 5
2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

*Article 31*

*Refugees unlawfully in the country of refuge*

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1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. 15
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country. 20

*Article 32*

*Expulsion*

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority. 25
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary. 30

*Article 33*

*Prohibition of expulsion or return (“refoulement”)*

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular 35

social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

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*Article 34*

***Naturalization***

The Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.

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**CHAPTER VI**

***EXECUTORY AND TRANSITORY PROVISIONS***

*Article 35*

***Co-operation of the national authorities with the United Nations***

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
  - (a) the condition of refugees,
  - (b) the implementation of this Convention, and
  - (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

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*Article 36*

***Information on national legislation***

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

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*Article 37*

***Relation to previous Conventions***

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June

1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

## CHAPTER VII

### ***FINAL CLAUSES***

*Article 38*

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#### ***Settlement of disputes***

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

*Article 39*

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#### ***Signature, ratification and accession***

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be reopened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952. 15

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations. 20

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this Article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations. 25

*Article 40*

#### ***Territorial application clause***

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned. 30

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later. 35

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject where necessary for constitutional reasons, to the consent of the governments of such territories.

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*Article 41*

***Federal clause***

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation, to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

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*Article 42*

***Reservations***

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36 to 46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

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*Article 43*

***Entry into force***

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the

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ninetieth day following the day of deposit by such State of its instrument of ratification or accession.

*Article 44*

***Denunciation***

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations. 5
2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.
3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General. 10

*Article 45*

***Revision***

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1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

*Article 46*

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***Notifications by the Secretary-General of the United Nations***

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

- (a) of declarations and notifications in accordance with Section B of article 1;
- (b) of signatures, ratifications and accessions in accordance with article 39; 25
- (c) of declarations and notifications in accordance with article 40;
- (d) of reservations and withdrawals in accordance with article 42;
- (e) of the date on which this Convention will come into force in accordance with article 43;
- (f) of denunciations and notifications in accordance with article 44; (g) of requests for revision in accordance with article 45. 30

In faith whereof the undersigned, duly authorised, have signed this Convention on behalf of their respective Governments,

Done at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain 35

deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

SCHEDULE

Paragraph 1

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1. The travel document referred to in article 28 of this Convention shall be similar to the specimen annexed hereto.
2. The document shall be made out in at least two languages, one of which shall be in English or French.

Paragraph 2

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Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult refugee.

Paragraph 3

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

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Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

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Paragraph 6

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1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.
2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.
3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

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Paragraph 7

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The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

Paragraph 8

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The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9

1. The Contracting States undertake to issue transit visas to refugees who have obtained visas for a territory of final destination.
2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

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Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11

When a refugee has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

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Paragraph 12

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

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Paragraph 13

1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with article 28 of this Convention shall be readmitted to its territory at any time during the period of its validity.
2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.
3. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorised for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

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Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

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Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

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Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

ANNEX

Specimen Travel Document

The document will be in booklet form (approximately 15 x 10 centimetres).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words "Convention of 28 July 1951" be printed in continuous repetition on each page, in the language of the issuing country.

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|   |  |
|---|--|
| <i>(Cover of booklet)</i>   |  |
| TRAVEL DOCUMENT   |  |
| (Convention of 28 July 1951)  | 10   |
|   | No.  |
| (1)   |  |
| TRAVEL DOCUMENT   |  |
| (Convention of 28 July 1951)  | 15   |
| This document expires on  |  |
| unless its validity is extended or renewed.   |  |
| Name  |  |
| Forename(s)   |  |
| Accompanied by  | child (children) 20                            |
| 1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.   |  |
| 2. The holder is authorised to return to  |  |
| [state here the country whose authorities are issuing the document]   | 25   |
| on or before  | unless some later date is hereafter specified. |
| [The period during which the holder is allowed to return must not be less than three months.]   |  |
| 3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. [The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.] <sup>1</sup> | 30   |
| (This document contains      pages, exclusive of cover.)  |  |

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(2)

Place and date of birth

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Occupation

Present residence

\*Maiden name and forename(s) of wife

\*Name and forename(s) of husband

|   |                     | Description                 |     |
|---|---------------------|-----------------------------|-----|
| Height  |                     |                             |     |
| Hair  |                     |                             |     |
| Colour of eyes  |                     |                             |     |
| Nose  |                     |                             | 5   |
| Shape of face   |                     |                             |     |
| Complexion  |                     |                             |     |
| Special peculiarities   |                     |                             |     |
| Children accompanying holder  |                     |                             |     |
| Name  | Forename(s)         | Place and<br>date of birth  | Sex |
|   |                     |                             | 10  |
| (This document contains   |                     | pages, exclusive of cover.) |     |
| <hr/>   |                     |                             |     |
| (3)   |                     |                             |     |
| Photograph of holder and stamp of issuing authority                                     |                     |                             | 15  |
| Finger-prints of holder (if required)   | Signature of holder |                             |     |
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## SCHEDULE 2

### PROTOCOL RELATING TO THE STATUS OF REFUGEES DONE AT NEW YORK ON 31 JANUARY 1967

*The States Parties* to the present Protocol,

*Considering* that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951, 5

*Considering* that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

*Considering* that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951, 10

*Have agreed as follows:*

#### *Article I*

##### ***General provision***

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined. 15

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and..." and the words "... as a result of such events", in article 1 A (2) were omitted. 20

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1)(a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

#### *Article II*

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##### ***Co-operation of the national authorities with the United Nations***

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol. 30

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning: 35

- (a) The condition of refugees;
- (b) The implementation of the present Protocol;

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

*Article III*

***Information on national legislation***

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

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*Article IV*

***Settlement of disputes***

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

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*Article V*

***Accession***

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialised agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

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*Article VI*

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***Federal clause***

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United

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Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

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### *Article VII*

#### ***Reservations and Declarations***

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

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2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

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3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

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4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

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### *Article VIII*

#### ***Entry into force***

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

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2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

### *Article IX*

#### ***Denunciation***

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1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the

date on which it is received by the Secretary-General of the United Nations.

*Article X*

***Notifications by the Secretary-General of the United Nations***

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

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*Article XI*

***Deposit in the Archives of the Secretariat of the United Nations***

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

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# BILLE

(mar a tionscnaíodh)

## *dá ngairtear*

Acht do dhéanamh socrú maidir le daoine a bhfuil cosaint idirnáisiúnta á lorg acau do theacht isteach agus do bheith sa Stát, ach aird a thabhairt freisin ar chumhacht na Feidhmeannacha i ndíal leis na nithe sin; do thabhairt eifeacht do Threoir (AE) 2024/1346 ó Pharlaimint na hÉiragó agus ón GComhairle ar 14 Bealtaine 2024 lena leagtar síos caighdeán a bhainneann le hiarraitáiriú ar chosaint idirnáisiúnta a ghilacadh (athmhinniú); do thabhairt tuilleadh eifeachtá do Rialachán (AE) 2024/1347 ó Pharlaimint na hÉiragó agus ón GComhairle ar 14 Bealtaine 2024 maidir le caighdeán i dtaca le cálúthíteach náisiúnach tríú ní daoine gan stát mar thairbhithé le chosaint idirnáisiúnta, i dtaca le stádas anfhorraimhach do dhíneanaithe no do dhaoinne atá inbhiúil le haghaidh cosaint choimhleach agus i dtaca lena bhfuil sa chosaint a dhíneanair; do thabhairt tuilleadh eifeachtá do Rialachán (AE) 2024/1348 ó Pharlaimint na hÉiragó agus ón GComhairle ar 14 Bealtaine 2024 lena mbunaitear níos imachta coitianta le haghaidh cosaint idirnáisiúnta san Aontas agus lena násairtear Treoir 2013/32/AE; do thabhairt tuilleadh eifeachtá do Rialachán (AE) 2024/1350 ó Pharlaimint na hÉiragó agus ón GComhairle ar 14 Bealtaine 2024 lena mbunaitear Creat an Aontais agus Líneamh Isteach Fhoras Daonáill, agus lena leasaitsear Rialachán (AE) 2021/1147; do thabhairt tuilleadh eifeachtá do Rialachán (AE) 2024/1351 ó Pharlaimint na hÉiragó agus ón GComhairle ar 14 Bealtaine 2024 maidir le bainistíneáil tearmann agus imrice; do thabhairt tuilleadh eifeachtá do Rialachán (AE) 2024/1358 ó Pharlaimint na hÉiragó agus ón GComhairle ar 14 Bealtaine 2024 maidir le bunú 'Eurodac' chun sonrai bithmhéadracha a chur i goompárad le chéile chun Rialachán (AE) 2024/1351 agus (AE) 2024/1350 ó Pharlaimint na hÉiragó agus ón GComhairle agus Treoir 2001/55/CE ón GComhairle a chur i bhfeidhme ag hóicteachtaí, agus chun náisiúnach tríú-trí agus daoine gan stát atá ag fagacht go neamhfhileathach a shainhthítear, agus maidir le hiarraitáiriú ó údarás forfhidhmeannáil dí li ná mBallast agus iarratáil ó Eorpúil ar chompháradáil a dhéanamh le sonrai Eurodac chun criocha forfhidhmeannán an dí; do thabhairt tuilleadh eifeachtá do Rialachán (AE) 2024/1359 ó Pharlaimint na hÉiragó agus ón GComhairle ar 14 Bealtaine 2024 lena dtugtar aghaidh ar chásanna gáireacháin agus *force majeure* i réimse na himirce agus an tearmann agus lena leasaitsear Rialachán (AE) 2021/1147; do thabhairt tuilleadh eifeachtá don Choinbhíníos i dtaoibh Stádas Dídeanaithe a rinneadh i Saibhreas an 28ú lá d'fhlí 1951 agus don Phrótaícal i dtaoibh Stádas Dídeanaithe a rinneadh i Nu-Earrachán an 31ú lá d'Eanáir 1967; do dhéanamh socrú maidir le daoine áirithe a chur an Stát; do dhéanamh socrú maidir le comhlacht a bhunú atá dtabharach an Binséan Uimh Acheinmhaire i dtaoibh Tearmannáig Filleadh no, sa Bhéarla, the *Tribunal for Asylum and Returns Appeals* agus do dhéanamh socrú maidir lena feidhmeannáin do dhéanamh socrú maidir le comhlacht a bhunú atá dtabharach Oifig an Phrionsaigh-Chigire Nósanna Imeachta Teorana um Thearmann ná, sa Bhéarla, the *Office of the Chief Inspector of Asylum Border Procedures* agus do dhéanamh socrú maidir lena feidhmeannáin; do leasú an Acht a mhasa Chosaint Idirnáisiúnta, 2015 níodh a'isghairf forálacha áirithe de; do leasú Acht Náisiúnach agus Saoránachas Éireann, 1956, an Achtá Inimircé, 1999, an Achtá Inimircé Neamhfhileathach (Gáimneáil), 2000, an Achtá Inimircé, 2004 agus achtacháin áirithe eile; agus do dhéanamh socrú i dtaoibh nithe gaoilimhara.

*An tAire Dlí agus Cirt, Gnóthaí Baile agus Imirce a thiolaic.*

22 Eanáir, 2026

## International Protection Bill 2026

# BILL

*(as initiated)*

*entitled*

An Act to provide for the entry into, and presence in, the State of persons seeking international protection, while having regard also to the power of the Executive in relation to these matters; to give effect to Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (recast); to give further effect to Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted; to give further effect to Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU; to give further effect to Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147; to give further effect to Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management; to give further effect to Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes; to give further effect to Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and *force majeure* in the field of migration and asylum and amending Regulation (EU) 2021/1147; to give further effect to the Convention relating to the Status of Refugees done at Geneva on the 28th day of July 1951 and the Protocol relating to the Status of Refugees done at New York on the 31st day of January 1967; to provide for the gathering of information from applicants for international protection; to provide for the removal from the State of certain persons; to provide for the establishment of a body to be known as *An Binne um Achomhairc i dtaobh Tearmain agus Filleadh* or, in the English language, as the Tribunal for Asylum and Returns Appeals and to provide for its functions; to provide for the establishment of a body to be known as *Ofig an Phriomh-Chigire Náisiúnaí Imeachta Teannra um Teannra* or, in the English language, as the Office of the Chief Inspector of Asylum Border Procedures and to provide for its functions; to amend, or repeal certain provisions of, the International Protection Act 2015; to amend the Irish Nationality and Citizenship Act 1956, the Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000, the Immigration Act 2004 and certain other enactments; and to provide for related matters.

*Presented by the Minister for Justice, Home Affairs  
and Migration*

22nd January 2026

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach direach ó  
FOILSEACHÁIN RIALTAIS,  
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