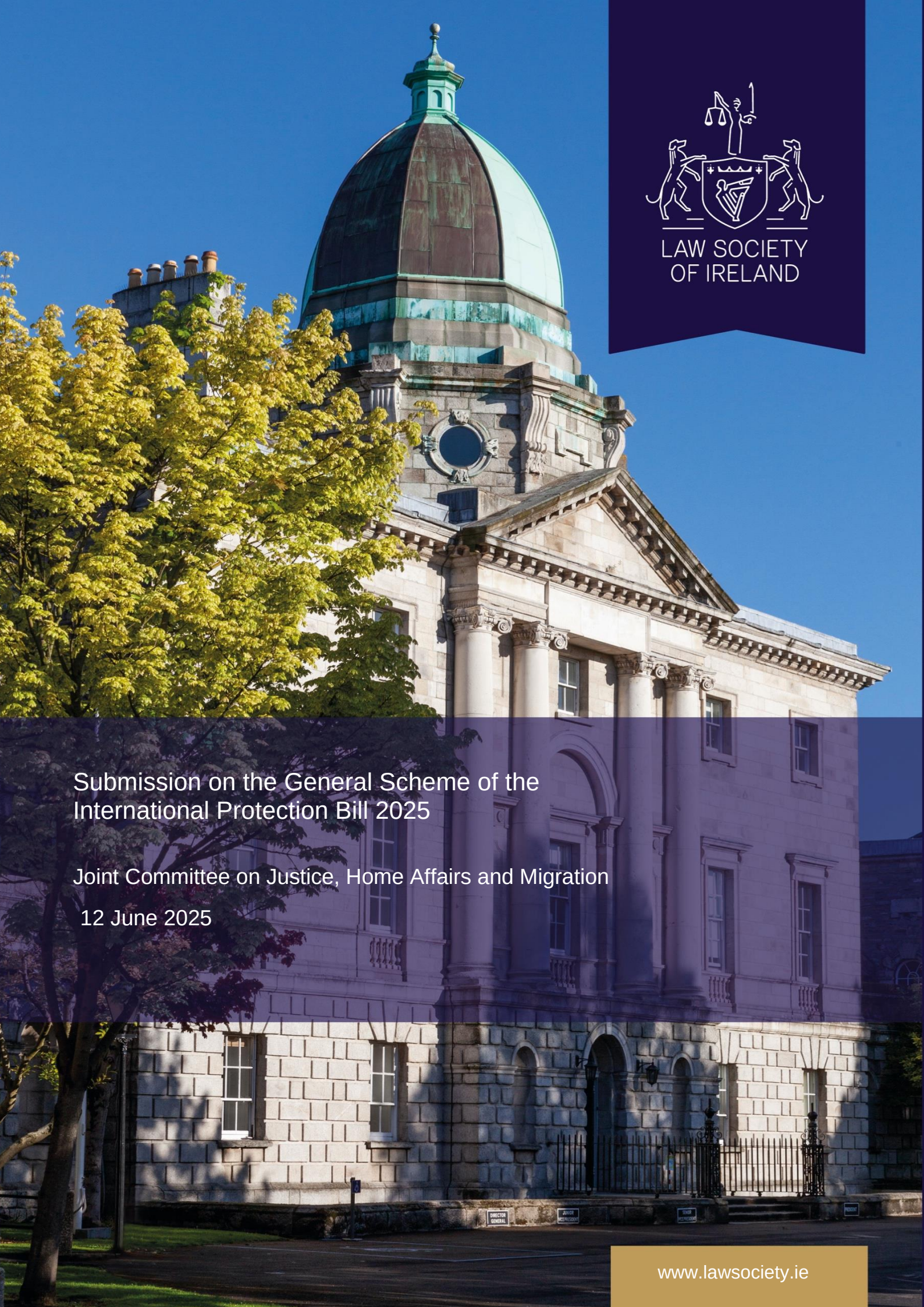

LAW SOCIETY OF IRELAND

Submission on the General Scheme of the International Protection Bill 2025

Joint Committee on Justice, Home Affairs and Migration

12 June 2025

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Submission for pre-legislative scrutiny of the General Scheme of the International Protection Bill 2025

About the Law Society

The Law Society of Ireland (the **Law Society**) is the educational, representative and professional body of the solicitors' profession in Ireland. The Law Society delivers high-quality legal education and training and places significant emphasis on civic engagement, supporting local community initiatives and driving diversity and inclusion. The Law Society is committed to participating in discussion and advocacy on the administration of justice and the effective implementation of public policy.

The Law Society appreciates the opportunity to provide this submission regarding the General Scheme of the International Protection Bill 2025 as part of the pre-legislative scrutiny process.

Background and summary

The General Scheme of the International Protection Bill 2025 (the **General Scheme**) aims to transpose the European Union (**EU**) Pact on Migration and Asylum (the **EU Pact**) that came into force on 11 June 2024. The EU Pact is a set of rules that seeks to manage migration and establish a common asylum system at EU level. The current international protection system in Ireland is governed by the International Protection Act 2015, which will be repealed by the General Scheme.

The General Scheme runs to 244 pages, with 163 Heads transforming the current framework for migration in Ireland. There is ongoing debate around many aspects of the EU Pact by Member States including issues regarding (1) compliance with fundamental rights, (2) use of border procedures (3) detention and reception conditions, (4) sovereignty and (5) legal uncertainty and implementation challenges. Ireland has taken a multi-pronged approach to implement the EU Pact, including operational capacity building (increased funding for the International Protection Office (**IPO**), new process centres, increased Garda operations), infrastructure investment and IT systems alignment. The General Scheme is seeking to introduce the legislative framework to embed many EU Pact provisions, and the Law Society does not, at the present time, intend to comment on each of those.

The Law Society submits that the General Scheme must reflect the highest standards of protection of fundamentals rights and European law. The primary focus of this submission is on the need for the General Scheme to include:

1. The definition of "legal counselling"; and
2. The time limits for appeals.

This submission is set out using the format and headings in the draft General Scheme.

Head 2 - Interpretation

Legal counselling

Head 2 of the General Scheme reads as follow:

"*"legal counselling" has the meaning assigned to it by head yy;* "

However, we note that head "yy" is not included in the General Scheme.

The concept of *legal counselling* was introduced as a new right in the European legislation by the Asylum and Migration Management Regulation (**AMMR**)[1] and the Asylum Procedure Regulation (**APR**)[2]. The concept of *legal counselling* is distinct from the right to legal assistance and the right to legal representation. The definition of *legal counselling* needs to be approached with caution due to the implications it will have on the prospects of international protection applicants to secure protection, or on their fundamental rights such as right to access to justice, right to legal aid and right to an effective remedy.

The components of legal counselling

Legal Counselling is not defined by the AMMR, the APR or any other instrument of the EU Pact. It is likely that the EU legislator is leaving each member state to adopt a definition of *legal counselling* however the two regulations provide indications of the constitutive elements.

Art. 16(2) of the APR provides:

> "*2. For the purposes of the administrative procedure, free legal counselling shall include the provision of:*
> *(a) guidance on and an explanation of the administrative procedure including information on rights and obligations during that procedure;*
> *(b) assistance on the lodging of the application and guidance on:*
> *(i) the different procedures under which the application may be examined and the reasons for the application of those procedures;*
> *(ii) the rules related to the admissibility of an application;*
> *(iii) legal issues arising in the course of the procedure, including information on how to challenge a decision rejecting an application in accordance with Articles 67 (right to an effective remedy), 68 (suspensive effect of appeal) and 69 (duration of the first level of appeal)."*

[1] See art. 21 of the Regulation (EU) 2024/1351 of the EU Parliament and Council of 14 May 2024 on asylum and migration management regulation, amending Regulation (EU) 2021/1147 and Regulation (EU) 2021/1060 and repealing Regulation (EU) No. 604/2013.

[2]See art. 15 and 16 of the Regulation (EU) of the EU Parliament and Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

The information provided must be in-depth and personalised. It is understood to be different than the general information provided under Article 8 APR. Under Article 8 APR the applicant for international protection receives general information on rules and procedures.

Art. 21(6) of the AMMR lists other constitutive elements of *legal counselling:*

> *"6. For the purposes of the procedure for determining the Member State responsible, the free legal counselling shall include the provision of:*
>
> *(a) guidance on and explanations of the criteria and procedures for determining the Member State responsible, including information on rights and obligations during all stages of that procedure;*
>
> *(b) guidance on and assistance in providing information that could help determine the Member State responsible in accordance with the criteria set out in Chapter II of this Part;*
>
> *(c) guidance and assistance on the template referred to in Article 22(1) (personal interview)."*

Considering the above, *legal counselling* appears to overlap with element of legal representation and right to information. *Legal counselling* would involve more than provision of information but less than legal assistance or representation.

The right to *legal counselling* applies from the arrival of the international applicant at the border. This right will apply to the administrative phase of the application for international protection. The advice component of the *legal counselling* must be generally accessible and able to guide the internation protection applicant on a variety of questions regarding their application supported by a certain level of expertise and professionalism.

In *Ministero dell'Interno*[3] the Court of Justice of the European Union (**CJEU**) confirms that the absence or inadequacy of the provision of legal information, an element of *legal counselling,* at the beginning of the procedure diminishes the capacity of the applicant to navigate the international protection system and to support their claim. This may give rise to a violation of Article 4 and 18 or 47 of the European Union Charter of Fundamental Rights (the **Charte**r). The CJEU found that where information is not provided the national courts must ascertain *"whether the infringement, notwithstanding the fact that the personal interview has taken place, actually deprived the party relying thereon of the possibility of putting forward his or her arguments, to the extent that the outcome of the administrative procedure in respect of that person could have been different (…)".*

In S.*H. v. Malta,* the European Court of Human Rights (**ECtHR**) notes that diminished capacity may, change the outcome of the administrative procedure in an unfair

[3] CJEU, *Ministero dell'Interno*, 30 November 2023, joined cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, ECLI:EU:C:2023:934, para. 125-126.

manner. In *that case,* the Strasbourg court questioned whether the international protection applicant had "*the benefit of any legal assistance in the preparation of his asylum application, during his interview and throughout the process until a few days before the first decision*" in assessing a potential violation of Article 13 in conjunction with Article 3 of the European Convention on Human Rights (the **ECHR**) [4].

Legal counselling is not limited to guidance, it must also include legal assistance throughout the administrative procedure for the preparation of the interview and for any other issue that may arise. A failure to provide effective legal counselling could compromise the ability of the applicant to support their claim at first instance and could lead to a situation that is incompatible with the principle of non-refoulement (forced return)[5]. The principle of non-refoulement prohibits States from transferring or removing an individual from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations. The administration of legal assistance implies a continuous support in the form of *legal counselling.*

Legal counselling should be primarily administered at an individual level. The APR allows for an option to provide *legal counselling* in groups. The Law Society submits that due to the requirement of confidentiality it is difficult to provide group counselling in all situations. Group counselling raises concerns regarding its effectiveness due to language barriers and the comprehension of legal procedure by laypersons. The use of group counselling should be limited to situations where the rights and safeguards highlighted above are guaranteed.

The administration of legal counselling

Article 19(1) APR which deals with the provision of *legal counselling*, assistance and representation, requires that legal advisers, other counsellors or NGOs are "*admitted, permitted or accredited*" under national law to provide legal service or representation to applicants. This would indicate that a high level of legal expertise shall be expected from those providing legal counselling.

It is submitted that qualified and enrolled legal professionals such as solicitors or barristers are best suited to carry out these activities which require legal background and professional deontology.

Retaining enrolled qualified legal professionals for the provision of *legal counselling* would also ensure that the standards of "*good quality information and legal support"* mentioned in recital 16 of the APR is met.

It is envisaged that *Legal counselling* will be provided to assist the applicant in lodging their application for international protection. To properly and effectively advise the applicant, the legal counsellor will have to gather sensitive personal information on the part of the applicant which will require trust from the applicant which will only be

[4] See ECtHR, *S.H. v. Malta*, application no.37241/21, 20 December 2022, para. 82.

[5] See European Council on Refugee and Exiles' legal note "Guarantees of the EU Charter of Fundamental Rights in Respect of Legal Counselling, Assistance and Representation in Asylum Procedures", 07 August 2024 p. 15.

possible if the legal counsellor is independent and bound by a duty of confidentiality. The members of the Irish legal profession are automatically bound by the duty of confidentiality and can provide these guarantees.

In addition, solicitors and barristers are the only two professions allowed to provide legal advice in Ireland and to be covered by professional indemnity insurance for this purpose.

The importance of entrusting *legal counselling* to registered legal professional is noted by the Government in the Implementation of the Pact on Migration and Asylum plan: "*Applicants for international protection are to be offered Legal Counselling which is to be provided through the Legal Aid Board, an independent State body. (…) Legal counselling and representation are to be provided through an expansion of the current provision by the Legal Aid Board using a mixed model of service delivery. This involves the use of in-house staff, including solicitor staff, and the use of private practitioners' panels of legal professionals."*[6]

Proposed definition of 'Legal Counselling' for the General Scheme

On the basis of the above, the Law Society submits that the General Scheme should include a clear definition of legal counselling similar to that referred to in the AMMR and the APR. In that aspect the definition proposed by the European Council for Refugees and Exiles seems appropriate[7].

The Law Society of Ireland proposes head 2 be amended as follow:

" "*Legal counselling has the meaning assigned to it by head yy""*

And the following head yy to be added.

Head yy

"Free legal counselling means the provision without charge of effective legal advice and guidance by a solicitor or a barrister on procedural and substantive issues related to an international protection application during the administrative procedure, including assistance with the lodging of the application, support during the preparation for the first-instance interview, the provision of information on how to challenge a decision rejecting an application in accordance with heads 67 and 68."

Legal aid

Article 19 APR refers to "***free*** *legal counselling"*. It provides indications as to how legal aid should be extended to cover *legal counselling* and be applied from the beginning of the administrative stage.

[6] IE-EU_Pact_National_Implementation_Plan_Ireland.pdf, p.107.

[7] See European Council on Refugee and Exiles's legal note "Guarantees of the EU Charter of Fundamental Rights in Respect of Legal Counselling, Assistance and Representation in Asylum Procedures", 07 August 2024 p. 5.

The Law Society submits that legal aid is a fundamental tool for ensuring access to justice. Article 47 of the Charter, which applies to international protection law, notes its importance "*legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice".*

In the context of administrative procedures for applications for international protection it is in the interest of the State and of the efficiency of the justice system that free legal counselling is made available to applicants from the beginning of the administrative stage. The determination of an application for international protection requires that the authority receives the most accurate information from the applicant concerning their situation[8]. It is common for applicants to be unaware of the criteria which will allow them to be granted international protection. The provision of *free legal counselling* at the initial phase of the application would accelerate the procedure and increase the quality of the applications thus avoiding a longer justice journey.

The Law Society submits that the legal aid scheme, and corresponding legislative provisions, should be amended to provide the right to be assessed for legal aid to cover *legal counselling* at the administrative stage prescribed by the General Scheme.

It should be noted that Article 18(4) APR and Article 21(8) AMMR provide a legal framework for financial support via the EU funds for the implementation of *free legal counselling.*

Head 41 – Notification of transfer decision

Head 41(2)(g) reads as follow

> "*A notification under Article 42(2) AMMR shall –*
> *(…)*
> *(g) provide information on how to access legal assistance under head yy (legal counselling/representation)"*

The EU Pact distinguishes between three rights: the right to legal counselling, the right to legal assistance and the right to legal representation. These 3 rights are clearly defined in head 2 of the General Scheme as follows:

> *""legal assistance" means legal aid or legal advice, within the meaning of the Civil Legal Aid Act 1995;*
>
> *"legal counselling" has the meaning assigned to it by head yy;*
>
> *"legal representative" means a practising solicitor or a practising barrister"*

Head 41(2)(g) seems to consider these three rights as being interchangeable.

Article 42(2) AMMR, which head 41 transposes, states that:

[8] See Council of Bars and Law Societies of Europe's note "CCBE recommendations on a framework on legal aid in the field of migration and international protection ".

"*Member States shall ensure that information on persons or entities that are able to provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1 (transfer decision), unless that information has already been communicated*" (emphasis added)

The Law Society submits that the General Scheme should correctly implement Article 42 (2) AMMR by adopting the following wording for Head 41(2)(g):

"*provide information on how to access legal assistance".*

Head 67 – Appeal to the SIB[9]

While the APR provides strict time limits for the various steps of the procedure, it allows Member States to lay down time limits for appeal against refusal decisions listed at Article 67(1) APR. However, this appeal period must be[10]:

(1) Between **a minimum of 5 days and a maximum of 10 days** in the case of a decision rejecting an application as inadmissible (implemented by head 33(4) of the General Scheme), as implicitly withdrawn (implemented by head 75 of the General Scheme), as unfounded or as manifestly unfounded in relation to both refugee and subsidiary protection status (implemented by head 64 of the General Scheme);
(2) Between **a minimum of 2 weeks and a maximum of 1 month** in all other cases.

Article 67(8) APR adds that time limits for the lodgement of an appeal shall start to run from the date of notification of the decision to the applicant.

These provisions of the EU Pact are transposed by head 67 of the General Scheme. Head 67(1) to (3) reads as follow:

"(1) An applicant as defined under Head 26 and a person subject to withdrawal of international protection shall have the right to an effective remedy before the SIB and may, in accordance with regulations under subhead (6) (if any), appeal to the SIB against the following:
(a) a decision, referred to in Head 33 (4), rejecting an application as inadmissible;
(b) a decision, referred to in Head 64 (5), rejecting an application as unfounded or rejecting an application as manifestly unfounded in relation to both refugee and subsidiary protection status;
(c) a decision, referred to in head 75, rejecting an application as implicitly withdrawn;
(d) a decision, referred to in head 74, withdrawing international protection;

[9] SIB refers to the Second Instance Body
[10] Art. 67(7) APR.

(e) a return decision issued in accordance with head 64 (5);
(f) a return order varied in accordance with head 84 (10).

(2) A notice of appeal under subhead (1) shall be submitted in writing to the SIB—
(a) within five days from the date of the decision under heads 33(4), 64(3), 64(4) and 75 is notified; or
(b) subject to subhead (3), within two weeks from the date of the sending to the applicant or person subject to withdrawal of international protection of the decision under heads 64 and 74(5).

(3) Where a return decision is issued together with a decision in subheads (1) (a), (b), (c) or (d), the return decision shall be appealed jointly with that decision within the timelines set out in subhead (2).”

It appears that there are typographical errors in head 67.

Head 67(1)(b) states " *a decision, referred to in **Head 64 (5),** rejecting an application as unfounded or rejecting an application as manifestly unfounded in relation to both refugee and subsidiary protection status”*. We note that decisions rejecting unfounded applications or manifestly unfounded applications are respectively defined at head 64(3) and (4), not 64(5).

Head 67(2)(b) provides for a period of two weeks to lodge an appeal against decisions issued pursuant to head 64. However, head 67(2)(a) already prescribes an appeal period of five days for decisions issued pursuant to head 64(3) and (4). It is also noted that head 74(5) referred to in head 67(2)(b) does not exist.

The Law Society submits that head 67(2)(b) should refer to time limits for appeals against decisions issued pursuant to **heads 64(5)** and **74**.

Starting point of the time limit for lodgement of an appeal

The Law Society submits that the time period “*within two weeks from the date of the sending to the applicant*…” prescribed in head 67(2)(b) introduces an undesirable degree of uncertainty as to the length of time to make an appeal and is contrary to the spirit and letter of Article 67(8) APR.

Article 67(8) APR:

“ The time limits referred to in paragraph 7 shall start to run from the date on which the decision of the determining authority or, in the case of withdrawal of international protection and where provided for by national law, of the competent court or tribunal <u>is notified to the applicant</u>, the person subject to withdrawal of international protection, the person recognised as eligible for subsidiary protection or to his or her representative or legal adviser legally representing the applicant. The procedure for notification shall be laid down in national law” (emphasis added).

Subsection (2)(b) provides for the appeal to be lodged within two weeks from the **date of sending** the refusal decision to the applicant. Commencing the time limit for the appeal from the date that the refusal decision is sent by post will introduce a possible reduction of the time open to the applicant to appeal the refusal decision. This could compromise their right to an effective remedy; and constitute a breach Article 67(7) APR by introducing a time limit inferior to the minimum prescribed.

In *I.M. v. France* and *R.D. v. France*[11], the ECtHR highlighted the importance of reasonable time limits for lodgements of appeals in asylum cases and recognised it as a component to the right to an effective remedy protected by Article 13 of the Convention.

Proposed amendment to Head 67(2)

The Law Society proposes that head 67(2)(b) be amended to reflect the practices in administrative law which rely on the **date of the decision** and not the **date of the sending** of the decision (which can take place later).

In addition, the Law Society suggests increasing the period to **three weeks** to allow for potential delay in delivery of the notification of the decision.

Revised head 67(2) (b)

> "*(2) A notice of appeal under subhead (1) shall be submitted in writing to the SIB—*
>
> *(a) within five days from the date of the decision under heads 33(4), 64(3), 64(4) and 75 is notified; or*
>
> *(b) subject to subhead (3), within three weeks from the date of the letter notifying the applicant or person subject to withdrawal of international protection of the decision under heads 64(5) and 74"*

Conclusion

The Law Society appreciates the opportunity to provide this submission to the Joint Oireachtas Committee on Justice, Home Affairs and Migration. The Law Society, in particular through its Human Rights and Equality Committee and also its Policy Department, remains available to assist the Joint Committee in the development of this legislation.

For further information on any aspect of this submission, please contact the Policy Department of the Law Society of Ireland at: PolicyTeam@LawSociety.ie

[11] ECtHR, I.*M. v. France,* application no. 9152/09, 2 February 2012, para. 154 (available in French only); ECtHR, *R.D. v. France*, application no. 34648/14, 16 June 2016, para. 56 (available in French only).

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