



**Comments by the Irish Refugee Council
on the Immigration, Residence and
Protection Bill 2007, in relation to the
Protection of Separated Children
26th July, 2007**

- 1. Definition of separated child:** The Irish Refugee Council encourages the Irish government to adopt the term separated child rather than unaccompanied minor as it encompasses a broader meaning that more accurately represents the situation of many migrant children. →Part 1: Interpretation

The Separated Children in Europe Programme (SCEP), a joint initiative of UNHCR and Save the Children, defines a separated child as “*a child under 18 years of age who is outside his/her country of origin and separated from both parents or his/her previous legal/customary primary caregiver.*”

“Some children are totally alone while others...may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation.”

- 2. Register of Separated Children:** The Irish Refugee Council calls upon the Irish government to include a provision in the Bill that would establish a “Register of Separated Children” and to provide separated children with an identity document. → Part 5: Register of Foreign Nationals

Separated children should be registered and provided with an identification document as soon as possible. This is especially important for those who are not registered with the Office of the Refugee Applications Commissioner for the purposes of an asylum application and thus have no clear legal status or identification documentation.

The Irish government could consider implementing a system similar to the UK’s National Register for Unaccompanied Children <http://www.nruc.gov.uk/index.html>, which was set up to safeguard separated children and to improve appropriate placement and service provision as well as accurate reporting.

- 3. Age assessment:** The Irish Refugee Council recommends that age assessment measures be proposed and implemented that will meet with international good practice standards. → References throughout the Bill

Ideally, when an individual’s stated age is disputed, age should be assessed by an independent panel of experts including a social worker, a general practitioner and a psychologist, who have expertise in child and adolescent behaviour and who have been trained in child-friendly interview techniques. It is not appropriate for immigration officers or members of the Gardai Síochána to be solely responsible for assessing the age of a foreign national as currently proposed in the Bill.

As far as minimum standards, the EU Council Directive 2005/85/EC (Procedures Directive) elaborated suitable practice for the process of age assessment including:

- Informing “unaccompanied minors” of the possibility that their age may be determined by medical examination.
- Obtaining consent for the examination from the child and/or his/her representative/guardian
- Telling the child, in a language that s/he may reasonably be expected to understand, about the method of examination
- Explaining possible implications of the examination results and the consequences of refusing to take the test
- Making the best interests of the child a primary consideration in this process.

Furthermore, the Separated Children in Europe Programme stresses that:

The margin of error for each age assessment test should be considered and the individual should be given the benefit of the doubt in disputed cases.

A guardian should be appointed before the testing and agree with the proposed process.

When age is disputed, the individual concerned should be placed in special accommodation during the testing period and for the duration of any appeal process.

Ideally, different methods should be combined and balanced to assess an individual’s age (see for example the *UK Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers*).

There should be the possibility to appeal the age determination decision.

Where an applicant’s stated age is disputed they should be exempt from removal until after the initial decision regarding their age and any subsequent appeal of this decision has been considered.

Additionally, the UK Immigration Law Practitioners’ Association recently published its recommendations on age assessment, which could also be adapted to the Irish context. For more information see:

<http://www.ilpa.org.uk/publications/ILPA%20Age%20Dispute%20Report.pdf>

4. Role of the Health Service Executive: The Irish Refugee Council recommends that the HSE be immediately informed when it appears that a foreign national is under the age of 18 and that a social worker be based at points of entry beginning with Dublin Airport. → References throughout the Bill

The Bill currently states that “immigration shall inform HSE as soon as practicable” where it appears that a foreign national is under the age of 18. The Irish Refugee Council would argue that this should happen immediately to ensure that child protection measures are put in place and that to do so a social worker should be based at points of entry beginning with Dublin Airport. Furthermore, as recommended by the Committee on the Rights of the Child, the Irish government should develop 24-hour social services.

More concerted efforts need to be made in the identification and registration of separated children upon arrival. This would require more training as well as better inter-agency co-operation, perhaps along the line of Operation Paladin in the UK, which forged a unique partnership among immigration, police, social services and the National Society for the Prevention of Cruelty to Children at Heathrow Airport with the aim of carrying out risk assessments for every separated child identified entering the UK. A social work service should be provided at ports and airports to assist in the identification, assessment and referral of vulnerable children.

While it is outside the scope of this Bill, the Irish Refugee Council also recommends that the Child Care Act 1991 should be amended to include mention of separated children and the specific role of the HSE. The current Bill states that the HSE will be responsible for separated children and that “provisions of the Child Care Act 1991” and other relevant enactments shall apply. This gives no guidance to the HSE as to their legal duties and which section of the Act should be applied, eg Section 4 or Section 5. The HSE itself noted in a review of services that the use of different sections of the Child Care Act 1991 to care for separated children--all based on legal opinion--should be revisited by specific advice from the Attorney General on the precise implications for the HSE of using different sections of the Act to enable care.

5. Guardianship: The Irish Refugee Council urges the Irish government to fulfil its commitment to appoint an independent guardian ad litem for every separated child. → References throughout the Bill

In the National Children’s Strategy adopted in November 2000, the Irish government made the commitment that: *Unaccompanied children seeking refugee status will be treated in accordance with best international practice, including the provision of a designated social worker and Guardian-Ad-Litem.* To prevent conflict of interest, the guardian must not be the child’s legal adviser or their social worker. Their role is to act as advocate and to safeguard the best interests of the child. The Committee on the Rights of the Child recently provided authoritative guidance on the role of such guardians in its *General Recommendation No. 6 on Treatment of Unaccompanied and Separated Children outside Their Country of Origin.*

Under Part 7 of the Bill outlining Protection measures, it is proposed that “the HSE shall arrange for the appointment of an employee of the HSE or such other person as it may determine to make an application on behalf of the foreign national.” Procedures should be put in place to facilitate individual applications by separated children in line with Article 12 of the Convention on the Rights of the Child, namely the right of the child to have an opinion and for that opinion to be given due weight. In that regard, it should be the role of the guardian to assist the child in consulting with legal counsel (Refugee Legal Services) and in determining, following legal advice, whether he/she should submit an application for protection.

Additionally, in the same section, the Bill stipulates that an immigration officer “may require accompanying adult to verify that he/she is taking parental responsibility.” This provision raises concerns as to whether any accompanying adult could claim parental responsibility, even when it is inappropriate and against the child’s best interests. Ideally, family relations should be supported by documentation or by consultation with both the adult and child concerned.

6. Family reunification: The Irish Refugee Council recommends that separated children granted refugee status, subsidiary protection or any other long-term protection residence permit (including trafficked children) be entitled to family reunification with parents as well as with siblings or other close relatives. → Part 5

The right to respect for family life is enshrined in many international instruments including the *European Convention on Human Rights and Fundamental Freedoms* and the *Convention on the Rights of the Child*.

7. Asylum process: The Irish Refugee Council calls upon the Irish government to adopt legislative provisions to strengthen the protection and assistance provided to separated children who are seeking asylum. → References throughout the Bill

The Irish Refugee Council welcomes the reference to child specific and gender specific forms of persecution. The subsequent publication of guidelines on both would provide necessary guidance and add further weight to these provisions. Ireland has the opportunity to become a model of best practice in this regard.

Additionally, we welcome the suggestion that the Chairperson of the Protection Review Tribunal may assign cases to members with regard to the age of the applicant. Selected members should receive additional training on interviewing children and child specific persecution.

In general, the asylum process should be more child-friendly and sensitive. There is a need to publish guidelines for interviewing separated children. Special consideration needs to be provided for the situation of children and the effect trauma has on memory and recall. The Irish government should apply a broader interpretation of protection needs to assess the risk of serious harm pursuant to non-refoulement obligations, for example, the consequences of severe deprivation on a child due include insufficient food and health services.

Finally, separated children should be exempt from special accelerated procedures related to safe third countries, manifestly unfounded and safe country of origin. Additionally, they should be exempt from Dublin II transfers unless a transfer is deemed to be in their best interests of the child such as ensuring family reunification in another EU Member State.

8. Protection for trafficked children: The Irish Refugee Council calls upon the Irish government to adopt legislative provisions that will allow it to ratify and fully implement the Council of Europe Convention against Trafficking in Human Beings and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. → Part 7: Protection

The Irish Refugee Council notes the limitations of the current Scheme for the Criminal Justice (Trafficking in Persons and Sexual Offences) Bill as well as of the Immigration, Residence and Protection Bill, in providing protection for suspected trafficked persons. Most notably, the Scheme for the Trafficking Bill narrowly addresses issues of criminal law. We understand that the Immigration, Residence and Protection Bill may only provide provisions for “non-national” trafficked persons who come from countries outside the European Union. Arguably, there is a need for separate legislation to allow the Irish

government to meet international standards for the protection and assistance of trafficked persons.

The Irish Refugee Council urges the government to specify guarantees in the Immigration, Residence and Protection Bill for suspected trafficked “foreign nationals” including provisions for a reflection period and temporary residency based on humanitarian grounds, independent of the ability or willingness of the trafficked person to co-operate with law enforcement authorities. Additionally, provisions for foreign trafficked children should ensure that they are provided with a guardian ad litem and that their best interests are the primary consideration in all decisions affecting them, including decisions about return to their country or origin.

9. Protection for those separated children who do not apply for asylum: The Irish Refugee Council calls upon the Irish government to provide for humanitarian leave to remain in a timely manner when it is deemed in a child’s best interests and to further develop the process for best interests determination for every separated child based on guidance from UNHCR and UNICEF guidelines. → Part 7: Protection

In addition to protection, separated children deserve a timely decision that leads to a durable solution. In Ireland, unless the child has made an asylum application, she/he has no legal status. Having no legal status, protection needs and future stability cannot be secured. The Law Society of Ireland recommends that a temporary form of protection – temporary permission to remain – be granted for children who have not made an asylum application, and therefore have no current legal status. As with other forms of temporary protection, there should be the possibility to renew the status and eventually to apply for a long-term or permanent status.

10. Prohibition of the detention of children: The Irish Refugee Council welcomes the Bill’s clear prohibition of the detention of children and therefore questions why there is a reference to expenses incurred in a minor’s detention. → Part 6: Liability for costs of removal

In application of article 37 of the Convention on the Rights of the Child and the principle of the best interests of the child, children should not, as a general rule, be detained. Furthermore, as noted by the UN Committee on the Rights of the Child in its recent *General Comment No. 6 on Treatment of Unaccompanied and Separated Children outside their Country of Origin*:

Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.

11. The acquisition, use and storage of biometric data: The Irish Refugee Council appeals to the Irish government to implement provisions related to the acquisition, use and storage of biometric data in line with its commitments under the *European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* and other international good practice standards as described by the Separated Children in Europe Programme's *Position Paper on the Use of Biometric Data*. → References throughout the Bill

Based on the research, expert consultation and the principles outlined in its position paper, SCEP takes the position that if a separated child is to be subjected to any type of biometric testing the following procedure should be used as a measure of safeguarding the child:

- The purpose for undertaking the test must be clear – what information is being sought and why.
- Confirmation must be gained that biometric testing is the best option available to gather the information that is sought.
- The decision to pursue testing must be made in the best interests of the child.
- The procedures must be explained clearly to the child.
- Counseling must be provided to help the child consider the impact of unforeseen revelations that may arise from the testing as well as the possible consequences of the information.
- The child must give informed consent.
- A guardian should accompany the child or, where there is no guardian, an independent and responsible adult (unless the child states that they would prefer not to be accompanied).
- The least invasive method of biometric testing should be used.
- The test should be administered by trained staff skilled in working with children.
- The outcome(s) of the test should be shared with the child and their guardian promptly.
- In case of doubts or a large margin of error, the decision taken must be the most favourable to the child and in their best interests.
- There must be access to an independent appeals procedure.

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