

General Scheme for the drafting of the International Protection Bill

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Long Title of Bill

An Act to restate and modify certain aspects of the law relating to the entry into, and presence in the State, of persons in need of international protection, to give further effect to Council Directive 2004/83/EC (Asylum Qualification Directive), to give further effect to Council Directive 2005/85/EC (Asylum Procedures Directive), to give further effect to Council Directive 2001/55/EC (Temporary Protection Directive), to give further effect to the Convention relating to the Status of Refugees done at Geneva on the 28th day of July 1951, the Protocol relating to the status of refugees done at New York on the 31st day of January 1967, to amend or repeal certain other enactments, and to provide for related matters.

PART 1 - PRELIMINARY

Head 1: Short title and commencement

Provide along the following lines:

- (1) The Act may be cited as the International Protection Act 2014.
- (2) The Act comes into operation on such day or days as the Minister may, by order or orders, appoint either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Head 2: Interpretation

Provide along the following lines:

In the Act-

“Act of 1996” means the Refugee Act 1996;

“Act of 1999” means the Immigration Act 1999;

“Act of 2004” means the Immigration Act 2004;

“applicant” means a person who is the subject of an application for international protection in relation to which the permission given to the person under Head 15 has not ceased to be valid;

“authorised officer” means a person authorised in writing by the Minister to exercise the powers conferred on an authorised officer by or under this Act;

“authorised person” means a person authorised in writing by the Minister to exercise the powers conferred on an authorised person by or under this Act;

“country of origin” means the country or countries of nationality or, for stateless persons, of former habitual residence;

“civil partner” means a civil partner within the meaning of section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“deportation order” shall be construed in accordance with Head 45;

“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 legible form,
- (e) any audio or video recording, and
- (f) a travel document or an identity document;

“Dublin System Regulations” means any instrument made under an Act giving effect to Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 or any Regulation amending or replacing that Regulation;

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

“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 to this Act) 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 to this Act);

“High Commissioner” means the United Nations High Commissioner for Refugees;

“immigration officer” has the meaning it has in section 3 of the Act of 2004;

“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 information;

“international protection” means status in the State either-

- (a) as a refugee on the basis of a refugee declaration, or

(b) as a person eligible for subsidiary protection on the basis of a subsidiary protection declaration;

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

“Minister” means the Minister for Justice and Equality;

“persecution” shall be construed in accordance with Head 6;

“person eligible for subsidiary protection” means a person—

(a) who is not a national of a Member State of the European Union,

(b) who does not qualify as a refugee,

(c) in respect of whom substantial grounds have been shown for believing that the person concerned, 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

(d) who is not excluded from being eligible for subsidiary protection under Head 11;

“prescribed” means prescribed by regulations made by the Minister;

“protection” (except where the context otherwise requires) means protection against persecution or serious harm and shall be construed in accordance with Head 29;

“qualified person” means a person who is either—

(a) a refugee and in relation to whom a refugee declaration is in force, or

(b) a person eligible for subsidiary protection and in relation to whom a subsidiary protection declaration is in force;

“refugee” means a person 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 his or her 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 a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Head 9 does not apply;

“refugee declaration” shall be construed in accordance with Head 43(2);

“Registrar” means the Registrar of the Tribunal appointed under Head 59;

“Regulations of 2006” means the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) as amended by the European Communities

(Eligibility for Protection) (Amendment) Regulations 2011 (S.I. No. 405 of 2011) and the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013);

“Regulations of 2013” means the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013);

“serious harm” means —

- (a) death penalty or execution,
- (b) torture or inhuman or degrading treatment or punishment of a person in his or her country of origin, or
- (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in a situation of international or internal armed conflict;

“serious non-political crime” includes particularly cruel actions, even if committed with an allegedly political objective;

“social welfare benefits” includes any payment or services provided under the Social Welfare Acts, the Health Acts 1947 to 2009 and the Housing Acts 1966 to 2009;

“subsidiary protection declaration” shall be construed in accordance with Head 43(6);

“Tribunal” means the International Protection Appeals Tribunal established by Head 55.

Head 3: Regulations

Provide along the following lines:

- (1) The Minister may make regulations in relation to any matter referred to in these Heads as prescribed or to be prescribed.
- (2) Different regulations under subhead (1) may be made in respect of different classes of matter the subject of the prescribing concerned.
- (3) Regulations under these Heads may contain such incidental, supplementary, consequential and transitional provisions as appear to the Minister to be necessary or expedient for the purposes or in consequence of, or to give full effect, to such regulations.
- (4) Every regulation made under the Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling such regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Head 4: Expenses

Provide along the following lines:

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

Head 5: Repeals and revocations

Provide along the following lines:

- (1) The Act of 1996 is to be repealed.
- (2) The Regulations of 2006 are to be revoked.
- (3) The European Communities (Asylum Procedures) Regulations 2011 (S.I. No. 51 of 2011) are to be revoked.
- (4) The Regulations of 2013 are to be revoked.
- (5) The repeal and revocations are subject to the provisions of Heads 63 and 64.
- (6) References in other legislative instruments to the repealed Act and the revoked Regulations shall, where appropriate, continue to operate as references to the corresponding provisions of this Act. If required, amendments to these other legislative instruments are to be included in the Act.

PART 2 - QUALIFICATION FOR INTERNATIONAL PROTECTION

Head 6: Acts of persecution

Provide along the following lines:

- (1) In these Heads acts of persecution must be—
 - (a) sufficiently serious by their nature or repetition to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or
 - (b) an accumulation of various measures, including violations of human rights, which is sufficiently severe to affect an individual in a similar manner as mentioned in paragraph (a).
- (2) The following are examples of acts which may amount to acts of persecution for the purposes of subhead (1):
 - (a) acts of physical or mental violence, including acts of sexual violence;

- (b) legal, administrative, police or judicial measures, or a combination of these measures, that are in themselves discriminatory or are implemented in a discriminatory manner;
 - (c) prosecution or punishment that is disproportionate or discriminatory;
 - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
 - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts of a kind referred to in Head 9(2);
 - (f) acts of a gender-specific or child-specific nature.
- (3) For the purpose of the definition of “refugee” in Head 2, there must be a connection between the reasons for persecution and the acts of persecution or the absence of protection.

Head 7: Reasons for persecution

Provide along the following lines:

- (1) The Minister or the Tribunal, as the case may be, shall take the following into account when assessing the reasons for persecution-
- (a) the concept of race shall in particular include considerations of colour, descent or membership of a particular ethnic group;
 - (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
 - (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic or linguistic identity, common geographical or political origins or its relationship with the population of another state;
 - (d) a group shall be considered to form a particular social group where in particular—
 - (i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, or
 - (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society,

and, depending on the circumstances in the country of origin, a particular social group may include a group based on a common characteristic of sexual orientation;

(e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution referred to in Head 28 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant concerned.

(2) In the assessment of whether an applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by an actor of persecution.

(3) For the purposes of subhead (1)(d)—

(a) sexual orientation shall not include acts considered to be criminal in the State,

(b) gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.

(4) In this Head “actor of persecution” shall be construed in accordance with Head 28.

Head 8: Cessation of refugee status

Provide along the following lines:

(1) A person shall cease to be a refugee, if he or she—

(a) has voluntarily re-availed himself or herself of the protection of the country of nationality,

(b) having lost his or her nationality, has voluntarily re-acquired it,

(c) has acquired a new nationality (other than as an Irish citizen), and enjoys the protection of the country of his or her new nationality,

(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution,

(e) subject to subheads (2) and (3), can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of his or her country of nationality, or

(f) subject to subheads (2) and (3), being a stateless person, is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to his or her country of former habitual residence.

(2) In determining whether subhead (1)(e) or (f) applies regard shall be had to whether the change of circumstances is of such a significant and non-temporary nature that the person's fear of persecution can no longer be regarded as well-founded.

(3) Subhead (1)(e) or (f) shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of his or her country of nationality or, being a stateless person, of the country of former habitual residence.

Head 9: Exclusion from being a refugee

Provide along the following lines:

- (1) A person is excluded from being a refugee where he or she is-
 - (a) subject to subhead (4) is receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance, or
 - (b) recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those.
- (2) A person is excluded from being a refugee where there are serious reasons for considering that he or she—
 - (a) 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) has committed a serious non-political crime outside the State prior to his or her arrival in the State, or
 - (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.
- (3) A person is excluded from being a refugee where there are serious reasons for considering that he or she has incited or otherwise participated in the commission of a crime or an act referred to in subhead (2).
- (4) Subhead (1)(a) shall not apply where the protection or assistance referred to therein has ceased for any reason, without the position of persons who had

been receiving that protection or assistance being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.

Head 10: Cessation of eligibility for subsidiary protection

Provide along the following lines:

- (1) A person shall cease to be eligible for subsidiary protection when the circumstances which led to his or her eligibility for subsidiary protection have ceased to exist or have changed to such a degree that international protection is no longer required.
- (2) In determining whether subhead (1) applies regard shall be had to whether the change of circumstances is of such a significant and non-temporary nature that the person no longer faces a real risk of serious harm.
- (3) Subhead (1) shall not apply to a person eligible for subsidiary protection who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of his or her country of nationality or, being a stateless person, of the country of former habitual residence.

Head 11: Exclusion from eligibility for subsidiary protection

Provide along the following lines:

- (1) A person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she—
 - (a) 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) has committed a serious crime,
 - (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations, or
 - (d) constitutes a danger to the community or to the security of the State.
- (2) A person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she has incited or otherwise participated in the commission of a crime or an act referred to in subhead (1).
- (3) A person is excluded from being eligible for subsidiary protection if he or she has, prior to his or her arrival in the State, committed a crime or crimes, not referred to in subhead (1), which, if committed in the State, would be

punishable by imprisonment and if he or she left his or her country of origin solely in order to avoid sanctions resulting from that crime or those crimes.

PART 3 - APPLICATION FOR INTERNATIONAL PROTECTION

Head 12: Application for international protection

Provide along the following lines:

- (1) Subject to Head 21, a person who is over the age of 18 years and 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-
 - (a) on his or her own behalf, or
 - (b) on behalf of another person who is under the age of 18 years and who is at the frontier of the State or who is in the State (whether lawfully or unlawfully) where the person over the age of 18 years is taking responsibility for the care and protection of the person who is under the age of 18 years.
- (2) Subject to subhead (3), an application for international protection shall be made in person and shall be made to the Minister.
- (3) Subject to Head 21, an person who makes an application under subhead (1)(a) shall be deemed to make an application on behalf of any dependent child of him or her who -
 - (a) is present in the State and under the age of 18 years at the time of the making of the application by the person concerned under subhead (1)(a),
 - (b) is born in the State while the person concerned is an applicant, or
 - (c) being under the age of 18 years, enters the State while the person concerned is an applicant.
- (4) Subject to Head 21, where it appears to the Child and Family Agency, on the basis of information available to it, that an application for international protection should be made on behalf of a child in respect of whom the Agency is providing care and protection it shall arrange for the appointment of an employee of the Agency or such other person as it may determine to make an application on behalf of the child.
- (5) An application for international protection shall be made in the prescribed form and shall include all details of the grounds for the application.
- (6) The Minister shall notify the High Commissioner in writing of the making of an application for international protection and the notice shall include the name of the applicant, his or her country of origin and such other information as the Minister considers appropriate.

Head 13: Preliminary interview

Provide along the following lines:

- (1) A person who is at the frontier of the State, or who is in the State, and who indicates that he or she-
 - (a) wishes to make an application for international protection,
 - (b) is requesting not to be expelled or returned to the frontier of a territory where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment, or
 - (c) fears or faces, persecution or serious harm if returned to his or her country of origin

shall be interviewed by an officer of the Minister or an immigration officer at such time or times as may be specified by the officer concerned and the person shall make himself or herself available for such interview at the time or times so specified.

- (2) An interview of a person under subhead (1) (“the preliminary interview”) shall be conducted so as to serve the purpose of establishing, among other things-
 - (a) whether the person wishes to make an application for international protection and, if he or she does so wish, the general grounds on which the application is based,
 - (b) the identity of the person,
 - (c) the nationality of the person,
 - (d) the country of origin of the person,
 - (e) the means of transport used, the route travelled by the person to the State and details of any person who assisted the person in travelling to the State,
 - (f) the reason why the person came to the State,
 - (g) the legal basis for the entry into or presence in the State of the person, and
 - (h) whether any of the circumstances referred to in Head 20 may apply.
- (3) A preliminary interview shall, where necessary, be conducted with the assistance of an interpreter.

- (4) A record of a preliminary interview shall be kept by the officer conducting it and a copy of it shall be furnished to the person and, if the preliminary interview was conducted by an immigration officer who is not an officer of the Minister, to the Minister.
- (5) The Minister shall furnish a copy of the record of a preliminary interview to the High Commissioner whenever requested in writing by the High Commissioner to do so.

Head 14: Unaccompanied minor seeking international protection

Provide along the following lines:

- (1) Where it appears to an officer referred to in Head 13 that the person who is seeking to make an application for international protection, or who is the subject of a preliminary interview under Head 13, is under the age of 18 years and is not accompanied by an adult who is taking responsibility for the care and protection of the person concerned, the officer shall, as soon as practicable, notify the Child and Family Agency accordingly.
- (2) After the notification referred to in subhead (1) it shall be presumed that the person concerned is a child and the Child Care Acts 1991 to 2007, the Child and Family Agency Act 2013 and other enactments relating to the care and welfare of persons under the age of 18 years shall apply.

Head 15: Permission to enter and remain in the State

Provide along the following lines:

- (1) An applicant shall be given, by or on behalf of the Minister, a permission which operates to allow the applicant to enter and remain or, as the case may be, to remain in the State for the sole purpose of the examination of his or her application including any appeal to the Tribunal in relation to the application.
- (2) The permission given under subhead (1) shall cease to be valid:
 - (a) if the application is, under Head 20, determined to be inadmissible, on the day of that determination,
 - (b) if the applicant is transferred from the State in accordance with Regulation (EU) No 604/2013 (the EU Dublin Regulation) or any Regulation amending or replacing that Regulation, on the day the applicant is transferred,
 - (c) if the Minister, under Head 43, refuses to give a refugee declaration to the applicant, on the day of that refusal, or
 - (d) if the Minister, under Head 43, gives a refugee declaration to the applicant, on the day the permission referred to in Head 48(1) is given.

- (3) An applicant shall-
- (a) not leave or attempt to leave the State without the consent of the Minister,
 - (b) not seek, enter or be in employment (including self-employment) or engage for gain in any business, trade or profession,
 - (c) inform the Minister of his or her address and any change of address as soon as possible, and
 - (d) 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 authorised person:
 - (i) that he or she reside or remain in a specified district or place in the State:
 - (ii) that he or she report at specified intervals to-
 - (I) an immigration officer or person nominated for the purposes of this subhead by the Minister, or
 - (II) a specified Garda Síochána station.
- (4) (a) An immigration officer or an authorised person may, by notice in writing, withdraw a condition referred to in subhead (3)(d) or vary it in a specified manner.
- (b) An applicant to whom paragraph (a) applies shall comply with any conditions that have been varied in accordance with subhead (3)
- (5) An applicant who contravenes subhead (3) is guilty of an offence and shall be liable on summary conviction to a Class D fine (i.e. not exceeding €1,000) or to imprisonment for a term not exceeding 1 month or to both.
- (6) Paragraphs (a), (b) and (d) of subhead (3) and Head 19 shall apply only to an applicant who, but for the giving of a permission under subhead (1), would not be entitled to remain in the State.
- (7) In this Head, “authorised person” means a person authorised in writing by the Minister to perform the functions conferred on an authorised person by this Head.

Head 16: Temporary residence certificate

Provide along the following lines:

- (1) The Minister shall give or cause to be given to an applicant a temporary residence certificate (in this Head referred to as “a certificate”) stating the name and containing a photograph of the applicant and such other information as may be prescribed.
- (2) A certificate, although given, remains the property of the Minister and the person to whom it is given shall surrender it when requested to do so by, or on behalf of, the Minister.
- (3) A certificate shall be deemed to be a registration certificate for the purposes of section 12 of the Act of 2004 and an applicant shall be deemed to have complied with section 9 of that Act.
- (4) A person who forges, or fraudulently alters, or assists in forging or fraudulently altering, or procures the forging or fraudulent alteration of a certificate is guilty of an offence.
- (5) A person who is guilty of an offence under subhead (4) shall be liable on summary conviction to a Class C fine (i.e. not exceeding €2,500) or to imprisonment for a term not exceeding 12 months, or to both.

Head 17: Statement to be given to applicant

Provide along the following lines:

The Minister shall, as soon as practicable after receipt by him or her of an application, give or cause to be given to the applicant a statement in writing specifying in a language that the applicant may reasonably be supposed to understand of the procedure to be followed in relation to the application and of his or her rights and obligations during the procedure, including-

- (a) the procedures to be followed in the examination of applications under this Act,
- (b) the entitlement of the applicant for the purposes of his or her application to consult a solicitor and, where necessary, to be provided with the services of an interpreter,
- (c) the entitlement of the applicant to communicate with the High Commissioner,
- (d) the entitlement of the applicant to make submissions in writing to the Minister,
- (e) the duty of the applicant to co-operate with the Minister and to furnish information relevant to his or her application,
- (f) the obligation of the applicant to comply with the conditions imposed under Head 15,

- (g) the possible consequences of the failure of the applicant to attend an interview under Head 32, or to comply with the obligations referred to in paragraphs (e) and (f), including the possibility that his or her application may be deemed to be withdrawn and that the permission given to him or her under Head 15 to remain in the State would, by operation of this Act, cease to be valid,
- (h) the possible outcomes arising from the examination and determination of the application by the Minister and any appeal to the Tribunal in relation to the application including, where the applicant is not eligible for international protection, the making of a deportation order,
- (i) the constant duty of the applicant to inform the Minister, without delay, of any reasons why the applicant should be given permission to remain in the State in the event of the applicant being the subject of a determination under Head 35(3)(c),
- (j) the possible consequences of the failure of the applicant to comply with the obligation referred to in paragraph (i) including the making of a deportation order in respect of the applicant.

Head 18: Taking of fingerprints

Provide along the following lines:

- (1) An authorised officer, a member of the Garda Síochána, or an immigration officer may,
 - (a) take or cause to be taken the fingerprints of an applicant, for the purposes of this Act, or
 - (b) take or cause to be taken the fingerprints of a person who is (i) not a citizen of an EU Member State, (ii) at least 14 years of age and (iii) found unlawfully present in the State, for the purpose of checking whether that person has previously lodged an application for international protection in another EU Member State.
- (2) Fingerprints shall not be taken under this Head from a person under the age of 14 years except in the presence of
 - (a) a parent of, or a person who is taking responsibility for, the person under the age of 14 years, or
 - (b) a person appointed in respect of the person under the age of 14 years by the Child and Family Agency under Head 12.
- (3) If and for so long as the authorised officer, the immigration officer or, as the case may be, the member of the Garda Síochána concerned has reasonable grounds for believing that the person is not under the age of 14 years, the

provisions of subhead (2) shall apply as if he or she has attained the age of 14 years.

- (4) An applicant who refuses to permit his or her fingerprints to be taken pursuant to subhead (1) shall be deemed not to have made reasonable efforts to establish his or her true identity within the meaning of Head 19 and to have failed to comply with the requirements of Head 25(1).
- (5) The Commissioner of the Garda Síochána shall arrange for the maintenance of a record of fingerprints taken pursuant to subhead (1).
- (6) Every fingerprint of an applicant taken pursuant to subhead (1) and kept under subhead (5) shall (if not earlier destroyed or deleted) be destroyed-
 - (a) not later than 10 years after the taking of such fingerprints, or
 - (b) not later than one month after the person to whom it relates becomes an Irish citizen or satisfies the Minister that he or she has acquired the citizenship or nationality of a Member State.

(7) In this Head-

“authorised officer” means a person authorised in writing by the Minister to exercise the powers conferred on an authorised officer under this Head;

“EU Member State” includes a State which participates in Regulation (EU) No 604/2013 or any Regulation amending or replacing that Regulation by virtue of an agreement between that State and the European Union.

Head 19: Detention of an applicant

Provide along the following lines:

- (1) An immigration officer or a member of the Garda Síochána may arrest an applicant and detain him or her in a prescribed place (in this Head referred to as a “place of detention”), being a prison or other place in the charge of a governor, an immigration officer or a member of the Garda Síochána, where that officer or member, with reasonable cause, suspects that the applicant—
 - (a) poses a threat to public security or public order in the State,
 - (b) has committed a serious non-political crime outside the State,
 - (c) has not made reasonable efforts to establish his or her identity,
 - (d) intends to leave the State and without lawful authority enter another state,
 - (e) without reasonable cause—

- (i) has destroyed his or her identity or travel document, or
 - (ii) is or has been in possession of a forged, altered or substituted identity document.
- (2) A person detained under this Head shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the person is being detained.
- (3) Where a person is brought before a judge of the District Court under subhead (2), the judge may—
 - (a) subject to subhead (4), and if satisfied that one or more of the paragraphs of subhead (1) apply in relation to the person, commit the person concerned to a place of detention for a period not exceeding 21 days from the time of his or her detention, or
 - (b) without prejudice to subhead (4), release the person and make such release subject to conditions, including conditions requiring him or her to—
 - (i) reside or remain in a specified district or place in the State,
 - (ii) report at specified intervals to a specified Garda Síochána station, or
 - (iii) surrender any passport or other travel document that he or she holds.
- (4) If, at any time during the detention of a person under this Head, an immigration officer or a member of the Garda Síochána is of the opinion that none of the paragraphs of subhead (1) applies in relation to the person, the person shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district where the person is being detained and, if the judge is satisfied that none of the paragraphs of subhead (1) applies in relation to the person, the judge shall release the person.
- (5) Where a person is released from a place of detention subject to one or more of the conditions referred to in subhead (3)(b), a judge of the District Court assigned to the District Court district in which the person's dwelling place is situated may, on the application of the person, an immigration officer or a member of the Garda Síochána, if the judge considers it appropriate to do so, vary, revoke or add a condition to the release.
- (6) Subject to subhead (7), subheads (1) to (5) shall not apply to a person who is under the age of 18 years.
- (7) If, and for so long as, the immigration officer or, as the case may be, the member of the Garda Síochána concerned has reasonable grounds for believing that the person is not under the age of 18 years, the provisions of subheads (1) to (5) shall apply as if he or she had attained the age of 18 years.

(8) Where an unmarried person under the age of 18 years is in the custody of another person (whether his or her parent or a person acting in *loco parentis* or any other person) and that other person is detained under the provisions of this Head, the immigration officer or the member of the Garda Síochána concerned shall, without delay, notify the Child and Family Agency of the detention and of the circumstances thereof.

(9) A member of the Garda Síochána may arrest without warrant and detain, in a place of detention, a person who, in the member's opinion, has failed to comply with a condition imposed by the District Court under subhead (3)(b).

(10) A person detained under subhead (9) shall be brought as soon as practicable before a judge of the District Court assigned to the District Court district in which the person is being detained, and subheads (3), (4) and (5) shall apply to such person detained under subhead (9) as they apply to a person detained under subhead (1), the references in those subheads to the judge's being satisfied that one or more of the paragraphs of subhead (1) applies being construed as a reference to his or her being satisfied that the person has failed to comply with a condition referred to in subhead (3)(b).

(11) If a judge of the District Court is satisfied in relation to a person brought before him or her under subhead (10) that the person has complied with the condition referred to in subhead (3)(b), the judge shall order the release of the person.

(12) Where a judge of the District Court commits a person to a place of detention under subhead (3) or (10), a judge of the District Court assigned to the District Court district in which the person is being detained may, if satisfied that one or more of the paragraphs of subhead (1) applies in relation to the person, commit him or her for further periods (each period being a period not exceeding 21 days) pending the determination of the person's application for international protection.

(13) (a) If, at any time during the detention of a person under this Head, the person indicates a desire to leave the State, he or she shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the person is being detained.

(b) The judge shall, if satisfied that—

- (i) the person does not wish to proceed with his or her application for international protection and wishes to leave the State, and
- (ii) the person has obtained, or has been given the opportunity of obtaining or being provided with, professional legal advice on the consequences of his or her decision not to proceed with his or her application for international protection,

order the Minister to arrange for the removal of the person from the State, and may include in the order such ancillary or consequential provisions as he or she may determine.

- (c) On the making of the order referred to in paragraph (b), the person shall be deemed to have withdrawn his or her application for international protection.

(14) A person detained under this Head is entitled to—

- (a) consult a solicitor,
- (b) have notification of his or her detention, the place of his or her detention and every change in that place sent to the High Commissioner and to another person reasonably nominated by the detained person for the purpose, and
- (c) the assistance of an interpreter for the purpose of consultation with a solicitor under paragraph (a) and for the purpose of any appearance before a court under this Head.

(15) An immigration officer or, as the case may be, a member of the Garda Síochána detaining a person under subhead (1) or (9) shall, without delay, inform the person or cause him or her to be informed, in a language that he or she may reasonably be supposed to understand—

- (a) that he or she is being detained under this Head,
- (b) that he or she will, as soon as practicable, be brought before a court which shall determine whether or not he or she should be committed to a place of detention or released pending a determination of his or her application for international protection,
- (c) of his or her entitlements under subhead (14), and
- (d) that he or she is entitled to leave the State at any time during the period of his or her detention and, if he or she indicates a desire to do so, he or she will, in accordance with subhead (13), be brought before a court as soon as practicable, and the court may make such orders as may be necessary for his or her removal from the State.

(16) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall also explain to a person detained under subhead (1) or (9), in a language that the person may reasonably be supposed to understand, that, if he or she does not wish to exercise a right specified in subhead (14) immediately, he or she will not be precluded thereby from doing so later.

(17) The immigration officer or, as the case may be, the member of the Garda Síochána, shall notify the Minister and, if the person detained has appealed under Head 37, the Tribunal, of the detention or release of a person under this Head.

(18) In this Head, “substituted identity document” means an identity document that does not relate to the person who is or has been in possession of the document and which the person in possession of the document has used or intends to use for the purposes of establishing identity.

(19) In this Head, “applicant” includes a person whose application has been withdrawn or has been deemed to be withdrawn.

Head 20: Inadmissible application

Provide along the following lines:

- (1) The Minister shall determine an application for international protection to be inadmissible if any of the following circumstances applies:
 - (a) another EU Member State has granted refugee status or subsidiary protection status to the applicant, or
 - (b) a country other than an EU Member State is, in accordance with subhead (2), a first country of asylum for the applicant;
- (2) A country is a first country of asylum for an applicant if he or she-
 - (a) (i) has been recognised in that country as a refugee and can still avail himself or herself of that protection, or

(ii) otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement,

and
 - (b) will be re-admitted to that country.
- (3) Where, under subhead (1), the Minister determines an application to be inadmissible-
 - (a) any examination of the application shall be terminated,
 - (b) the report referred to in Head 35 shall not be prepared but another report shall be prepared in writing, which shall include a statement that the application has been determined to be inadmissible and the reasons for that determination.
- (4) Where the Minister makes a determination under subhead (3) he or she shall, as soon as practicable, notify the person concerned of that fact and of the reasons for it and of how a review of that determination may be sought.
- (5) A notification referred to in subhead (4) shall be in a language that the person may reasonably be supposed to understand, where-
 - (a) the person is not assisted or represented by a legal representative, and
 - (b) free legal assistance is not available to the person.

- (6) The Minister shall notify the High Commissioner of a determination under subhead (1).
- (7) A person to whom a notice under subhead (4) is sent may, within 15 working days from the date of the notice, appeal to the Tribunal in the matter of a determination that an application for international protection is inadmissible.
- (8) Heads 37, 38, 40, 41 and 42 shall apply, mutatis mutandis, to an appeal under subhead (7) with the modification that the Tribunal shall make its decision without holding an oral hearing.
- (9) In relation to an appeal under subhead (7), the Tribunal may decide to-
- (a) affirm the determination of the Minister, or
 - (b) set aside the determination of the Minister.
- (10) Where the Tribunal decides to set aside the determination under subhead (9)(b) the person shall be given a permission referred to in Head 15.

Head 21: Subsequent application

Provide along the following lines:

- (1) An application for international protection (in this Head referred to as a “subsequent application”) shall not be made on behalf of a person to whom this Head applies without the consent of the Minister, given under this Head.
- (2) A request for the consent referred to in subhead (1) shall include-
- (a) a written statement of the reasons why the person concerned considers that the subsequent application should be admissible,
 - (b) where the previous application or appeal was withdrawn or deemed to be withdrawn, a written explanation of the circumstances giving rise to the withdrawal or deemed withdrawal of the application or appeal,
 - (c) all relevant information being relied upon by the person concerned to demonstrate that he or she is entitled to international protection, and
 - (d) a written statement drawing to the Minister’s attention any new elements or findings relating to the examination of whether he or she is entitled to international protection which have arisen since he or she ceased to be an applicant.
- (3) The Minister shall, as soon as practicable after receipt by him or her of a request under subhead (2), give or cause to be given to the person concerned a statement in writing specifying in a language that the person may reasonably be supposed to understand-

- (a) the procedures that are to be followed for the purposes of this Head,
 - (b) the entitlement of the person to communicate with the High Commissioner,
 - (c) the entitlement of the person to make submissions in writing to the Minister,
 - (d) the duty of the person to co-operate with the Minister and to furnish information relevant to his or her request, and
 - (e) such other information as the Minister considers necessary to inform the person of the effect of this Head, and of any other relevant provision of these Heads.
- (4) The Minister shall give consent to the making of a subsequent application where, following a preliminary examination of the request he or she is satisfied that-
- (a) since the person concerned ceased to be an applicant new elements or findings have arisen or have been presented by the person concerned which makes it significantly more likely that the person will qualify for international protection, and
 - (b) the person was, through no fault of the person, incapable of presenting those elements or findings for the purposes of his or her previous application (including, as the case may be, any appeal in the matter of that application).
- (5) Where the Minister gives consent to the making of a subsequent application-
- (a) he or she shall, as soon as practicable notify the person concerned of that fact, and
 - (b) the person shall be given a permission referred to in Head 15.
- (6) Where the Minister refuses to give consent to the making of a subsequent application, he or she shall, as soon as practicable, notify the person concerned of that fact and of the reasons for it and of how a review of that decision may be sought.
- (7) A notification referred to in subhead (5) or (6) shall be in a language that the person may reasonably be supposed to understand, where-
- (b) the person is not assisted or represented by a legal representative, and
 - (c) free legal assistance is not available to the person.
- (8) A person to whom a notice under subhead (6) is sent may, within 15 working days from the date of the notice, appeal to the Tribunal in the matter of a

refusal by the Minister to give consent to the making of a subsequent application.

- (9) Heads 37, 38, 40, 41 and 42 shall apply, mutatis mutandis, to an appeal under subhead (8) with the modification that the Tribunal shall make its decision without holding an oral hearing.
- (10) In relation to an appeal under subhead (8), the Tribunal may decide to-
- (a) affirm the refusal of the Minister, or
 - (b) set aside the refusal of the Minister and recommend that the Minister gives consent to the making of a subsequent application.
- (11) Where the Tribunal decides to set aside the refusal of the Minister under subhead (10)(b) the Minister shall give consent to the making of a subsequent application on behalf of the person concerned.
- (12) In this Head “person to whom this Head applies” means a person to whom the Minister has refused to give a refugee declaration under Head 43 or a person to whom the Minister has, under section 17 of the Act of 1996, refused to give a declaration.

Head 22: Report in relation to the health of an applicant

Provide along the following lines:

- (1) Where, in the performance by the Minister of his or her functions under these Heads in relation to an applicant, a question arises regarding the physical or psychological health of the applicant, the Minister may require the applicant to be examined and a report furnished by a nominated registered medical practitioner in relation to the health of the applicant.
- (2) Where, in the performance by the Tribunal of its functions under these Heads in relation to an applicant, a question arises regarding the physical or psychological health of the applicant, the Tribunal may require the applicant to be examined and a report furnished by a nominated registered medical practitioner in relation to the health of the applicant.
- (3) For the purposes of this Head, “nominated registered medical practitioner” means such registered medical practitioner as the Minister may nominate from time to time.

Head 23: Medical examination to determine the age of unaccompanied minor

Provide along the following lines:

- (1) Where, subject to the provisions of this Head, the Minister is of the opinion, following general statements or other relevant indications, that there are doubts concerning the age of an applicant referred to in Head 12(4) the

Minister may arrange for the use of a medical examination to determine the age of the applicant for the purposes of this Act.

- (2) A medical examination under subhead (1) shall be performed with full respect for the applicant's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.
- (3) A medical examination under subhead (1) shall not be carried out without the consent of (a) the applicant concerned, (b) the adult who is taking responsibility for the care and protection of the applicant or (c) the employee or other person appointed by the Child and Family Agency under Head (12)(4).
- (4) The Minister shall ensure that an applicant referred to in Head (12)(4) is informed, prior to the Minister's examination of the application, in a language which the applicant may reasonably be supposed to understand, of-
 - (a) the possibility that the age of the applicant may be determined by medical examination,
 - (b) the method or methods of the medical examination,
 - (c) the possible consequences of the result of the medical examination for the examination by the Minister of the application, and
 - (d) the consequences of refusal on the part of the applicant to undergo the medical examination.
- (5) The best interests of the child shall be a primary consideration in the application of this Head.

Head 24: Protection of identity of applicant

Provide along the following lines:

- (1) The Minister and the Tribunal and their respective officers shall take all practical steps to ensure that the identity of applicants is kept confidential.
- (2) A person shall not, without the consent of that applicant, publish in a written publication available to the public or broadcast, or cause to be so published or broadcast, information likely to lead members of the public to identify a person as an applicant.
- (3) If any matter is published or broadcast in contravention of subhead (2), the following persons are guilty of an offence:
 - (a) in the case of a publication in a newspaper or periodical, the proprietor, the editor and the publisher of the newspaper or periodical,

- (b) in the case of any other publication, the person who publishes it,
 - (c) in the case of matter that is a programme that is broadcast, any person who transmits or provides that programme in which the broadcast is made, and any person having functions in relation to the programme corresponding to those of the editor of newspaper, and
 - (d) in the case of matter that is broadcast but is not a programme, the person responsible for broadcasting the matter and any person having functions in relation to the website or other medium of communications corresponding to those of the editor of a newspaper.
- (4) Where a person is charged with an offence under subhead 3 it shall be a defence to prove that at the time of the alleged offence he or she was not aware, and neither suspected nor had reason to suspect, that the publication or broadcast in question was of such matter as is referred to in subhead (2).

(5) In this Head-

“broadcast” means the transmission, relaying or distribution by wireless telegraphy or cable of communications, sounds, signs, visual images or signals intended for direct reception by the general public, whether such communications, sounds, signs, visual images or signals are actually received or not, and includes the publication of such communications, sounds, signs, visual images or signals through the medium of the internet;

“written publication” includes a film, a sound track and any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.

PART 4 - ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

Head 25: Assessment of facts and circumstances

Provide along the following lines:

- (1) It shall be the duty of an applicant-
 - (a) to submit as soon as reasonably practicable all the elements needed to substantiate his or her application, and
 - (b) to co-operate in the examination of his or her application and in the determination of his or her appeal, if any.
- (2) The Minister shall, in co-operation with the applicant, assess the relevant elements of the application.

- (3) The Tribunal shall, for the purposes of an appeal, in co-operation with the applicant, assess the relevant elements of the application.
- (4) The elements referred to in subheads (1), (2) and (3) consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality or nationalities, country or countries and place or places of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.
- (5) The following matters shall be taken into account by the Minister or, as the case may be, the Tribunal for the purposes of the examination of an application for international protection or the determination of an appeal in respect of such an application:
 - (a) all relevant facts as they relate to the country of origin 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;
 - (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
 - (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, 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;
 - (d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities will expose the applicant to persecution or serious harm if returned to that country;
 - (e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he could assert citizenship.
- (6) The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such serious harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of

suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

- (7) Where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the Minister or, as the case may be, the Tribunal is satisfied that—
- (a) the applicant has made a genuine effort to substantiate his or her application,
 - (b) all relevant elements, at the applicant's disposal, have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,
 - (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case,
 - (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, and
 - (e) the general credibility of the applicant has been established.

Head 26: Credibility

Provide along the following lines:

The Minister or the Tribunal, as the case may be, shall assess the credibility of an applicant for the purposes of the examination of his or her application or the determination of an appeal in respect of his or her application and in doing so shall have regard to all relevant matters.

Head 27: International protection needs arising sur place

Provide along the following lines:

- (1) A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.
- (2) A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the applicant since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.
- (3) Without prejudice to the Geneva Convention, an applicant who is the subject of an application made with the consent of the Minister given under Head 21 shall not normally be:

- (a) the subject of a determination by the Minister under Head 35 that he or she is a person in respect of whom a refugee declaration should be given, or
- (b) the subject of a decision by the Tribunal under Head 42 that he or she is a person in respect of whom a refugee declaration should be given,

if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin.

Head 28: Actors of persecution or serious harm

Provide along the following lines:

Actors of persecution or serious harm include:

- (a) a state,
- (b) parties or organisations controlling a state or a substantial part of the territory of a state, and
- (c) non-state actors, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm.

Head 29: Actors of protection

Provide along the following lines:

- (1) Protection against persecution or serious harm can only be provided by:

- (a) a state, or
- (b) parties or organisations, including international organisations, controlling a state or a substantial part of the territory of a state,

provided that they are willing and able to offer protection in accordance with paragraph (2).

- (2) Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided where the actors mentioned under subparagraphs (a) and (b) of subhead (1) take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.
- (3) When assessing whether an international organisation controls a state or a substantial part of its territory and provides protection as described in subhead

(2) the Minister or, as the case may be, the Tribunal, shall take into account any guidance which may be provided in relevant European Union acts.

Head 30: Internal protection

Provide along the following lines:

(1) The Minister or, as the case may be, the Tribunal may determine that an applicant is not in need of international protection if in a part of the country of origin the applicant

(a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm, or

(b) has access to protection against persecution or serious harm,

and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.

(2) The Minister or, as the case may be, the Tribunal, in examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph (1), shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Head 25.

(3) The Minister or, as the case may be, the Tribunal, in complying with this Head, shall ensure that precise and up-to-date information is obtained from relevant sources, such as the High Commissioner and the European Asylum Support Office.

Head 31 – Applicant from a safe country of origin

Provide along the following lines:

The designation of a country as a safe country of origin under Head 66 may be applied in respect of an applicant only where-

(a) the country is the country of origin of the applicant, and

(b) the applicant has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her eligibility for international protection.

PART 5 - EXAMINATION OF APPLICATIONS AT FIRST INSTANCE

Head 32: Minister's examination of application

Provide along the following lines:

The Minister shall examine each application for international protection for the purpose of determining-

- (a) whether the applicant is a person in respect of whom a refugee declaration should be given,
- (b) whether the applicant is a person in respect of whom a refugee declaration should not be given and in respect of whom a subsidiary protection declaration should be given, or
- (c) whether the applicant, being a person in respect of whom neither a refugee declaration nor a subsidiary protection declaration should be given, is a person in respect of whom a permission to reside in the State should be given in accordance with Head 36A.

Head 32A: Personal interview

Provide along the following lines:

- (1) As part of an examination referred to in Head 32 the Minister shall cause the applicant to be interviewed in relation to the matters referred to in paragraphs (a) and (b) of that Head (“the personal interview”) at such time and place that the Minister may fix.
- (2) An applicant interviewed under subhead (1) shall, whenever necessary for the purpose of ensuring appropriate communication during a personal interview, be provided by the Minister with the services of an interpreter.
- (3) The Minister, for the purpose of ensuring that the personal interview under subhead (1) is conducted under conditions which allow the applicant to present the grounds for his or her application in a comprehensive manner shall-
 - (a) ensure that the person who conducts the personal interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant’s cultural origin or vulnerability, insofar as it is possible to do so, and
 - (b) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview.
- (4) The requirement in subhead (3)(b) shall be regarded as complied with if interpretation is provided in a language that the applicant may reasonably be supposed to understand and in which he or she is able to communicate.
- (5) A personal interview under subhead (1) shall-
 - (a) take place without the presence of family members of the applicant unless the Minister considers it necessary for an appropriate examination to have other family members present, and

- (b) take place under conditions which ensure appropriate confidentiality.
- (6) The following may be present at a personal interview under subhead (1):
- (a) the High Commissioner, whenever he or she so requests, and
 - (b) the applicant's legal representative or a person nominated by that legal representative, with the consent of the applicant.
- (7)
- (a) Where an applicant is under the age of 18 years and is accompanied by an adult other than his or her parent, the interviewer, where he or she considers it appropriate to do so, shall require the adult to satisfy him or her that the adult is taking responsibility for the care and protection of the applicant concerned.
 - (b) For the purposes of paragraph (a), the interviewer may make such inquiries of or about the applicant and the adult concerned as the interviewer considers necessary in order to satisfy himself or herself that the adult is taking the responsibility referred to in paragraph (a) and is authorised to do so.
 - (c) Where the interviewer (whether or not having made appropriate enquiries under paragraph (b)) is not satisfied either that the adult is taking responsibility for the applicant or that the adult is authorised to do so, he or she shall so inform the Child and Family Agency, and-
 - (i) it shall be presumed that the applicant is a child in need of care and protection, and
 - (ii) the Child Care Acts 1991 to 2007, the Child and Family Agency Act 2013 and other enactments relating to the care and welfare of persons under the age of 18 years shall apply.
- (8) A personal interview under subhead (1) may be dispensed with where the Minister is of the opinion that-
- (a) based on the available evidence, the applicant is a refugee,
 - (b) where the applicant is under the age of 18 years, he or she is of such an age and degree of maturity that an interview would not usefully advance the examination, or
 - (c) the applicant is unfit or unable to be interviewed owing to circumstances beyond his or her control.
- (9) Subhead (8) shall not of itself operate to—

- (a) prevent information relating to the application from being submitted to the Minister by or on behalf of the applicant,
 - (b) prevent the Minister from making a final determination in respect of the application, or
 - (c) adversely affect the final determination of the application.
- (10) The applicant, the High Commissioner or any other person concerned may make representations in writing to the Minister in relation to any matter relevant to an examination by him or her under this Head and the Minister shall take account of any such representations made before or during a personal interview under this Head.
- (11) Subhead (10) shall not be construed as preventing the Minister from taking into account any representations made following a personal interview under subhead (1) provided that such representations are made prior to the determination referred to in Head 35.
- (12) Following the conclusion of a personal interview under this Head, the interviewer shall furnish to the Minister a report in writing of the interview.
- (13) The report prepared under subhead (12) shall include anything relevant to a request by the applicant for permission to remain in the State in the event that his or her application for international protection is refused.
- (14) The functions of the Minister under this Head shall be exercised by an authorised officer or an authorised person.

Head 33: Applicants who are unaccompanied minors

Provide along the following lines:

Where the applicant is a child referred to in Head 12(4) the Minister shall, taking the best interests of the child as a primary consideration, ensure that-

- (a) the person appointed by the Child and Family Agency under Head 12(4)-
 - (i) is given the opportunity to inform the child about the meaning and possible consequences of the personal interview under Head 32(2) and, where appropriate, how to prepare himself or herself for the personal interview, and
 - (ii) is allowed to be present at the personal interview and to ask questions or make comments, within the framework set by the person who conducts the interview,
- (b) the personal interview under Head 32(2) is conducted by a person who has the necessary knowledge of the special needs of minors, and

- (c) the report together with the determination of the Minister under Head 35 is prepared by an person with the necessary knowledge of the special needs of minors.

Head 34: Withdrawal or deemed withdrawal of application at first instance

Provide along the following lines:

- (1) An applicant may withdraw his or her application by sending notice of withdrawal to the Minister.
- (2) Where an applicant does not attend for interview under Head 32 on the date and at the time fixed for the interview then, unless the applicant, not later than 3 working days from that date, furnishes the Minister with an explanation for the non-attendance which in the opinion of the Minister is reasonable in the circumstances, his or her application shall be deemed to be withdrawn.

(3) Where-

- (a) in the opinion of the Minister an applicant has failed, or is failing, in his or her duty to co-operate under Head 25(1), or
- (b) the Minister is of the opinion that the applicant is in breach of Head 15(3)(a), (c) or (d) or Head 15(4),

then the Minister may send to the applicant or his or her legal representative (if known) written notice of his or her opinion.

(4) The Minister, in the notice under subhead (3), shall also-

- (a) require the applicant to confirm in writing within 10 working days of the date of the notice that he or she wishes to continue with his or her application,
- (b) remind the applicant of his or her duty to co-operate under Head 25(1) and to comply with any requirements that have been or may be imposed on him or her under paragraph (a), (c) or (d) of Head 15(3) or Head 15(4), and
- (c) include a statement of the consequences specified in subhead (5).

(5) The consequences referred to in subhead (4)(c) are that an applicant's application shall be deemed to be withdrawn, and that subhead (6) shall apply accordingly, if the applicant-

- (a) does not furnish the confirmation referred to in subhead 4(a), or
- (b) having furnished such a confirmation, in the opinion of the Minister fails or continues to fail to comply with any of the obligations referred to in subhead (4)(b).

- (6) Where an application is withdrawn or deemed to be withdrawn pursuant to this Head-
- (a) any examination of that application shall be terminated,
 - (b) Heads 35 to 42 shall not apply in respect of that application, and
 - (c) the Minister, as soon as practicable, shall-
 - (i) notify the applicant and his or her legal representative (if known) of the fact that the application is withdrawn or deemed to be withdrawn and of the reasons for it, and
 - (ii) inform the High Commissioner of the fact that the application is withdrawn or deemed to be withdrawn.
- (7) The notification under subhead (6)(c)(i) shall, when sent to the applicant, be in a language that he or she may reasonably be supposed to understand, where-
- (a) he or she is not assisted or represented by a legal representative, and
 - (b) free legal assistance is not available to him or her.

Head 35: Report of examination and determination of application

Provide along the following lines:

- (1) The Minister shall cause a written report to be prepared following the conclusion of an examination of an application for international protection in relation to the matters referred to in paragraphs (a) and (b) of Head 32.
- (2) The report under subhead (1) shall-
 - (a) refer to the matters relevant to the application which are-
 - (i) raised by the applicant, in a personal interview under Head 32A or a preliminary interview under Head 13 or at any time before the conclusion of the examination, and
 - (ii) other matters the Minister considers appropriate,
 - (b) set out the determination of the Minister in relation to the application, and
 - (c) set out any of the findings referred to in subhead (4) made by the Minister in relation to the application.
- (3) The determination shall be that-

- (a) the applicant is a person in respect of whom a refugee declaration should be given,
 - (b) the applicant is a person in respect of whom a refugee declaration should not be given and in respect of whom a subsidiary protection declaration should be given, or
 - (c) the applicant is a person in respect of whom neither a refugee declaration nor a subsidiary protection declaration should be given.
- (4) In addition to the setting out of a determination referred to in paragraph (c) subhead (3) the Minister may include in the report under subhead (1) any of the following findings made by the Minister-
- (a) that the examination of the application for international protection revealed only issues that are not relevant or are of minimal relevance to the eligibility of the applicant for international protection,
 - (b) that the applicant has made inconsistent, contradictory, improbable or insufficient representations which are clearly unconvincing in relation to the eligibility of the applicant for international protection, or
 - (c) that the applicant has failed without reasonable cause to make his or her application earlier, having had opportunity to do so.
- (5) Where a determination cannot be made within 6 months of the date of application then the Minister shall, upon request from the applicant, provide the applicant with information on the estimated time within which a determination may be made.
- (6) The provision under subhead (5) by the Minister of an estimated time within which a determination may be made shall not of itself oblige the Minister to make a determination within that time.
- (7) The functions of the Minister under subheads (1) to (4) shall be exercised by an authorised officer or, subject to Head 68(2), an authorised person.

Head 36: Notification of determination of application at first instance

Provide along the following lines:

- (1) The Minister shall notify, in writing, the applicant, the applicant's legal representative (if known) and, whenever so requested by him or her, the High Commissioner, of the Minister's determination of the application under Head 35.
- (2) The notification under subhead (1) and, where applicable, the statement under subhead (4)(e) or subhead (5)(e), shall, when sent to the applicant, be in a language that he or she may reasonably be supposed to understand, where-

- (a) he or she is not assisted or represented by a legal representative, and
 - (b) free legal assistance is not available to him or her.
- (3) Where the Minister's determination is that the applicant is a person in respect of whom a refugee declaration should be given the notification under subhead (1) need only consist of that fact.
- (4) Where the Minister's determination is that the applicant is a person in respect of whom a refugee declaration should not be given and in respect of whom a subsidiary protection declaration should be given, the notification under subhead (1) shall be accompanied by-
 - (a) a statement of the reasons for the part of the determination that the applicant is a person in respect of whom a refugee declaration should not be given,
 - (b) a copy of the report under Head 35,
 - (c) copies of any reports, documents or representations in writing submitted to the Minister for the purposes of his or her examination of the application relating to whether the applicant qualifies as a refugee and not already available to the applicant or his or her legal representative,
 - (d) an indication in writing of the nature and source of any other information relating to the application which has come to the notice of the Minister in the course of an examination by him or her relating to whether the applicant qualifies as a refugee, and
 - (e) a statement of the entitlement of the applicant to appeal to the Tribunal and the procedures specified in Head 37.
- (5) Where the Minister's determination includes the part that the applicant is a person in respect of whom neither a refugee declaration nor a subsidiary protection declaration should be given, the notification under subhead (1) shall be accompanied by-
 - (a) a statement of the reasons for that part of the determination,
 - (b) a copy of the report under Head 35,
 - (c) copies of any reports, documents or representations in writing submitted to the Minister for the purposes of his or her examination of the application relating to whether the applicant qualifies as a refugee or as a person eligible for subsidiary protection and not already available to the applicant or his or her legal representative,

- (d) an indication in writing of the nature and source of any other information relating to the application which has come to the notice of the Minister in the course of an examination by him or her relating to whether the applicant qualifies as a refugee or as a person eligible for subsidiary protection, and
 - (e) a statement of the entitlement of the applicant to appeal to the Tribunal and the procedures specified in Head 37.
- (6) 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 in accordance with an undertaking (express or implied) that the information would be kept confidential, the information shall not, without the consent of the other state, be produced or further disclosed otherwise than in accordance with the undertaking.

Head 36A: Examination and determination in relation to permission to remain

- (1) The Minister shall, in respect of an applicant who-
- (a) is the subject of a determination under Head 35(3)(c), and
 - (b) has informed the Minister of any reason or reasons why he or she should be given permission to remain in the State,
- examine the reason or reasons presented by the applicant in writing or at the personal interview under Head 32A in relation to why he or she should be given permission to remain in the State.
- (2) In determining whether to give permission to reside in the State to an applicant under this Head, the Minister shall have due regard to-
- (a) the family and personal circumstances of the applicant (with particular reference to the right to respect for private and family life under Article 8 of the European Convention on Human Rights);
 - (b) the nature of the applicant's connection with the State, if any;
 - (c) humanitarian considerations;
 - (d) the character and conduct of the applicant both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
 - (e) considerations of national security and public order; and
 - (f) the common good.
- (3) The determination of the Minister under this Head shall be that-

- (a) the applicant is a person in respect of whom a permission to reside in the State should be given, or
 - (b) the applicant is a person in respect of whom such a permission should be refused.
- (4) The functions of the Minister under subheads (1) to (3) shall be exercised by an authorised officer or, subject to Head 68(2), an authorised person.
- (5) The Minister shall notify, in writing, the applicant, the applicant's legal representative (if known) of the Minister's determination under subhead (3).

PART 6 - APPEALS TO TRIBUNAL

Head 37: Appeal to Tribunal

Provide along the following lines:

- (1) An applicant may appeal to the Tribunal, in accordance with regulations under subhead (4), in the matter of a determination of the Minister under Head 35 -
- (a) in respect of the part of the determination, referred to in Head 35(3)(b), that the applicant is a person in respect of whom a refugee declaration should not be given, or
 - (b) in respect of the part of the determination, referred to in Head 35(3)(c), that the applicant is a person in respect of whom neither a refugee declaration nor a subsidiary protection declaration should be given.
- (2) An appeal under subhead (1) shall be brought by notice in writing-
- (a) within 15 working days of the sending of the notification referred to in Head 36, and
 - (b) specifying the grounds of appeal and indicating whether the applicant wishes the Tribunal to hold an oral hearing for the purpose of his or her appeal.
- (3) On receipt of a notice under subhead (2), the Tribunal shall transmit a copy of the notice to the Minister and notify the High Commissioner of the making of the appeal.
- (4) The Minister may prescribe procedures dealing with appeals to the Tribunal including the holding of oral hearings.

Head 38: Oral hearing

Provide along the following lines:

- (1) The Tribunal shall hold an oral hearing for the purpose of an appeal under Head 37 where-
 - (a) subject to subhead (2), the applicant has requested this in the notice under Head 37(2), or
 - (b) it is of the opinion that it is in the interests of justice to do so.
- (2)(a) An applicant may withdraw a request for an oral hearing made in a notice under Head 37(2) by giving notice, which shall set out the reasons for the withdrawal, to the Tribunal not later than 3 working days before the hearing date.
 - (b) The Tribunal, on receipt of a notice under paragraph (a), shall consider, having regard to the interests of justice, whether to hold an oral hearing.
- (3) Except where otherwise provided an appeal may be determined without an oral hearing.
- (4) Subject to subheads (5), (6) and (7), an oral hearing shall be held in private.
- (5) The High Commissioner may be present at an oral hearing for the purpose of observing the proceedings.
- (6) In conducting an oral hearing, the Tribunal shall-
 - (a) enable the applicant to be present at the hearing and present his or her case to the Tribunal in person or through a legal representative,
 - (b) enable an officer of the Minister or another person nominated by the Minister to be present at and participate in the hearing and present the Minister's case to the Tribunal in person or through a legal representative,
 - (c) where necessary for the purpose of ensuring appropriate communication during the hearing, provide the applicant with the services of an interpreter,
 - (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.
- (7) An oral hearing may be held in public where the applicant so consents and where, in the opinion of the Tribunal, it is in the interests of justice to do so.
- (8)(a) Where, the notice of appeal under Head 37 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 determine whether he or she should be directed to attend before the Tribunal in accordance with subhead (9).

(b) In making a determination under paragraph (a), the Tribunal shall have regard to the nature and purpose of the evidence proposed to be given by the witness as indicated in the notice of appeal.

(9) For the purposes of an oral hearing, the Tribunal may-

- (a) direct in writing any person, except 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,
- (b) direct any such person to produce any specified document or thing in his or her possession or control, and
- (c) give any other directions for the purpose of an appeal that appear to the Tribunal to be reasonable and just.

(10) Paragraphs (a) and (b) of subhead (9) shall not apply to a document or thing relating to information as respects which the Minister or the Minister for Foreign Affairs and Trade directs (which he or she is hereby empowered to do) that the information be withheld in the interest of national security or public policy (“ordre public”).

(11) Subject to subhead (12), 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.

(12) 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 in accordance with an undertaking (express or implied) that the information would be kept confidential, the information shall not, without the consent of the other state, be produced or further disclosed otherwise than in accordance with the undertaking.

Head 39 – Accelerated appeal procedures for manifestly unfounded applications

Provide along the following lines:

Where the report of the Minister under Head 35(1) includes any of the findings referred to in Head 35(4) the following modifications shall apply in relation to the applicant concerned-

- (a) the period of 15 working days referred to in Head 37(2)(a) shall be 10 working days,

- (b) notwithstanding the provisions of Head 38 the Tribunal shall make its decision in relation to any appeal made by the applicant under Head 37 without holding an oral hearing

and

notification of these modifications shall be included in the statement referred to in Head 36(5)(e).

Head 40: Appeal to Tribunal: provision of information

Provide along the following lines:

- (1) The Minister shall furnish the Tribunal with the elements given to the applicant in accordance with Head 36.
- (2) The Tribunal may, for the purposes of its functions under this Act request the Minister 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 Minister 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 the applicant concerned and his or her legal representative (if known).

Head 41: Withdrawal and deemed withdrawal of appeal to Tribunal

Provide along the following lines:

- (1) An applicant may withdraw his or her appeal to the Tribunal by sending notice of withdrawal to the Tribunal.
- (2) Where an applicant fails, without reasonable cause, to attend an oral hearing then, unless the applicant, not later than 3 working days from the date fixed for the oral hearing, 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.
- (3) Where-
 - (a) in the opinion of the Tribunal an applicant is failing in his or her duty to co-operate under Head 25(1), or
 - (b) the Minister notifies the Tribunal that he or she is of the opinion that the applicant is in breach of Head 15(3)(a), (c) or (d) or Head 15(4),then the Tribunal shall send to the applicant or his or her legal representative (if known) written notice of that opinion.

- (4) The Tribunal, in the notice under subhead (3), shall also-
- (a) require the applicant to confirm in writing within 10 working days of the date of the notice that he or she wishes to continue with his or her appeal,
 - (b) remind the applicant of his or her duty to co-operate under Head 25(1) and to comply with any requirements that have been or may be imposed on him or her under paragraph (a), (c) or (d) of Head 15(3) or Head 15(4), and
 - (c) include a statement of the consequences specified in subhead (5).
- (5) The consequences referred to in subhead (4)(c) are that an applicant's appeal shall be deemed to be withdrawn, and that subhead (6) shall apply accordingly, if the applicant-
- (a) does not furnish the confirmation referred to in subhead (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 Minister fails or continues to fail to comply with any of the obligations referred to in subhead (4)(b).
- (6) Where an appeal is withdrawn or deemed to be withdrawn pursuant to this Head-
- (a) any consideration of that appeal by the Tribunal shall be terminated,
 - (b) Head 42 shall not apply in respect of that appeal, and
 - (c) the Tribunal, as soon as practicable, shall-
 - (i) notify the applicant and his or her legal representative (if known) of the fact that the appeal is withdrawn or deemed to be withdrawn and of the reasons for it,
 - (ii) notify the Minister 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) The notification under subhead (6)(c)(i) shall, when sent to the applicant, be in a language that he or she may reasonably be supposed to understand, where-
- (a) he or she is not assisted or represented by a legal representative, and
 - (b) free legal assistance is not available to him or her.

Head 42: Decision of Tribunal on appeal

Provide along the following lines:

- (1) Before reaching a decision under subhead (2) or (3) the Tribunal shall consider the following:
 - (a) the notice of appeal;
 - (b) all material furnished to the Tribunal by the Minister that is relevant to the decision as to whether the applicant is entitled to international protection as a refugee or, as the case may be, as a person eligible for subsidiary protection;
 - (c) the part of the determination of the Minister under appeal;
 - (d) any observations made to the Tribunal by the Minister or the High Commissioner;
 - (e) where an oral hearing has been held, the evidence adduced and any representations made at that hearing; and
 - (f) other matters the Tribunal considers appropriate.
- (2) In relation to an appeal under Head 37(1)(a), the Tribunal may decide to-
 - (a) affirm the part of a determination of the Minister that the applicant is a person in respect of whom a refugee declaration should not be given, or
 - (b) set aside the part of a determination of the Minister that the applicant is a person in respect of whom a refugee declaration should not be given and to recommend that a refugee declaration should be given.
- (3) In relation to an appeal under Head 37(1)(b), the Tribunal may decide to-
 - (a) affirm the part of a determination of the Minister that the applicant is a person in respect of whom neither a refugee declaration nor a subsidiary protection declaration should be given,
 - (b) set aside the part of the determination of the Minister that the applicant is a person in respect of whom a refugee declaration should not be given and to recommend that a refugee declaration should be given, or
 - (c) set aside the part of the determination of the Minister that the applicant is a person in respect of whom a subsidiary protection declaration should not be given and to recommend that a subsidiary protection declaration should be given.
- (4) In relation to an appeal under Head 37(1)(a), the Tribunal shall decide to affirm the part of a determination of the Minister that the applicant is a person in respect of whom a refugee declaration should not be given unless it is

satisfied, having considered the matters referred to in subhead (1), that the applicant is a refugee.

- (5) In relation to an appeal under Head 37(1)(b), the Tribunal shall decide to affirm the part of a determination of the Minister that the applicant is a person in respect of whom neither a refugee declaration nor a subsidiary protection declaration should be given unless it is satisfied, having considered the matters referred to in subhead (1), that the applicant is a refugee or, as the case may be, a person eligible for subsidiary protection.
- (6) A decision of the Tribunal under subhead (2) and the reasons for it shall be communicated by the Tribunal to the applicant concerned and his or her legal representative (if known), and the Minister.
- (7) A decision of the Tribunal under subhead (2) shall be communicated to the High Commissioner.
- (8) A decision of the Tribunal shall become the final decision of the Tribunal once it has been communicated to the applicant or his or her legal representative (if known).
- (9) The Tribunal shall furnish the applicant concerned and his or her legal representative (if known) and the High Commissioner whenever so requested by him or her with copies of any reports, observations, or representations in writing or any other document furnished to the Tribunal by the Minister, copies of which have not been previously furnished to the applicant and his or her legal representative (if known), or as the case may be, the High Commissioner, and 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.

PART 7 - DECLARATIONS AND OTHER OUTCOMES

Head 43: Refugee Declaration and Subsidiary Protection Declaration

Provide along the following lines:

- (1) The Minister shall, subject to subhead (4), give a refugee declaration to an applicant as soon as possible after-
 - (a) the Minister, under Head 35, makes a determination that the applicant is a person in respect of whom a refugee declaration should be given, or
 - (b) the Tribunal, under Head 42, decides to set aside the part of a determination of the Minister that the applicant is a person in respect of whom a refugee declaration should not be given and to recommend that a refugee declaration should be given.
- (2) A refugee declaration shall be a statement in writing declaring that the applicant is a refugee.

- (3) The Minister shall refuse to give a refugee declaration to an applicant where-
- (a) the Minister has, under Head 35, made a determination including the part that the applicant is a person in respect of whom a refugee declaration should not be given, other than where the applicant has appealed to the Tribunal in accordance with Head 37 in respect of that part of the determination,
 - (b) an appeal by the applicant to the Tribunal under Head 37 in respect of the part of a determination of the Minister that the applicant is a person in respect of whom a refugee declaration should not be given is withdrawn or deemed withdrawn under Head 41, or
 - (c) the Tribunal, under Head 42, decides to affirm the part of a determination of the Minister that the applicant is a person in respect of whom a refugee declaration should not be given.
- (4) The Minister may refuse to give a refugee declaration to an applicant who is a refugee where-
- (a) there are reasonable grounds for regarding him or her as a danger to the security of the State, or
 - (b) the person, having been by a final judgment convicted, whether in the State or not, of a particularly serious crime, constitutes a danger to the community of the State.
- (5) The Minister shall give a subsidiary protection declaration to an applicant as soon as possible after-
- (a) the Minister, under Head 35, makes a determination including the part that the applicant is a person in respect of whom a subsidiary protection declaration should be given, or
 - (b) the Tribunal, under Head 42, decides to set aside the part of a determination of the Minister that the applicant is a person in respect of whom a subsidiary protection declaration should not be given and to recommend that a subsidiary protection declaration should be given.
- (6) A subsidiary protection declaration shall be a statement in writing declaring that the applicant is a person eligible for subsidiary protection.
- (7) The Minister shall refuse to give both a refugee declaration and a subsidiary protection declaration to an applicant where-
- (a) his or her application is withdrawn or deemed withdrawn under Head 19(13) or Head 34,

- (d) the Minister has, under Head 35, made a determination including the part that the applicant is a person in respect of whom neither a refugee declaration nor a subsidiary protection declaration should be given, other than where the applicant has appealed to the Tribunal in accordance with Head 37 in respect of that part of the determination,
 - (b) an appeal by the applicant to the Tribunal under Head 37 in respect of the part of a determination of the Minister that the applicant is a person in respect of whom neither a refugee declaration nor a subsidiary protection declaration should be given is withdrawn or deemed to be withdrawn under Head 41, or
 - (c) the Tribunal, under Head 42, decides to affirm the part of a determination of the Minister that the applicant is a person in respect of whom neither a refugee declaration nor a subsidiary protection declaration should be given.
- (8) Where a person in relation to whom a subsidiary protection declaration is in force is given a refugee declaration, the subsidiary protection declaration shall cease to be in force from the day that the refugee declaration is given.
- (9) The Minister shall send to the applicant concerned a notice in writing of-
- (a) the giving of a subsidiary protection declaration,
 - (b) the giving of or, as the case may be, the refusal to give a refugee declaration, and
 - (c) the refusal to give both a refugee declaration and a subsidiary protection declaration.
- (10) The Minister shall notify the High Commissioner of the giving of or, as the case may be, the refusal to give an applicant a refugee declaration or a subsidiary protection declaration.
- (11) A refugee declaration or a subsidiary protection declaration, although given or deemed to have been given under these Heads, shall not be in force in relation to an Irish citizen.

Head 43A: Option to voluntarily return to the country of origin

Provide along the following lines:

- (1) The Minister may notify a person-
 - (a) whose application for international protection has not been the subject of a determination of the Minister under Head 35, or
 - (b) whose application for international protection has been the subject of a determination of the Minister under Head 35(3)(c),

of the option to inform the Minister of the person's wish to voluntarily return to his or her country of origin and of the relevant provisions of this Act.

- (2) A notification under subhead (1) shall expire-
- (a) on a day stated in the notification, or
 - (b) within a number of days from the sending of the notification, such number of days being stated in the notification.
- (3) The Minister shall notify a person to whom the Minister has refused to give both a refugee declaration and a subsidiary protection declaration, and
- (a) who has not informed the Minister of any reason why he or she should be given permission to remain in the State, or
 - (b) who is the subject of a determination of the Minister under Head 36A(3)(b),

of the option to inform the Minister of the person's wish to voluntarily return to his or her country of origin and of the relevant provisions of this Act.

- (4) A notification under subhead (3) shall expire on the fifth day following it being given to the person concerned.
- (5) If, before the expiry of the notification, a person who has been notified under subhead (1) or (3) informs the Minister of his or her wish to voluntarily return to his or her country of origin then the following provisions shall apply in relation to the person -
- (a) for so long as the Minister is of the opinion that the person intends to return to his or her country of origin and for so long as the Minister is not of the opinion that adverse concerns relating to national security or criminality arise in relation to the person, Head 45 shall not apply in relation to the person, and
 - (b) in the event that the person leaves the State for the purpose of returning to his or her country of origin, and if applicable, withdraws his or her application for international protection or, as the case may be, his or her appeal under Head 37, a deportation order under this Act shall not be made in respect of the person.

Head 44: Prohibition of refoulement

Provide along the following lines:

A person shall not be expelled or returned in any manner whatsoever to the frontier of a territory, where in the opinion of the Minister, the life or freedom of that person

would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or, where in the opinion of the Minister, there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Head 45: Deportation Order

Provide along the following lines:

- (1) Subject to Head 43A and Head 44, an order (in this Head referred to as ‘a deportation order’) shall be made requiring any person to whom this Head applies and who is specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State.
- (2) A deportation order made under this Head shall, for so long as it is in force, operate and have effect as if it were a deportation order made under section 3 of the Act of 1999 with the exception of subsections (7) and (11) of that section.
- (3) A deportation order shall be in the form prescribed or in a form to the like effect.
- (4) The Minister may by order amend or revoke an order made under this Head including an order under this subhead.
- (5) A person who, but for the operation of Head 44, would be the subject of a deportation order under this Head shall be given permission to reside in the State.
- (6) In this Head “person to whom this Head applies” means a person to whom the Minister has under Head 43 refused to give both a refugee declaration and a subsidiary protection declaration, and
 - (a) who has not informed the Minister of any reason why he or she should be given permission to remain in the State, or
 - (b) who is the subject of a determination by the Minister under Head 36A(3)(b).

Head 46: Revocation of refugee declaration or subsidiary protection declaration

Provide along the following lines:

- (1) The Minister shall revoke a refugee declaration given to a person if satisfied that-
 - (a) the person should have been or is excluded from being a refugee under Head 9,
 - (b) the person has, in accordance with Head 8, ceased to be a refugee, or

- (c) misrepresentation or omission of facts, whether or not including the use of false documents, by the person was decisive in the decision to give the person a refugee declaration.
- (2) The Minister may revoke a refugee declaration given to a person if satisfied that-
 - (a) there are reasonable grounds for regarding him or her as a danger to the security of the State, or
 - (b) the person, having been by a final judgment convicted, whether in the State or not, of a particularly serious crime, constitutes a danger to the community of the State.
- (3) The Minister shall revoke a subsidiary protection declaration given to a person if satisfied that-
 - (a) the person should have been or is excluded from being eligible for subsidiary protection under Head 11,
 - (b) the person has, in accordance with Head 10, ceased to be eligible for subsidiary protection, or
 - (c) misrepresentation or omission of facts, whether or not including the use of false documents, by the person was decisive in the decision to give the person a subsidiary protection declaration.
- (4) Where the Minister proposes, under subhead (1), (2) or (3), to revoke a declaration, he or she shall send a notice in writing of his or her proposal and of the reasons for it to the person concerned, which notice shall include a statement of the person's entitlement under paragraph (6) to make representations in writing to the Minister in relation to the proposal.
- (5) Where the Minister sends a notice under subhead (4) to a person, he or she shall at the same time send a copy thereof to the person's legal representative (if known) and to the High Commissioner.
- (6) A person who has been sent a notice of a proposal under subhead (4) may, within 15 working days of the issue of the notice, make representations in writing to the Minister in relation to the proposal.
- (7) The Minister shall-
 - (a) before deciding to revoke a declaration under this Head, take into consideration any representations made to him or her in accordance with subhead (6), and
 - (b) where he or she decides to revoke the declaration under this Head, send a notice in writing of his or her decision and of the reasons for it to the

person concerned, which notice shall include a statement of the person's entitlement under subhead (8) to appeal.

- (8) A person to whom a notice under subhead (7)(b) is sent may, within 15 working days from the date of the notice, appeal to the High Court against the decision of the Minister to revoke the declaration.
- (9) The High Court may, as it thinks proper, on the hearing of the appeal under subhead (8)-
- (a) confirm the decision of the Minister, or
 - (b) direct the Minister to withdraw the revocation of the declaration.
- (10) A decision to revoke a declaration has effect-
- (a) where no appeal to the High Court is brought against the decision of the Minister, from the date on which the period for making such an appeal expires, or
 - (b) where an appeal to the High Court is brought against the decision of the Minister-
 - (i) unless the High Court issues a direction under subhead (9)(b), from the date on which the High Court, under subhead (9)(a), affirms the decision, or
 - (ii) as the case may be, from the date of withdrawal of that appeal.
- (11) In this Head "declaration" means a refugee declaration or a subsidiary protection declaration.

PART 8 - CONTENT OF INTERNATIONAL PROTECTION

Head 47: Extension to qualified person of certain rights

Provide along the following lines:

A qualified person shall be entitled-

- (a) to seek and enter employment, to engage in any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen,
- (b) 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,
- (c) subject to Head 48, to reside in the State, and

- (d) subject to Head 49, to the same rights of travel in or to or from the State as those to which Irish citizens are entitled.

Head 48: Permission to reside in the State

Provide along the following lines:

- (1) A qualified person shall be given a permission to reside in the State for a specified period of not less than 3 years.
- (2) A family member shall be given a permission to reside in the State for a specified period of not less than 1 year and, in case of renewal, of not less than 2 years.
- (3) A permission given under subhead (1) or (2)-
 - (a) shall be renewable unless compelling reasons of national security or public order (“ordre public”) otherwise require, and
 - (b) shall cease to be valid where the person to whom it was given ceases to be a qualified person or a family member, as the case may be.
- (4) In this Head and Head 49, “family member” means a person in relation to whom –
 - (a) a permission to enter and to reside in the State given under Head 50 is in force, or
 - (b) a permission to reside in the State given under Head 51 is in force.

Head 49: Travel document

Provide along the following lines:

- (1) Subject to subhead (2), the Minister, on application by the person concerned—
 - (a) shall issue a travel document to a qualified person, and
 - (b) shall issue a travel document to a family member.
- (2) The Minister need not issue a travel document to a person referred to in subhead (1) if—
 - (a) the Minister has required that person to provide such information as the Minister reasonably requires for the purposes of his or her functions under this Head and the person has not done so,
 - (b) that person is a person in relation to whom a subsidiary protection declaration is in force and who is able to obtain a national passport, or

(c) the Minister considers that to issue it would not be in the interests of national security, public security, public health or public order or would be contrary to public policy (“*ordre public*”).

(3) An application under subhead (1) shall be in writing and—

(a) in such form as may be prescribed,

(b) accompanied by such information as may be prescribed, being information that the Minister reasonably requires for the purposes of his or her functions under this Head, and

(c) accompanied by such fee (if any) as may be prescribed.

(4) A travel document shall be in such form as may be prescribed or in a form to the like effect.

Head 50: Permission to enter and reside for member of family of qualified person

Provide along the following lines:

(1) A qualified person (in this Head referred to as the “sponsor”) may, within 12 months of the giving to the sponsor by the Minister of the refugee declaration or, as the case may be, the subsidiary protection declaration under Head 43, make an application to the Minister for permission to be given to a member of his or her family to enter and reside in the State.

(2) The Minister shall investigate, or cause to be investigated, an application under paragraph (1) to determine-

(a) the identity of the person who is the subject of the application,

(b) the relationship between the sponsor and the person who is the subject of the application, and

(c) the domestic circumstances of the person who is the subject of the application.

(3) It shall be the duty of the sponsor and the person who is the subject of the application to co-operate fully in the investigation under subhead (2) including to provide all information in his or her possession, control or procurement relevant to the application.

- (4) Subject to paragraph (7), if the Minister is satisfied that the person who is the subject of the application is a member of the family of the sponsor, the Minister shall give permission in writing to the person to enter and reside in the State and the person shall, subject to that permission being in force, be entitled to the rights and privileges specified in Head 47 in relation to a qualified person for such period as the sponsor is entitled to remain in the State.
- (5) A permission given under subhead (4) shall cease to be in force if the person to whom it is given does not enter and reside in the State by a date specified by the Minister when giving the permission.
- (6) A permission given under subhead (4) shall cease to be in force in relation to the spouse or the civil partner concerned in the event that the marriage or the civil partnership ceases to subsist.
- (7) The Minister may refuse to give permission to enter and reside in the State to a person referred to in paragraph (4) or revoke any permission given to such a person—
- (a) in the interest of national security or public policy (“*ordre public*”),
 - (b) where the person would be or is excluded from being a refugee in accordance with Head 9,
 - (c) where the person would be or is excluded from being eligible for subsidiary protection in accordance with Head 11,
 - (d) where the entitlement of the sponsor to remain in the State ceases, or
 - (e) where misrepresentation or omission of facts, whether or not including the use of false documents, by the person was decisive in the decision to give the person the permission.
- (8) In this Head and Head 51, “member of the family”, in relation to the sponsor, means—
- (a) where the sponsor is married, his or her spouse (provided that the marriage is subsisting on the date the sponsor made an application for international protection in the State),
 - (b) where the sponsor is a civil partner, his or her civil partner (provided that the civil partnership is subsisting on the date the sponsor made an application for international protection in the State),

- (c) where the sponsor is, on the date of the application under paragraph (1), under the age of 18 years and is not married, his or her parents and their children who, on the date of the application under paragraph (1), are under the age of 18 years and are not married, or
- (d) a child of the sponsor who, on the date of the application under paragraph (1), is under the age of 18 years and is not married.

Head 51: Permission to reside for member of family of qualified person

Provide along the following lines:

- (1) A qualified person (in this Head referred to as the “sponsor”) may make an application to the Minister for permission to reside in the State to be given to a member of his or her family who, on the date of the application, is in the State (whether lawfully or unlawfully) and who does not himself or herself qualify for international protection
- (2) The Minister shall investigate, or cause to be investigated, an application under paragraph (1) to determine-
 - (a) the identity of the person who is the subject of the application,
 - (b) the relationship between the sponsor and the person who is the subject of the application, and
 - (c) the domestic circumstances of the person who is the subject of the application.
- (3) It shall be the duty of the sponsor and the person who is the subject of the application to co-operate fully in the investigation under subhead (2) including to provide all information in his or her possession, control or procurement relevant to the application.
- (4) Subject to paragraph (6), if the Minister is satisfied that the person who is the subject of the application is a member of the family of the sponsor, the Minister shall give permission in writing to the person to reside in the State and the person shall, subject to that permission being in force, be entitled to the rights and privileges specified in Head 47 in relation to a qualified person for such period as the sponsor is entitled to remain in the State.

- (5) A permission given under subhead (4) shall cease to be in force in relation to the spouse or the civil partner concerned in the event that the marriage or the civil partnership ceases to subsist.
- (6) The Minister may refuse to give permission to reside in the State to a person referred to in paragraph (4) or revoke any permission given to such a person—
- (a) in the interest of national security or public policy (“*ordre public*”),
 - (b) where the person would be or is excluded from being a refugee in accordance Head 9,
 - (c) where the person would be or is excluded from being eligible for subsidiary protection in accordance with Head 11,
 - (d) where the entitlement of the sponsor to remain in the State ceases, or
 - (e) where misrepresentation or omission of facts, whether or not including the use of false documents, by the person was decisive in the decision to give the person the permission.

Head 52: Situation of vulnerable persons and children

Provide along the following lines:

- (1) In the application of Heads 47, 48, 49, 50 and 51 due regard shall be had to the specific situation of vulnerable persons such as persons under the age of 18 years (whether or not accompanied), disabled persons, elderly persons, pregnant women, single parents with children under the age of 18 years, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence.
- (2) In the application of Heads 47, 48, 49, 50 and 51 in relation to a child under the age of 18 years the best interests of the child shall be a primary consideration.

PART 9 - PROGRAMME REFUGEES AND TEMPORARY PROTECTION

Head 53: Programme refugees, etc.

Provide along the following lines:

- (1) In this Head, a “programme refugee” means a person to whom permission to enter and remain in the State for resettlement, or for temporary protection other than temporary protection provided for in Head 54, has been given by the Government or the Minister and whose name is entered in a register established and maintained by the Minister, whether or not such person is a refugee within the meaning of the definition of “refugee” in Head 2.

- (2) During such period as he or she is entitled to remain in the State pursuant to permission given by the Government or the Minister under subhead (1), Head 47, Head 48 and Head 49 shall apply to a programme refugee as if the programme refugee is a qualified person with the modification that a permission given under Head 48 may be for a specified period of less than 3 years.
- (3) The Minister may, after consultation with the Minister for Foreign Affairs, enter into agreements with the High Commissioner for the reception and resettlement in the State of persons under this Head.
- (4) In subhead (1), “programme refugee” includes a person who, on the commencement of this Head, is a “programme refugee” within the meaning of section 24 of the Act of 1996 and the related entry in the register referred to in subsection (1) of that section shall be deemed to be entered in the register referred to in subhead (1).

Head 54: Temporary protection

Provide along the following lines:

(1) In this Head—

“temporary protection” means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons who are unable to return to their country of origin, immediate and temporary protection;

“Council Directive” means Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof and any other Directive amending or replacing it;

“displaced persons” has the same meaning as in the Council Directive.

(2) Subject to subhead (3), this Head applies to a displaced person to whom, following a Council Decision under Article 5 of the Council Directive establishing the existence of a mass influx of displaced persons, permission to enter and remain in the State for temporary protection as part of a group of persons has been given by the Government or the Minister and whose personal data (that is to say, name, nationality, date and place of birth, marital status, family relationship) are entered in a register established and maintained for the purposes of this Head by the Minister.

- (3) The Minister may exclude a displaced person from temporary protection if—
 - (a) there are serious reasons for considering that—
 - (i) he or she 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, or
 - (ii) he or she has been guilty of acts contrary to the purposes and principles of the United Nations,

- (b) there are reasonable grounds for regarding him or her as a danger to the security of the State,
- (c) the Minister is of opinion that he or she constitutes a danger because he or she was convicted by a final judgment of a particularly serious crime, whether in the State or elsewhere, or
- (d) there are serious reasons for considering that he or she has committed a serious non-political crime outside the State prior to his or her entry into the State.

(4) In considering whether to exclude a displaced person from temporary protection under paragraph (c) or (d) of subhead (3), the Minister shall weigh the reasons underlying the Council Decision concerned as they relate to the displaced person against the nature of the crime of which the displaced person concerned is suspected.

(5) Subhead (3)(d) and (4) apply both to the participants in and the persons who have instigated a crime referred to in subhead (4).

(6) The Minister shall give to a displaced person to whom subhead (2) applies a permission to reside in the State and shall—

(a) issue him or her with, if required, a visa or transit visa free of charge, or
and

(b) provide him or her with information, in a language that he or she may reasonably be supposed to understand, setting out the provisions of this Head relating to temporary protection in the State.

(7) Subject to subhead (8), a permission to reside in the State given under subhead (6) shall be valid for one year, and may be renewed.

(8) A permission to reside in the State given under subhead (6) may be revoked—

(a) when temporary protection has ended in accordance with the Council Decision,

(b) upon the transfer of residence of the holder to another Member State, or

(c) where the Minister decides that the holder should have been excluded from temporary protection under subhead (3) and (4).

(9) Where, during the validity of a permission to reside in the State given under subhead (6), a displaced person to whom subhead (2) applies seeks to enter another Member State or has entered it without authorisation, the Minister shall, in co-operation with the competent authority of that Member State, make arrangements for the return of the person to the State.

(10) Without prejudice to subhead (8), a displaced person to whom subhead (2) applies shall be entitled-

(a) to seek and enter employment, to engage in any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen,

(b) 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, and

(c) to the same rights of travel in the State as those to which Irish citizens are entitled.

(11) The Minister shall co-operate with the competent authorities of a Member State in relation to-

- (a) the transfer to another Member State of a displaced person to whom subhead (2) applies,
- (b) the transfer from another Member State to the State of a displaced person to whom subhead (2) applies, and
- (c) the reunification, either in the State or in another Member State, of family members of a displaced person to whom subhead (2) applies.

(12) The Minister may prescribe documentation to be used for the purpose of enabling and facilitating transfers and reunifications referred to in subhead (11).

(13) For the purposes of subhead (11), the Minister may provide to another Member State, insofar as they are available-

- (a) personal data relating to a displaced person (that is to say, name, nationality, date and place of birth, marital status, family relationship),
- (b) travel documents relating to the person concerned,
- (c) documents concerning evidence of family ties relating to the person concerned (such as marriage certificates, birth certificates and certificates of adoption),
- (d) other information required to establish the identity of the person concerned or his or her family relationships,
- (e) residence permits and decisions concerning the giving or refusal of visas or residence permissions to the person concerned by the Minister, and documents forming the basis of those decisions,
- (f) applications for visas or entry or residence permissions submitted by the person concerned and pending in the State, and the stage reached in the processing of these,
- (g) any corrected information within paragraphs (a) to (f) which becomes available.

(14) Subhead (2) shall not apply to a person who is, for the time being, an applicant and a permission to reside in the State given under subhead (6) shall not be in force in relation to such a person.

PART 10 - INTERNATIONAL PROTECTION APPEALS TRIBUNAL

Head 55: International Protection Appeals Tribunal

Provide along the following lines:

- (1) On the day that the Minister may by order appoint, there shall stand established a Tribunal to be known as (*name in Irish to be inserted*) or, in the English language, the International Protection Appeals Tribunal, which shall determine appeals and perform such other functions as may be conferred on it by or under this Act and the Dublin System Regulations.

- (2) Subject to subhead (3), the Tribunal shall be—
 - (a) inquisitorial in nature, and
 - (b) independent in the performance of its functions.
- (3) This Head shall not be construed as prejudicing the generality of any other provision of this Act or of applicable regulations.
- (4) The Minister may appoint such and so many persons to be members of the staff of the Tribunal as he or she considers necessary to assist the Tribunal in the performance of its functions and such members of the staff of the Tribunal 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 and Reform, determine.
- (5) Members of the staff of the Tribunal shall be civil servants within the meaning of the Civil Service Regulation Acts 1956 to 2005.
- (6) Whenever the Tribunal consists of more than one member, it shall be grouped into divisions, each of which shall consist of one member.

Head 56: Membership of the Tribunal

Provide along the following lines:

- (1) The Tribunal shall consist of the following members:
 - (a) a chairperson, who shall be appointed in a whole-time capacity; and
 - (b) such number of other members, appointed either in a whole-time or a part-time capacity, as the Minister, with the consent of the Minister for Public Expenditure and Reform, considers necessary for the expeditious performance of the functions of the Tribunal,
 each of whom shall have had before his or her appointment the appropriate experience specified in subhead (2).
- (2) The experience referred to in subhead (1) is—
 - (a) in relation to the chairperson, not less than 5 years' experience as a practising barrister or practising solicitor, and
 - (b) in relation to members other than the chairperson, not less than 5 years' experience as a practising barrister or practising solicitor.
- (3) Subject to subhead (4), the Minister shall appoint the members of the Tribunal.
- (4) Subject to subheads (8), (15) and (16), the Minister shall not appoint—
 - (a) the chairperson of the Tribunal, or
 - (b) any other member of the Tribunal,

unless the Public Appointments Service, within the meaning of the Public Service Management (Recruitment and Appointment) Act 2004, after holding a competition under section 47 of that Act, has selected him or her for appointment to the position.

(5) Subhead (4) shall not apply to the reappointment of a member, in accordance with subhead (7), for a second term.

(6) (a) Each member of the Tribunal appointed in a part-time capacity shall hold office under a contract for 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 and Reform may determine.

(b) The chairperson of the Tribunal and each member of the Tribunal 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 and Reform may determine.

(7) The term of office of the members of the Tribunal shall be as follows:

(a) the term of office of the chairperson shall be 5 years and a chairperson may be reappointed to the office for a second term not exceeding 5 years;

(b) the term of office of a member appointed in a whole-time capacity, other than the chairperson, shall be 3 years and such a member may be reappointed to the office for a second term not exceeding 3 years;

(c) the term of office of a member appointed in a part-time capacity shall be 3 years and such a member may be reappointed to the office for a second term not exceeding 3 years.

(8) Where the chairperson is for any reason temporarily unable to act as the chairperson, or the office of the chairperson is vacant, the Minister shall appoint a person to be the chairperson for the duration of the inability or until an appointment is made under subhead (4)(a), as appropriate, and the person so appointed may perform all the functions conferred on the chairperson by this Act.

(9) A member of the Tribunal may resign from office by letter addressed to the Minister and the resignation shall take effect from the date specified in the letter.

(10) A member of the Tribunal shall cease to be a member of the Tribunal on attaining the age of 66 years.

(11) Where a member of the Tribunal is—

(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 section 19 of 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,

(e) appointed to judicial office, or

(f) appointed Attorney General,

he or she shall thereupon cease to be a member of the Tribunal.

(12) A person who is for the time being—

(a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,

(b) a member of the European Parliament, or

(c) entitled under the standing orders of a local authority to sit as a member thereof,

shall, while he or she is so entitled under paragraph (a) or (c) or is such a member under paragraph (b), be disqualified from being a member of the Tribunal.

(13) Without prejudice to the generality of subhead (12), that subhead 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.

(14) A member of the Tribunal may be removed from office by the Minister for stated reasons.

(15) If a member appointed in a part-time capacity—

(a) dies, resigns, becomes disqualified, is removed from office, or

(b) is for any reason temporarily unable to continue to perform his or her functions,

the Minister may, notwithstanding subhead (4), appoint another person to be a member of the Tribunal in a part-time capacity until an appointment is made in accordance with subhead (4).

(16) If a member 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, notwithstanding subhead (4), appoint another person to be a member of the Tribunal in a whole-time or part-time capacity until an appointment is made in accordance with subhead (4).

Head 57: Functions of chairperson of Tribunal

Provide along the following lines:

(1) The chairperson shall ensure that the functions of the Tribunal are performed efficiently and that the business assigned to each member is disposed of as expeditiously as may be consistent with fairness and natural justice.

(2) The chairperson shall, having regard to the need to observe fair procedures, establish or adopt rules and procedures for the conduct of oral hearings and shall publish any such rules and procedures so established.

(3) The chairperson may issue to the members of the Tribunal guidelines on the practical application and operation of the provisions or any particular provisions of this Act and on developments in the law relating to international protection.

(4) (a) The chairperson may, if he or she considers it appropriate to do so in the interest of the fair and efficient performance of the functions of the Tribunal, issue guidelines to the Registrar for the purpose of the performance of his or her functions of assigning or re-assigning appeals under Head 60 (2) or (3).

(b) In issuing the guidelines referred to in paragraph (a), the chairperson shall have regard to the following matters:

(i) the grounds of the appeals specified in the notices of appeal;

(ii) the country of origin of applicants;

(iii) any family relationship between applicants;

(iv) the ages of the applicants and, in particular, of persons under the age of 18 years in respect of whom applications are made;

(v) the provisions of this Act under which the appeals are made.

(5) The chairperson shall—

(a) re-assign business from one member to a different member if, in the opinion of the chairperson, such re-assignment—

(i) is warranted by the inability or unwillingness to transact that business of the member to whom the business was originally assigned, and

(ii) where the business relates to an appeal, cannot be achieved by agreement between the Registrar and that member,

(b) require a member to prepare a report of his or her determination of each appeal within a period specified in the guidelines referred to at subhead (3), and

(c) require a member to prepare a report on any aspect of the transaction of the business assigned to the member.

(6) The chairperson may from time to time convene a meeting with a member or members of the Tribunal for the purpose of discussing matters relating to the transaction of the business assigned to the member or members, including, in particular, such matters as the avoidance of undue divergences in the transaction of business by the members.

(7) The chairperson shall convene a meeting of the members at least once a year to review the transaction of business by members and, where necessary, to make provision for training programmes for members.

(8) The chairperson shall make the following written reports on the activities of the Tribunal:

- (a) a report to the Minister in relation to any function that the chairperson performs under this Act, if requested to do so by the Minister or if the chairperson considers it appropriate to do so;
- (b) an annual report to the Minister not later than 3 months after the end of each year, which the Minister shall cause to be laid before each House of the Oireachtas not more than 30 days after he or she receives it.

(9) Where a member of the Tribunal fails to comply with a provision of Head 58 the chairperson may make a written report to the Minister of this failure.

(10) The Tribunal shall be named as respondent in any proceedings brought by an applicant arising from the performance of the functions of the Tribunal or any of its members relating to that applicant's appeal, and the chairperson shall be responsible for the conduct of such proceedings on behalf of the Tribunal.

(11) In this Head and Head 58, "business" means the determination of appeals and any additional tasks assigned to a member by the chairperson in order to fulfil any other functions conferred on the Tribunal by or under this Act and the Dublin System Regulations.

Head 58: Role of members of the Tribunal

Provide along the following lines:

(1) A member of the Tribunal shall, on behalf of the Tribunal, transact the business assigned to him or her under this Act.

(2) A member shall, in the performance of his or her functions under this Act—

- (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 such rules and procedures as are established or adopted by the chairperson under Head 57(2),
- (c) have regard to any guidelines issued by the chairperson under Head 57(3),
- (d) prepare the report referred to in paragraph (b) or (c) of Head 57(5) and provide it to the chairperson when requested to do so, and
- (e) attend any meetings convened by the chairperson under Head 57(6) or (7), unless it is impracticable to do so.
- (f) comply with any direction given by the chairperson relating to training and the continued professional development of members.

Head 59: Registrar

Provide along the following lines:

- (1) The Minister shall designate a person who is for the time being a member of the staff of the Tribunal to be the Registrar of the Tribunal.
- (2) A person designated under subhead (1) shall perform the functions assigned to him or her by or under this Act.
- (3) The Registrar shall be responsible to the chairperson for the performance of his or her functions.
- (4) Where the Registrar is for any reason temporarily unable to perform his or her function of assigning and re-assigning appeals under Head 60(2) or (3) or the position of Registrar is vacant, that function of the Registrar may be performed, for the duration of the inability or until a designation is made under subhead (1), by such member of the staff of the Tribunal as may, from time to time, be designated for that purpose by the Registrar, or (in the absence of such designation) by the Minister, and references in this Act to the Registrar shall be read as including references to a person designated under this subhead.

Head 60: Functions of the Registrar

Provide along the following lines:

- (1) The Registrar shall, in consultation with the chairperson—
 - (a) manage and control generally the staff and administration of the Tribunal, and
 - (b) perform such other functions as may be conferred on him or her by the chairperson.
- (2) The Registrar shall assign to each member the appeals to be determined by him or her.
- (3) Subject to Head 57(5)(a), the Registrar may re-assign an appeal where the member to whom it was originally assigned is unable or unwilling to determine that appeal.
- (4) In assigning or re-assigning an appeal to a member the Registrar shall have regard to—
 - (a) the need to ensure the efficient management of the work of, and the expeditious performance of its functions by, the Tribunal, consistent with fairness and natural justice,
 - (b) any guidelines issued by the chairperson under Head 57(4)(a).
- (5) The Registrar shall bring to the attention of the chairperson any matter relevant to the chairperson's functions under subhead (1) or (5) of Head 57.

(6) (a) The Registrar shall, whenever requested by the chairperson, assign to the chairperson—

(i) appeals, or

(ii) a particular appeal,

to be determined by the chairperson under this Act.

(b) In assigning an appeal under paragraph (a), the Registrar shall comply with any direction of the chairperson.

(c) In making a request or giving a direction referred to in this subhead, the chairperson shall have regard to the matters referred to in paragraph (a) subhead (4).

PART 11- FURTHER PROVISIONS AND TRANSITIONAL PROVISIONS

Head 61: Detention

Provide along the following lines:

(1) Where, immediately before the coming into operation of this subhead, a person was detained in a place of detention pursuant to section 9 of the Act of 1996 then his or her continued detention in that place is authorised by virtue of this Head, this Act shall apply accordingly, and any period of detention under that Act shall be included in reckoning a period for the purpose of Head 19.

(2) Pending the making of regulations under Head 19, rules or regulations made under section 9 of the Act of 1996 relating to the treatment of persons detained under that section shall, except where they may be inconsistent with this Act, continue in force and shall apply and have effect, with any necessary modifications, in relation to an applicant detained under this Act.

Head 62: Transitional provisions relating to declarations and permissions under existing asylum legislation

Provide along the following lines:

(1) A declaration in force in relation to a refugee under the Act of 1996 shall be deemed to be a refugee declaration given and in force in relation to the person concerned under this Act and the provisions of this Act shall apply accordingly.

(2) A permission to reside in the State granted to a person referred to in subhead (1) in accordance with Regulation 17 of the Regulations of 2006 shall, for the duration of its unexpired term, be deemed to be a permission given under Head 48 and the provisions of this Act shall apply accordingly.

(3) A permission to enter and reside in the State granted to a person and in force under section 18 of the Act of 1996 shall be deemed to be a permission given

and in force in relation to the person concerned under Head 50 and the provisions of this Act shall apply accordingly.

- (4) A subsidiary protection declaration in force in relation to a person eligible for subsidiary protection under the Regulations of 2013 shall be deemed to be a subsidiary protection declaration given and in force in relation to the person concerned under this Act and the provisions of this Act shall apply accordingly.
- (5) A permission to enter and reside in the State granted or deemed to have been granted under Regulation 25 of the Regulations of 2013 in relation to a person shall be deemed to be a permission given and in force in relation to the person concerned under Head 50 and the provisions of this Act shall apply accordingly.
- (6) A permission to reside in the State granted under Regulation 26 of the Regulations of 2013 in relation to a person shall be deemed to be a permission given and in force in relation to the person concerned under Head 51 and the provisions of this Act shall apply accordingly.
- (7) A permission to reside in the State granted or deemed to have been granted under Regulation 23 of the Regulations of 2013 to a person referred to in subhead (4), (5) or (6) shall, for the duration of its unexpired term, be deemed to be a permission given under Head 48 and the provisions of this Act shall apply accordingly.

Head 63: Transitional provisions relating to caseloads under the existing asylum legislation

Provide along the following lines:

- (1) A person who has made an application for a declaration under section 8 of the Act of 1996 and whose application is not yet the subject of a recommendation under section 13 of that Act shall be deemed to have made an application for international protection under Head 12 and the Minister shall examine the application under Head 32.
- (2) A person who has made an appeal under section 16 of the Act of 1996 against a recommendation of the Commissioner and the appeal has not been decided shall be deemed to have made an application for international protection under Head 12 and the Minister shall examine the application under Head 32 with the modification that the applicant is a person in respect of whom a refugee declaration should not be given.
- (3) A person who has made an application for a declaration under section 8 of the Act of 1996, whose application has been the subject of a recommendation under section 13 of that Act against which no appeal lies and the Minister has not yet refused a declaration under section 17 of that Act, shall be deemed to have made an application for international protection under Head 12 and the Minister shall examine the application under Head 32 and the Tribunal shall

decide any appeal with the modification that the applicant is a person in respect of whom a refugee declaration should not be given.

- (4) A person who has made an application for a declaration under section 8 of the Act of 1996, whose application has been the subject of a recommendation under section 13 of that Act which has been affirmed under section 16 of that Act and the Minister has not yet refused a declaration under section 17 of that Act, shall be deemed to have made an application for international protection under Head 12 and the Minister shall examine the application under Head 32 and the Tribunal shall decide any appeal with the modification that the applicant is a person in respect of whom a refugee declaration should not be given.
- (5) A person who is the subject of an application, within the meaning of Regulation 2(1) of the Regulations of 2013, where the Commissioner has not yet commenced the investigation of the application under Regulation 5 of those Regulations shall be deemed to have made an application for international protection under Head 12 and the Minister shall examine the application under Head 32 and the Tribunal shall decide any appeal with the modification that the applicant is a person in respect of whom a refugee declaration should not be given.
- (6) A person who is an applicant within the meaning of section 1 of the Act of 1996, who is an applicant within the meaning of Regulation 2(1) of the Regulations of 2013 or who may make an application for a subsidiary protection declaration under Regulation 3 of those Regulations and who is not by this Head deemed to have made an application for international protection under Head 12, shall, notwithstanding Head 5, continue to be subject to that Act, the Regulations of 2006 and the Regulations of 2013 for the purpose of an application for a declaration under that Act or an application for a subsidiary protection declaration under the Regulations of 2013.
- (7) The Minister-
 - (a) shall give each person to whom subhead (1), (2), (3), (4) or (5) applies a statement in writing explaining the effect of this Act and the procedures under which his or her application for international protection will be dealt with, and
 - (b) shall afford each such person an opportunity to submit, within a specified period, an application in accordance with the provisions of this Act.
- (8) A request for consent under section 17(7) of the Act of 1996 shall be concluded in accordance with the corresponding provision of this Act.
- (9) A proposal to revoke a declaration under section 21 of the Act of 1996 shall be concluded under that Act.

- (10) A proposal to revoke a subsidiary protection declaration under Regulation 21 of the Regulations of 2013 shall be concluded under those Regulations.
- (11) An application for family reunification under section 18 of the Act of 1996, or Regulation 25 or 26 of the Regulations of 2013 shall be concluded under that Act or those Regulations.
- (12) A requirement on a person under section 9(5)(a) of the Act of 1996 shall continue under Head 15(3)(d).
- (13) Any fingerprints taken under section 9A of the Act of 1996 shall be deemed to have been taken under the corresponding provisions of this Act and those provisions shall apply to those fingerprints.
- (14) The functions conferred on the Refugee Applications Commissioner by the enactments that continue to apply under this Head are, for the purposes referred to in this Head, transferred to the Minister.
- (15) The functions conferred on the Refugee Applications Commissioner by the Dublin System Regulations are transferred to the Minister.
- (16) Any information provided to the Refugee Applications Commissioner under the Act of 1996, the Regulations of 2013 and the Dublin System Regulations shall be deemed to be information provided to the Minister.
- (17) Each record held by the Refugee Applications Commissioner under the Act of 1996, the Regulations of 2013 and the Dublin System Regulations shall be deemed to be information provided to the Minister.
- (18) Legal proceedings in train relating to the Refugee Applications Commissioner shall be transferred to the Minister.
- (19) A temporary residence certificate issued under section 9(3) of the Act of 1996 to a person to whom subhead (1), (2), (3) or (4) applies shall be deemed to be a temporary residence certificate issued under the corresponding provision of this Act.

Head 64: Transitional provisions relating to International Protection Appeals Tribunal

Provide along the following lines:

- (1) The administration and business in connection with the performance of any functions of the former Tribunal under the Act of 1996, the Regulations of 2006, the Regulations of 2013 and the Dublin System Regulations are to be transferred, with effect from the establishment day, to the Tribunal.

- (2) For the purposes of subhead (1), and subject to subhead (4) the chairperson of the Tribunal shall perform the functions of the chairperson of the former Tribunal under the Act of 1996 and the Regulations of 2013.
- (3) For the purposes of subhead (1), a member of the Tribunal to whom is assigned an appeal made by a person to whom Head 63(6) applies shall decide that appeal in accordance with the Act of 1996 and the Regulations of 2006 or the Regulations of 2013, as the case may be, and, for that purpose, perform the functions of a member of the former Tribunal under that Act or those Regulations.
- (4) On and after the establishment day, the assignment to members of the Tribunal of appeals made by persons to whom Head 63(6) applies shall be subject to the provisions of these Heads and not the Act of 1996 or the Regulations of 2013.
- (5) Where the former Tribunal is a party to legal proceedings pending immediately before the establishment day which relate to functions which, on and after that date, are functions of the Tribunal, the Tribunal shall, insofar as the proceedings relate to those functions, be substituted in the proceedings for the former Tribunal and the proceedings shall not abate by reason of the substitution.
- (6) The person who, immediately before this subhead is commenced, was the chairperson of the former Tribunal shall [notwithstanding any contract of service and with the person's consent], on and after that date, be deemed to have been appointed chairperson of the Tribunal and shall hold office until an appointment is made under Head 56.
- (7) A person who, immediately before this subhead is commenced, was a member of the former Tribunal shall [notwithstanding any contract for service and with the person's consent], on and after that date, be deemed to have been appointed in a part-time capacity to the Tribunal and shall hold office until replaced by a member appointed under Head 56.

(8) In this Head-

“establishment day” means the day appointed by the Minister under Head 55(1) on which the International Protection Appeals Tribunal stands established;

“former Tribunal” means the Refugee Appeals Tribunal established under section 15 of the Act of 1996.

Head 65: Judicial review

Provide along the following lines:

The list of decisions, determinations, recommendations, refusals or orders set out in subsection 5(1) (inserted by section 34 of the Employment Permits (Amendment) Act

2014) of the Illegal Immigrants (Trafficking) Act 2000 is to be expanded to include the following decisions, determinations, refusal or orders under this Act:

- (a) a determination of the Minister under Head 20(1),
- (b) a decision of the Tribunal under Head 20(9)(a),
- (c) a refusal by the Minister under Head 21(6),
- (d) a decision of the Tribunal under Head 21(10)(a),
- (e) a determination of the Minister under Head 35(3),
- (f) a determination of the Minister under Head 36A(3),
- (g) a decision of the Tribunal under Head 42(2) or 42(3),
- (h) a deportation order under Head 45(1),
- (i) an order under Head 45(4), and
- (j) a decision of the Minister under Head 54(3).

Head 66: Designation of safe countries of origin

Provide along the following lines:

- (1) The Minister may by order designate a country as a safe country of origin.
- (2) The Minister may make an order under subhead (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 generally and consistently no persecution, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.
- (3) In making the assessment referred to in subhead (2), the Minister shall take account of, among other things, the extent to which protection is provided against persecution or mistreatment by-
 - (a) the relevant laws and regulations of the country and the manner in which they are applied,
 - (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) respect for the non-refoulement principle in accordance with the Geneva Convention, and
 - (d) provision for a system of effective remedies against violations of those rights and freedoms.
- (4) The Minister shall base his or her assessment referred to in subhead (2) on a range of sources of information, including in particular information from other EU Member States, the European Asylum Support Office, the High Commissioner, the Council of Europe and other relevant international organisations.
- (5) The Minister shall regularly review the situation in a country designated under subsection (1) in accordance with subheads (2) to (4).
- (6) The Minister shall notify the European Commission of the making, amendment or revocation of an order under subsection (1).
- (7) In this Head-

“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;

“country” means a country other than an EU Member State;

“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;

“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.

Head 67: Prioritisation

Provide along the following lines:

- (1) Subject to the need for fairness and efficiency in dealing with applications for international protection under this Act, the Minister may, where he or she considers it necessary or expedient to do so, accord priority to any application or any applications.
- (2) Subject to the need for fairness and efficiency in dealing with applications for international protection under this Act, the Minister may, where he or she considers it necessary or expedient to do so, accord priority to any application or any applications having regard to the following:

- (a) whether the applicant possesses identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of such documents;
- (b) whether the applicant has provided 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;
- (c) whether the applicant has provided a full and true explanation of how he or she travelled to and arrived in the State;
- (d) where the application was made other than at the frontier of the State, whether the applicant has provided a reasonable explanation to show why he or she did not claim asylum immediately on arriving at the frontier of the State unless the application is grounded on events which have taken place since his or her arrival in the State;
- (e) where the applicant has forged, destroyed or disposed of any identity or other documents relevant to his or her application, whether he or she has a reasonable explanation for so doing;
- (f) whether 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;
- (g) whether the applicant, without reasonable cause, has made an application following the notification of a proposal under section 3(3)(a) of the Immigration Act 1999;
- (h) whether the applicant has complied with the requirements of Head 25(1);
- (i) whether the applicant has, without reasonable cause, failed to comply with the requirements of Head 15(3)(a);
- (j) whether the applicant has, without reasonable cause, failed to comply with the requirements of Head 15(3)(c);
- (k) whether the applicant has, without reasonable cause, failed to comply with the requirements of Head 15(3)(d);

Head 68: Contracts for services

Provide along the following lines:

- (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 and Reform, determine.

- (2) The Minister may authorise a person who has entered into a contract with the Minister referred to in subhead (1) to perform any of the Minister's functions (other than the functions referred to in Head 35(2)(b), Head 35(4) and Head 36A(3)) of this Act.

Schedule 1

Text of 1951 Convention relating to the Status of Refugees

Schedule 2

Text of 1967 Protocol relating to the Status of Refugees