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Irish Centre for Human Rights

Age assessment of age-disputed unaccompanied minors in Ireland: *from current practice to a new system*

Authors: Ciara Smyth, Leah Doyle, Sarah Phelan, Wasekera Chiphazi Banda, Victoria Ugbodu, Leah Walker, Vebi Levni, Nicole Cumiskey, Meklit Bekelle, Laine Stover and Emma Roquel

University of Galway.ie

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1. Introduction

Unaccompanied minors (UAM) who arrive in Ireland seeking international protection are not treated the same as adults.[1] They are taken into the care of the Child and Family Agency (Tusla), accommodated separately from adults, placed under the supervision of a social worker, placed in education, assisted in making an application for international protection (where appropriate) and supported throughout that process. This is broadly consistent with international obligations and international best practice.[2] However, there is currently a significant issue relating to age assessment of age-disputed unaccompanied children. Without appropriate age assessment, age-disputed unaccompanied children are treated as adults and do not benefit from the system described above. This raises serious concerns as regards child safeguarding and protection, access to justice and to appropriate social support, and compliance with the rights of the child. To provide a vivid example, over the past two years some minors have been incorrectly assessed as adults and, owing to the shortage of adult asylum accommodation, have been rendered street homeless, although some have subsequently been taken into the care of the State following an age assessment review.[3] The current system of age assessment is about to be overhauled as the EU Pact on Migration and Asylum – and specifically the Asylum Procedures Regulation (APR) – takes effect from June 2026.[4] Set against the backdrop of the current problematic system of age assessment, this paper outlines the contours of the new age assessment process in the APR and considers the options for Ireland as it moves towards implementation.

2. Current age assessment law, policy and practice in Ireland

Under Section 14(1) of the International Protection Act 2015 (IPA), where it appears to an immigration officer or the International Protection Office (IPO) that an UAM is seeking to make an application for international protection, the UAM is referred to Tusla.[5] Thereafter,

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[1] Various terms are used to describe applicants for international protection who are under 18 and unaccompanied by a family member or other person with legal responsibility for them, including 'unaccompanied children' and 'separated children'. The term 'unaccompanied minors' is used here as this is the term used in the Asylum Procedures Regulation and in the General Scheme of the International Protection Bill.

[2] However, there are issues with Tusla's ability to carry out its statutory mandate relating to UAMs. See report of HIQA monitoring inspection of Separated Children Seeking International Protection Service, January and February 2025: www.hiqa.ie/ga/system/files?file=inspectionreports/8511_CPW_SCIP_20250128.pdf [accessed 24 September 2025]. There is also concern about Tusla's proposed Model of Care for Separated Children Seeking International Protection Service. See Children's Rights Alliance, 'Submission on Tusla draft Model of Care for Separated Children Seeking International Protection Service', November 2024: https://childrensrights.ie/wp-content/uploads/2024/12/Submission-on-Tusla-SCSIP-Model-of-Care_November-2024.pdf [accessed 24 September 2025]. These broader issues lie outside the scope of this paper.

[3] See *S.Y. (a minor) v the Minister for Children, Equality, Disability, Integration and Youth & Ors* [2023] IEHC 187.

[4] Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

[5] Irish law on age assessment is currently governed by the 2005 Asylum Procedures Directive (Council Directive 2005/85/EC), Article 17(5). This provision is limited to medical examinations for age assessment. Although medical examinations for age assessment are foreseen in the IPA 2015, Ireland has never used this

per Section 14(2) IPA, 'it shall be presumed that the person concerned is a child and the Child Care Acts 1991 to 2013, the Child and Family Agency Act 2013 and other enactments relating to the care and welfare of persons who have not attained the age of 18 years shall apply accordingly.' Although there is no express provision to this effect, Tusla may conduct an age assessment in order to satisfy itself that the applicant is a child – subject to the presumption of minority above. This is consistent with its statutory mandate to provide services to *children* in need of care and protection. One of the statutory services that Tusla provides, pursuant to Section 15(4) IPA, is to assess whether an application for international protection should be made on behalf of the UAM and to represent and assist the child in that process. Another service, pursuant to Section 24(3) IPA, relates to the age assessment process arranged by the IPO where there is reasonable cause for doubt as to an applicant's age. Here, the age assessment cannot proceed without the applicant or Tusla's consent. Such consent is one of a number of statutory safeguards relating to age assessment, including the prior provision of information on the age assessment procedure, the consequences of non-compliance, the choice of age assessment method, and the need to safeguard the dignity and the best interests of the child.

The chronology of events and the respective statutory competences of the IPO and Tusla described above lead to the firm conclusion that the responsibility for age assessment in the international protection (IP) status determination context rests at all times with the IPO. This is not to suggest that Tusla should not conduct age assessment for the specific and limited purpose of deciding whether an applicant comes within the scope of its services. But that is a separate process. In practice, however, the IPO relies exclusively on the Tusla age assessment. This is highly problematic: such practice is without legal foundation; it does not meet the statutory safeguards for age assessment laid down in the IPA; and it places Tusla in a conflict of interest situation, whereby it is *conducting* age assessment for the very process it is supposed to be *representing* the child in. Furthermore, the Tusla age assessment practice is itself fraught with difficulties.

Until recently, Tusla had no policy or approved internal guidelines regulating age assessment procedures.[6] Nonetheless, Tusla did have an established age assessment practice, whereby a social worker from the dedicated Team for Separated Children Seeking International Protection interviewed the child/young person and assessed their age based on presenting information, including the young person's narrative, presentation and appearance. According to the Irish Refugee Council's Law Centre, the practice of social workers was variable, with some assessments being cursory and subjective.[7] In some cases, identity documents that established the age of the child were discounted as being false, without any attempt at verification. Furthermore, Tusla was not adequately funded or resourced to carry out age

mode of age assessment. Accordingly, the Asylum Procedures Directive is not relevant to age assessment practice in Ireland. Ireland did not opt into the 2013 Recast Asylum Procedures Directive (2013/32/EU), which sets standards for other forms of age assessment.

[6] Report by Ciara Ross on behalf of the Irish Refugee Council, 'Input by civil society organisations to the Asylum Report 2024' (*European Union Agency for Asylum*, 2024) <https://euaa.europa.eu/sites/default/files/2024-02/irish_refugee_council.pdf> [accessed 04 May 2025].

[7] Reported to the authors as part of the scoping exercise conducted for this study, 13 February 2025.

assessment for international protection purposes.[8] This meant that pending age assessments were subject to lengthy delays, during which time the applicant was considered to be an adult. Finally, the age assessment decision was not amenable to independent appeal: a legal challenge simply resulted in an internal reassessment by another social worker from the same team. While awaiting the reassessment – which could take months – the child was considered and treated as an adult.[9]

In 2022, Tusla conducted a review of its age assessment procedure and in March 2023 produced new (unpublished) procedural guidance on 'Eligibility for Services for Separated Children Seeking International Protection' (Eligibility Guidelines).[10] Based loosely on EASO guidelines on age assessment, the new procedure is considerably more robust than the previous ad hoc practice.[11] It entails a day-long assessment (extendable where necessary) by a social worker, and encompasses a range of assessment criteria, such as personal data, documentation, social and family history, education, personal and social development, self-care skills, health and emotional well-being, family support, physical appearance, and the interaction of the person during the assessment. The child is entitled to be supported by a support person, such as a friend or an NGO, and an advocate, whose role is to support the child to engage with the assessment to ensure that the child's views are heard. The assessing social worker is to adopt a collaborative approach and the principle of the benefit of the doubt is to apply to borderline cases. Furthermore, age assessment is indicated only where age is in dispute, and identity documents are to be taken as genuine unless there are indications to the contrary. Finally, there is a *de novo* appeal by an appeals committee, comprising a psychologist, social worker from a different team and an administrator.

However, the Eligibility Guidelines are not being consistently applied in practice. According to the Irish Refugee Council's Law Centre, some age assessments carried out by Tusla are characterised by:

- The lack of a fully reasoned decision
- An undue emphasis on the child/young person's physical features and personal characteristics
- A failure to take account of the impact of trauma
- A failure to take a detailed personal history/personal statement
- A failure to conduct a prior best interests assessment and to apply the presumption of minority

[8] See generally, Joint Committee on Children, Equality, Disability, Integration and Youth debate, Tuesday 27 June 2023: www.oireachtas.ie/en/debates/debate/joint_committee_on_children_equality_disability_integration_and_youth/2023-06-27/2/ [accessed 24 September 2025].

[9] See the input of Dr Fiona O'Reilly, of Safetynet, to the Joint Committee on Children, Equality, Disability, Integration and Youth debate, ibid.

[10] Tusla, Procedural Guidance and Assessment Framework for the Determination of Eligibility for Services under the Child Care Act 1991 for Separated Children Seeking International Protection, 2023.

[11] EASO, 'EASO Practical Guide on Age Assessment', 2nd Edition, 2018 [hereafter, EASO Practical Guide].

- A failure to give due account to identity documents submitted, including those submitted after the assessment
- A failure to establish the appeals committee
- Long delays waiting for internal reviews during which there is no suspensive effect.[12]

Furthermore, even if the Eligibility Guidelines were being fully implemented, there remains no statutory basis for the IPO to rely on Tusla's age assessment procedure. However, this is shortly about to change.

3. The new legal framework on age assessment

A new legal basis for age assessment in Ireland applies from June 2026, when the EU Pact on Migration and Asylum, and specifically, the APR, takes effect. The APR authorises the determining authority to undertake age assessment in age-disputed cases and establishes detailed mandatory standards for such assessment, including in relation to the representative. It also authorises Member States to conduct medical examinations in certain circumstances. Such examinations are controversial, as discussed below, and not currently used in Ireland. The Department of Justice, Home Affairs and Migration has drafted a scheme of the implementing legislation – the General Scheme of the International Protection Bill 2025.[13] The provision on age assessment is currently blank, indicating that the issue is still under consideration.

Accordingly, it is an opportune moment to analyse the new EU law requirements, which must be reflected in the forthcoming Irish legislation, policy and practice. The following sub-sections analyse the age assessment provisions of the APR in light of the literature on age assessment (both scholarly and grey) and relevant human rights standards. Each sub-section is structured as a question, which must be answered in the forthcoming Irish legislation, and identifies the best practice response. However, it should be noted that this brief advocacy document cannot take the place of more comprehensive guidance on age assessment, such as the in-depth soft-law guidance on age assessment provided by EASO (now the EUAA) or the detailed measures to safeguard human rights elaborated by child rights experts and adopted by the Committee of Ministers of the Council of Europe.[14]

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[12] Irish Refugee Council's response to the Review of Tusla's Intake and Eligibility Assessment to determine eligibility for services under The Child Care Act 1991.

[13] https://assets.gov.ie/static/documents/General_Scheme_International_Protection_Bill_2025.pdf [accessed 24 September 2025].

[14] EASO Practical Guide, above n. 11. Council of Europe, 'Human Rights Principles and Guidelines on Age Assessment in the Context of Migration', Recommendation CM/Rec (2022) 22 of the Committee of Ministers and Explanatory Memorandum. See further, Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22, 16 November 2017.

3.1 Age assessment: who is responsible for what?

3.1.1 The determining authority

Article 25(1) APR provides, inter alia:

> Where, as a result of statements by the applicant, available documentary evidence or other relevant indications, there are doubts as to whether or not an applicant is a minor, *the determining authority* may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by *qualified professionals*, to determine the applicant's age *within the framework of the examination of an application.*[15]

Accordingly, ***the determining authority is the entity authorised to undertake age assessment***, including the (prior) decision that age assessment is necessary. Per Article 3(16) APR, 'determining authority' means 'any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection and competent to take decisions under the administrative procedure.' In the General Scheme of the International Protection Bill (IPB), the terms 'the Minister' and 'officer of the Minister' are used to designate the determining authority (hereinafter the term 'the Minister' is used).

Although the Minister has the responsibility for age assessment, per Article 25(1) APR it is a multidisciplinary (including a psychosocial) assessment, which must be carried out by qualified professionals. The requirement of multi-disciplinarity indicates the collective involvement of several different professionals who are able, in the words of the Committee of Ministers of the Council of Europe, 'to make an estimation of a person's age, giving due consideration to physical, psychological, developmental, environmental and socio-cultural factors, and which is grounded in evidence-based knowledge, methods and practice.'[16] Accordingly, the relevant professionals must be knowledgeable, not only within their own professional field, but also in the field of age assessment. The specific reference to psychosocial assessments suggests the involvement of social workers or psychologists. The regulation is silent on whether such professionals should be hired directly by the determining authority or be contracted by the determining authority to carry out age assessment functions. In the event of the latter, it is important to note that the ***age assessment professionals should not come from the same organisation that represents the child in the age assessment process in order to avoid any possible conflict of interest.***

3.1.2 The representative

The above proposition follows from Article 23 APR, which provides for the appointment of a provisional representative and subsequently (within 15 days) a representative. The role of the provisional representative is to safeguard the best interests of the child and to represent the child until the representative is appointed. This role includes the duty 'where applicable [to] assist *the unaccompanied minor* in relation to the age-assessment procedure referred to in

[15] Emphasis added.

[16] Council of Europe, above n. 14, p. 15. See further Separated Children in Europe Programme, SCEP Statement of Good Practice 4th Revised Edition (SCEP 2009) 25.

Article 25.' As for the representative, he/she is also required to perform his/her functions in accordance with the best interests of the child but there are a longer list of tasks, which include 'where applicable, [to] assist *with the age-assessment procedure* referred to in Article 25.' While this slight difference in wording between the role of the provisional representative and the representative as regards age assessment might suggest that the representative can actually carry out the age assessment, such interpretation is at variance with the overarching duty of the representative to act in the best interests of the child.[17] It is also at odds with the stipulation in Article 23 that 'organisations or natural persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be appointed as representative'. According to EASO guidance in 2018 relating to the (less developed) recast Asylum Procedures Directive, 'the representative must be independent in order to avoid any conflict of interests, thus ensuring that he or she acts in the best interests of the child.'[18] Therefore, it is clear that the representative cannot conduct the age assessment.

Under Head 141 of the General Scheme of the IBP, Tusla can designate one or more organisations, including itself, to act as a representative organisation and the representative organisation must appoint a representative (or a provisional representative until the representative is appointed) to a UAM. The exact tasks of the representative are set out in some detail in Head 141(10). They generally involve *assisting the UAM* in various ways in relation to the procedures set out in the act, including 'safeguard[ing] the minor's best interests'. However, Head 141(10)(f) tasks the representative, where applicable, to 'assist *with the age assessment procedure* referred to [in the Head on age assessment].' Unfortunately, the latter head is currently blank. Nonetheless, the duty to assist with the age assessment procedure rather than to assist the UAM in relation to the age assessment procedure is worrying and arguably not in compliance with Article 23 APR when read in its totality. In this regard, ***the IPB should clarify that the role of the representative is to assist and represent the UAM in any age assessment process conducted by the Minister.***

3.1.3 The legal adviser and interpreter

In addition to the representative, two other actors play an important role in the age assessment process: the legal advisor and the interpreter. Article 23(6) APR specifies that the various tasks of the representative – including in relation to age assessment – should be undertaken 'where appropriate together with the legal advisor'. However, the term 'legal advisor' in the APR means a legal advisor sourced and paid for by the applicant him/herself, which would be out of reach for UAMs. In terms of free legal aid, the APR requires Member States to make full legal advice and representation available at the appeal stage only; at the first instance stage, the requirement is simply to make 'legal counselling' available (although Member States may opt to make legal advice and representation at any stage).[19] However, it is submitted that 'legal counselling', the precise content of which is unclear in the Pact, may not add significantly to what the representative is already doing. In this regard, what UAMs need

[17] See further Recital 37 APR.
[18] EASO Practical Guide, above n. 11, p. 26.
[19] Section III.

is full legal advice and representation.[20] This is underscored by the complexity of age assessment, as discussed throughout this document. Although the provision of the General Scheme of the IPB on age assessment is currently blank, the General Scheme does reflect the provisions of the APR on legal counselling. Hence, there is a risk that legal support for age-disputed UAM in the Irish legislation will be limited to legal counselling.

As regards interpretation, Article 8(3) APR provides that 'during the administrative procedure, applicants shall be provided with the [free] services of an interpreter for the purpose of registering and lodging an application and, where applicable, for the personal interview, whenever appropriate communication cannot be otherwise ensured.' No mention is made of age assessment. However, this omission should not be interpreted to mean that the services of an interpreter can be dispensed with. On the contrary, it is hard to see how the representative, the determining authority, the professionals involved in the multi-disciplinary assessment and the legal adviser could possibly acquit their responsibilities in the absence of an interpreter. The General Scheme of the IPB reflects the provisions of the APR in relation to interpretation. It is hoped that the (currently blank) Head that deals with age assessment will make an explicit reference to the *right* of applicants to interpretation.

Indeed, the appointment of a legal adviser and an interpreter are closely connected to a number of important rights of the child in the CRC, and have been pronounced on several times by the Committee on the Rights of the Child. In *J.A.B v Spain*, the applicant was denied legal representation and an interpreter during age assessment, violating both his right to be heard and his associated right to effective procedural protection (Article 12 CRC).[21] In *S.E.M.A v France,* the applicant's interview lasted only one hour and was conducted with an interpreter who spoke a language the applicant did not understand well.[22] The Committee considered this a failure to ensure the child's right to be heard. In *A.M v Switzerland*, the failure to assign legal representation at an early stage undermined the guarantee of the child's best interests (Article 3) and right to be heard.[23] In light of this jurisprudence, it is submitted that the ***IPB should specify that age-disputed UAM are entitled to free legal advice and representation and the services of an interpreter***.

3.1.4 An appeals mechanism

According to ECRE, '[o]ne of the most consistent concerns in the age assessment practices of migrant children [in the EU] is the lack of an effective remedy to challenge the result.'[24] This is consistent with current Irish practice, as discussed earlier. Although the APR is silent on whether there is a right of appeal in the age assessment context, it is submitted that this right flows directly from Article 47 of the Charter of Fundamental Rights of the EU, which provides that '[e]veryone whose rights and freedoms guaranteed by the law of the Union are

[20] See, in this regard, Committee on the Rights of the Child, General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, 1 September 2005, para. 36.
[21] Committee on the Rights of the Child, *J.A.B. v Spain*, CRC/C/81/D/22/2017.
[22] Committee on the Rights of the Child, *S.E.M.A. v France*, CRC/C/92/D/130/2020.
[23] Committee on the Rights of the Child, *A.M. v Switzerland*, CRC/C/96/D/80/2019.
[24] ECRE, Age Assessment in Europe, 2022, p. 4.

violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.' The law of the Union includes the detailed rules regarding age assessment laid down in the APR as previously discussed. Union law also includes relevant Charter rights, such as the right to dignity (Article 1), the right to the integrity of the person (Article 2), the right to privacy (Article 7), and the principle of the best interests of the child and the right of the child to be heard in all matters concerning the child (Article 24). Article 47 of the Charter also establishes important procedural guarantees: a fair hearing within a reasonable time by an independent and impartial tribunal previously established by law; the possibility of being advised, defended and represented; and access to legal aid where 'such aid is necessary to ensure effective access to justice'. Ideally, there should be a right to appeal the age assessment decision, separate and distinct from the right to appeal the outcome of the first instance international protection decision.[25] At minimum, as advised by the EASO, 'if there is no separate right of appeal against the result of the age assessment decision itself, the opportunity to challenge the outcome through judicial review or as part of the consideration of the overall protection claim should be available.'[26] As previously observed, the head of the General Scheme of the IPB dealing with age assessment is currently blank, so the official position on an appeals mechanism is unknown. It is recommended that ***the IBP establish a direct right of appeal of the age assessment decision to a body that is not the determining authority.***

3.2 Age assessment: when should it be initiated?

Article 25(1) APR specifies that age assessment may be indicated where there are doubts about the applicant's minority 'as a result of statements by the applicant, available documentary evidence or other relevant indications'. It follows that ***age assessment is not required in the case of all applicants claiming or suspected to be children***. This is consistent with the jurisprudence. For example in *Darboe and Camara v Italy*, the European Court of Human Rights (ECtHR) underscored 'the primary importance of the best interests of the child and of the principle of presumption of minority in respect of unaccompanied migrant children reaching Europe.'[27]Accordingly, any age assessment must be preceded by a preliminary assessment that the stated age of the applicant is doubtful and that age assessment is therefore required. In other words, a two-stage process is required: the preliminary assessment and the (full) age assessment.[28]

It seems likely that the preliminary assessment will be undertaken in the context of the screening procedure. Under the Screening Regulation certain cohorts of IPAs (e.g. those who

[25] See Children's Rights Alliance, 'Submission on Ireland's National Implementation Plan for EU Pact on Migration and Asylum', December 2024, p. 13.
[26] EASO Practical Guide, above n. 11, p. 37.
[27] ECtHR, *Darboe and Camara v. Italy*, Application No. 5797/17, 21 July 2022, para. 139.
[28] EASO advises that 'it is important to ensure a rest and recovery period between the first analysis of evidence, which may be conducted upon arrival, and a fully-fledged age assessment. Thus, a two-stage age assessment process is deemed to be the most appropriate channel to conduct an efficient and safe age assessment.' EASO Practical Guide, above n. 11, p. 42.

apply at the border having entered irregularly and those who apply in land having apparently entered irregularly) must be screened for identity and national security purposes and to be channelled into the correct procedure.[29] Screening also includes a preliminary 'vulnerability screening' to identify persons with special needs, such as UAM. However, per Head 11 of the General Scheme of the IPB, Ireland is choosing to apply the screening process envisaged in the Screening Regulation to *all* IPAs. All IPAs will be required to go to a designated screening centre for seven days (extendable in certain circumstances). The Minister (or in EU law terms, the designated authority) has responsibility for the screening process.[30] When it comes to the preliminary vulnerability assessment, this is to be undertaken by 'specialist personnel of the screening authority trained for that purpose' and may be assisted by 'nongovernmental organisations and, where relevant, by registered medical personnel or personnel of other competent authorities.'[31] Their role is to identify persons with special needs, including UAM. Head 20(3) establishes that, in the case of UAM, the representative or provisional representative envisaged in Head 141 (discussed above) is available to support the minor with:

- The provision of information on the screening process in a child-friendly and age-appropriate manner
- Complying with his/her obligations during the screening procedure and the duty to cooperate in the assessment of facts and circumstances relating to his/her claim for international protection
- Communicating with the Minister during the screening procedure.

The General Scheme of the IPB, like the Screening Regulation, is silent on how the UAM is to be identified and there is no mention whatsoever of age assessment. This is unfortunate because the preliminary assessment is more complex than it might first appear. Recall the three factors listed in Article 25(1) APR as causes of doubt about the applicant's age and which may trigger the need for a full age assessment (the applicant's statements, available documentary evidence and other relevant indications). These are not *necessarily* cause for doubt and require careful evaluation.

It is useful to consider 'statements by the applicant' and 'other relevant indications' – which is likely to be a euphemism for the applicant's appearance and demeanour – together. Both are likely to be appraised in the context of a preliminary (screening) interview. Such interviews typically involve evaluating an individual's appearance, including hair, skin, build, voice pitch, and demeanour, as well as statements and biographical information to estimate date of birth.[32] This method of assessment has been criticised because, absent very specific training in age assessment, it is easy to under or over-estimate age based on subconscious

[29] Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817.
[30] Head 15.
[31] Head 19(2).
[32] Ukrike Bialas, 'Who is a Minor? Age Assessments of Refugees in Germany and the Classificatory Multiplicity of the State' (2025) 48 Ethnic and Racial Studies 740.

cultural and political biases.[33] Although there is a relationship between physical appearance and human biology, Sorsveen and Ursin argue that 'how we ascribe meaning to biological features is socially and culturally situated.'[34] Bialas futher notes that a challenging childhood and traumatic flight may cause an individual to outwardly appear older than their chronological age, but at the same time be delayed in their emotional and social development.[35] Visual assessments that an individual does not 'look like a child' or 'behave like a child' are based on socially-constructed ideas about how a child should look and behave.[36] The reliance on visual assessments in Ireland, coupled with a brief interview, has been criticised by NGOs (as discussed earlier) and in the scholarship.[37] Article 25(2) APR provides that 'the assessment of age shall not be based solely on the applicant's physical appearance or behaviour.' While this applies to the age assessment proper, the underlying principle – which is that such forms of assessment are dubious – also surely applies to the preliminary interview.

As for available documentary evidence as a cause for doubt, this must be read in the light of an important proviso in Article 25(1) APR, which states that such documents 'shall be considered genuine, unless there is evidence to the contrary and statements by minors shall be taken into consideration'. This essentially establishes that, absent evidence to the contrary, the benefit of the doubt should be given when assessing available documents and the applicant's statements. This is significant in light of the widespread practice, in Ireland and elsewhere, of summarily rejecting documentary evidence without any attempt at verification. An example of such practice was vividly illustrated in the recent ECtHR judgment in *F.B. v Belgium*.[38] Here the applicant had produced a non-legalised copy of her birth certificate. This was rejected and she was subjected to a medical age examination, which indicated that she was an adult. The applicant subsequently supplied the original of a judgment issued by a domestic court in her country of origin, serving as a birth certificate, and an original short-form birth certificate, both establishing that she was a minor. However, these documents were rejected by the Belgian authorites as having no evidential value and the results of the medical age assessments were upheld. The ECtHR found a violation of Article 8 of the European Convention on Human Rights (ECHR) relating to the right to privacy.

The UN Committee on the Rights of the Child also has an established jurisprudence on the summary rejection of documentary evidence of age and its (non) compliance with various rights in the Convention on the Rights of the Child (CRC). In *J.A.B. v Spain*, the Committee

[33]Anders Hjern, Maria Brendler-Lindqvist and Marie Norredam, 'Age Assessment of Young Asylum Seekers' (2012) 101 Acta Paediatrica 4.

[34] Aurora T Sørsveen and Marit Ursin, 'Constructions of "the Ageless" Asylum Seekers: An Analysis of How Age Is Understood among Professionals Working within the Norwegian Immigration Authorities' (2021) 35 Children & Society 198.

[35] Bialas, above n. 32.

[36] Mary Anne Kenny and Maryanne Loughry,'Addressing the limitations of age determination for unaccompanied minors: A way forward' (2018) 92 Children and Youth Services Review, 15.

[37] See, for example, Samantha Arnold and Muireann Ni Raghallaigh 'Unaccompanied Minors in Ireland: Current Law, Policy and Practice (2017) 15(1) Social Work and Society, 1.

[38] ECtHR, *F.B. v Belgium*, Application No. 47836/21, 06 June 2025.

on the Rights of the Child held that the refusal to acknowledge the original birth certificate of the applicant, which attested to the fact that he was a minor, was a violation of the requirement to make the best interests of the child a primary consideration in Article 3 of the CRC.[39] In *A.L v Spain,* the applicant was declared an adult based on a single wrist X-ray, and on that basis he was held in a holding centre for foreign adult nationals.[40] Subsequently, a birth certificate confirming he was a minor was not considered by the Spanish authorities. The Committee found that the failure to apply the benefit of the doubt violated both Articles 3 and 12 of the Convention – the latter relating to the right of the child to be heard. Similarly, in *S.E.M.A v France,* the Committee noted that the applicant's documents were dismissed without verification and the authorities failed to apply the benefit of the doubt, as a result of which the applicant was not provided with shelter until the day of his 18th birthday. [41]

The summary rejection of documentary evidence may also amount to a violation of the child's right to an identity, protected in Article 8 CRC. In *A.L. v Spain,* the authorities disregarded a valid Algerian birth certificate and instead relied on an X-ray.[42] Similarly, in *J.A.B v Spain,* the child's Cameroonian birth certificate was dismissed without investigation, leading to the attribution of a false date of birth and a breach of the right to identity.[43] In *S.E.M.A v France,* the Committee held that authorities failed in their duty to verify identity documents and instead presumed them to be inauthentic. In each case, the State was held to have violated the child's right to an identity.[44]

To summarise the discussion so far, ***age assessment should not be a standard practice*** but initiated only where there are established reasons for doubting the applicant's minority arising from his/her statements, presentation or documents. Such reasons should be assessed in a preliminary phase and it seems likely that this will be during screening. However***, important safeguards in the APR, in relevant jurisprudence and in best practice guidance relating to evidential evaluation and the benefit of the doubt need to be reflected in the IPB***. It goes without saying that ***the screening procedure is not the forum for a full age assessment***. This follows from Article 25(1) APR which specifies that age assessment may take place 'within the framework of the examination of an application'. In this regard, the screening procedure necessarily precedes the examination of an application.

A final point on the question of when age assessment should be conducted relates to the status of the UAM during and after the age assessment process. While awaiting age assessment, the principle of the benefit of the doubt applies and the applicant should be presumed to be a child until it is established otherwise.[45] Following age assessment, the applicant should have the possibility of appealing the outcome, with suspensive effect. In

[39] Committee on the Rights of the Child, *J.A.B. v Spain*, above n. 21.
[40] Committee on the Rights of the Child, *A.L. v Spain*, CRC/C/81/D/16/2017.
[41] Committee on the Rights of the Child, *S.E.M.A. v France*, above n. 22.
[42] Committee on the Rights of the Child, *A.L. v Spain,* above n. 40.
[43] Committee on the Rights of the Child, *J.A.B. v Spain*, above n. 21.
[44] Committee on the Rights of the Child, *S.E.M.A. v France,* above n. 22.
[45] See the EASO Practical Guide, above n. 11, for a thorough discussion of the principle of the benefit of the doubt as it applies to every stage of the age assessment process.

other words, the applicant should be treated as a child until the appeal is decided. Accordingly, it is submitted that ***the IPB should specify that principle of the benefit of the doubt applies during age assessment and while awaiting the outcome of any appeal***.

3.3 Age assessment: how?

Article 25 APR envisages three types of age assessment: 1) the non-medical, multi-disciplinary age assessment, which is the one conducted in the first instance; 2) the medical examination, which may be conducted if there are still doubts about age following the multi-disciplinary age assessment; and 3) the holistic assessment, which requires that the results from the multi-disciplinary assessment and the medical examination are analysed together.

3.3.1 Non-medical age assessment

Article 25(1) authorises the determining authority to 'undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the applicant's age within the framework of the examination of an application.' Psychosocial interviews involve questioning individuals about their life experiences, education, family composition, and the birth dates of other family members to estimate their age.[46] However, Kenny and Loughry note that achieving reliable results from such interviews may be challenging.[47] Young people who have been through traumatic experiences which may lead them to present as more or less mature. Those with significant mental health issues may struggle to recall dates and times accurately. There is also a significant cultural component to the ability to relay information in a chronological manner.[48] Nonetheless, with appropriate training and guidance, psychosocial interviews can be useful, as evidenced by the so-called 'Merton-compliant assessment' in the UK. Furthermore, they allow the voice of the child to be heard and to be given due weight in accordance with the age and maturity of the child, which is a requirement of Article 12 CRC. In this regard, the APR helpfully specifies that 'statements by minors shall be taken into consideration' for the purposes of age assessment. It is submitted that ***the current Tusla guidelines on age assessment are a good starting point for developing a model for psychosocial interviews*** – with the caveat that it should <u>not</u> be Tusla doing the age assessment (at least not for the purposes of the international protection procedure).

3.3.2 Medical examinations

Article 25(2) APR provides that 'where there are still doubts as to the age of an applicant following the multi-disciplinary assessment, medical examinations may be used as a measure of last resort to determine the applicant's age within the framework of the examination of an application.' Accordingly, there is no EU law requirement to carry out medical age assessment, but Member States may choose to do so as a measure of last resort. The issue of

[46] Hjern, Brendler-Lindqvist and Norredam, above n. 33.
[47] Kenny and Loughry, above n. 36, 18.
[48] Pia Zambelli, 'Hearing Differently: Knowledge-Based Approaches to Assessment of Refugee Narrative' (2017) 29(1) International Journal of Refugee Law, 10.

medical examinations for age assessment is extremely problematic and cumbersome, as detailed below, at it is recommended that Ireland avoid introducing such examinations in IPB.

The EUAA divides medical examinations into two groups: those involving radiation (X-rays) and those which are radiation-free. Those involving radiation are controversial because, from a medical ethics perspective, X-rays are usually only undertaken when required for *medical* purposes, where the benefits of a clear medical diagnosis and corresponding treatment pathway outweigh the risks of radiation.[49] In the age assessment context, X-rays are being used for entirely non-medical purposes and, furthermore, may not lead to a clear 'diagnosis' of age because they are insufficiently precise.

The most common method for skeletal assessment is the analysis of the hand and wrist (carpal bones) using the Greulich and Pyle (GP) and Tanner-Whitehouse (TW) atlases.[50] However, the standard X-ray hands for comparison on the GP and WT atlases are based on a 1930-1940 American and a 1950's British Caucasian population.[51] Similarly, dental assessments calculate the root development and mineralisation of the third molars, which are the only teeth still forming during the relevant age interval.[52] The scholarship has identified significant concerns with the skeletal and dental age assessment methods, including the fact that there is not necessarily a relationship between the skeletal age and chronological age of an individual.[53] Different factors such as ethnic, genetic, endocrinal, socio-economic, nutritional, and medical conditions can influence the skeletal age.[54] Additionally, stress may affect physiological growth and maturation in complex ways.[55] In *A.L. v Spain*, the UN Committee on the Rights of the Child criticised the use of a single wrist X-ray based on the Greulich and Pyle atlas as the sole basis for determining age.[56] The Committee held that such methods are insufficient and that age determination must involve a comprehensive evaluation that respects the dignity of the child.

Similarly, the Demirjian method, which is widely used in dental assessments, has attracted considerable criticism. It is based on an analysis of the development stages of specific permanent teeth in the lower left dental arch. This method has been criticised for its overestimation of actual chronological tooth age.[57] Nuzzolese and Di Vella also point out that children from different racial and ethnic backgrounds may develop bones and teeth differently,

[49] Danilo Buonsenso and others, 'Age Assessment of Unaccompanied Foreign Minors: An Analyses of Knowledge and Practices among Italian Pediatricians' (2024) 50 Italian Journal of Pediatrics 151, 2.
[50] Hjern, Brendler-Lindqvist and Norredam, above n. 33.
[51] Henriette D. C. Roscam Abbing, 'Age Determination of Unaccompanied Asylum Seeking Minors in the European Union: A Health Law Perspective' (2011) 18(1) European Journal of Health Law, 11.
[52] Emilio Nuzzolese and Giancarlo Di Vella, 'Forensic Dental Investigations and Age Assessment of Asylum Seekers' (2008) 58 International Dental Journal 122.
[53] Roscam Abbing above n. 51; Kenny and Loughry above n. 36.
[54] Roscam Abbing, ibid.
[55] Gregor Noll, 'Junk Science? Four Arguments against the Radiological Age Assessment of Unaccompanied Minors Seeking Asylum' (2016) 28 International Journal of Refugee Law 234.
[56] Committee on the Rights of the Child, *A.L. v Spain*, above n. 40.
[57] Noll, above n. 55.

and some conditions can cause a delay in tooth eruption.[58] Additionally, most assessments of wisdom teeth calculate only probabilities for an individual to be under or over 18, and do not reach a high degree of confidence.[59]

Radiation-free methods involve dental assessments and skeletal assessments (hand/wrist, knee, clavicle) using MRI or ultrasound. However, as regards MRI, the cost may be prohibitive and the scan itself may be contra-indicated for some applicants, for example, because it requires subjects to stay still for a long period in an enclosed space at high volume.[60] As for ultrasound, studies have found that this method is 'not yet be considered a valid replacement for bone age assessment since the growth stages are not always visualised.'[61] A final radiation-free method involving no technology is the physical development assessment (otherwise known as the sexual maturation observation). This involves a physical inspection of the applicant with a focus on secondary sexual characteristics, measured against the average age for sexual maturity. However, the EUAA has unambiguously stated that it 'considers that no method implying nudity or the examination of genitalia as a sexual maturity observation should be used under any circumstance.'[62]

As observed by the EUAA, the choice of method of medical age examination involves balancing intrusiveness and accuracy. No method is entirely accurate. Indeed, Kenny and Loughry note the difficulties in assessing the age of individuals between the ages of 15 and 18 years, with a margin of error that can be plus or minus 5 years of age.[63] This margin of error increases where where the individual has undergone puberty.[64] In recognition of these complexities, the APR states that 'Where the result of the [medical] age assessment […] is not conclusive with regard to the applicant's age or includes an age-range below 18 years, Member States shall assume that the applicant is a minor.'[65] Indeed, since the margin of error can only safely be discounted where the individual is very young (in which case one wonders why an age assessment was necessary in the first place) or very old relative to the age of minority, this means that medical age assessment is of limited practical utility.

Resort to medical age assessment is subject to a number of further requirements in the APR. It must be 'the least invasive possible and be performed with full respect for the individual's dignity'.[66] Since medical examinations involving radiation, as well as the physical development assessment, are invasive, as discussed above, this would seem to discount such methods. This leaves the radiation-free methods of MRI, which may be contra-indicated, and ultrasound, whose reliability is low.

[58] Nuzzolese and Di Vella, above n. 52.
[59] Ibid.
[60] EASO Practical Guide, above n. 11, p. 53.
[61] Ibid, p. 54.
[62] Ibid, p. 55.
[63] Kenny and Loughry, above n. 36.
[64] Danilo Buonsenso and others, above n. 49.
[65] APR, Article 25(2).
[66] APR, Article 25(3).

Article 25(2) APR provides that medical examinations may only be used 'where there are still doubts as to the age of an applicant following the multi-disciplinary assessment [and] as a measure of last resort'. The fact that medical assessments should only be used as a measure of last resort was underscored by the ECtHR in *F.B. v Belgium,* mentioned above.[67] There, the Court found that the State's reliance on medical age assessment (triple bone test consisting of hand and wrist, collarbone and dental X-rays) as a *first* resort was inconsistent with the applicant's right to privacy in Article 8 ECHR. The Court held that an interview by a qualified professional, in which the applicant was asked about her marital status, her family situation, her living conditions in her country of origin and her education, should have happened before, and not after, a medical assessment. This would have allowed the qualified professional to ensure that the applicant had received all the necessary information to defend her rights effectively and may have pre-empted the need for a medical assessment.

Indeed, information is a key pre-requisite for a medical examination. Per Article 25(4) APR, applicants and their representative must be informed,

> prior to the examination of their application for international protection, and in a language that they understand and in a child-friendly and age appropriate manner, of the possibility that their age might be assessed by means of a medical examination. That shall include information on the method of examination, on possible consequences which the result of the medical examination might have for the examination of the application, and on the possibility and consequences of a refusal on the part of the applicant to undergo the medical examination.[68]

Furthermore, a medical examination can only be carried out where the applicants or their representatives consent after having received the above information.[69] In other words, medical examination of age is predicated on the applicant's or his/her representative's *informed consent*. The importance of informed consent was discussed by the ECtHR in *F.B. v Belgium*, where the authorities proceeded to a medical age examination *before* the applicant had been interviewed by a qualified professional and thus had an opportunity to give informed consent.[70] There was conflicting evidence about whether the applicant had signed a document which provided basic information on age assessment before the examination. However, the Court did not find it necessary to make a finding of fact on this point, since the document made no mention of consent and thus could not form the basis for informed consent. The Court reiterated the importance of patients' free and informed consent to medical procedures, noting that the absence of such consent could amount to interference with their physical integrity, which is protected by Article 8 of the Convention.

If consent is essential and must be freely given, the question arises as to what happens if consent is withheld. Article 25(6) APR provides that this 'shall not prevent the determining authority from taking a decision on the application for international protection. Such refusal

[67] ECtHR, *F.B. v Belgium*, above n. 38.
[68] APR, Article 25(4).
[69] APR, Article 25(5).
[70] ECtHR, *F.B v Belgium*, above n. 38.

may only be considered to be a rebuttable presumption that the applicant is not a minor.' However, one can question whether refusal should lead to a rebuttable presumption of majority, since there are legitimate medical and dignity-related reasons for withholding consent, as detailed above. Furthermore, consent that is given under threat of a sanction is arguably not freely given, as the Court of Justice of the EU has found in the analogous situation of personality tests in the asylum context.[71] For these reasons, it is submitted that the refusal to consent to a medical examination should not determine the outcome of the age assessment and should certainly not lead to a negative credibility inference in the context of the international protection procedure.[72]

It should be acknowledged that some EU MS do conduct medical age assessments but that Ireland has not done so hitherto.[73] In light of the above concerns related to medical ethics, intrusiveness, margin of error and utility, it is submitted that ***Ireland should avoid the introduction of medical age assessments in the IBP. If medical assessments are provided for in the IBP, the full range of attendant guarantees in the APR should be listed.***

3.3.3 Holistic age assessment

The APR provides that where medical examinations are used as a last resort, 'the results from the medical examination and the multi-disciplinary assessment shall be analysed together, thereby allowing for the most reliable result possible.' Accordingly, the medical examination is not determinative on its own; it must be considered together with the prior multi-disciplinary assessment to reach an estimated age. This provision of the APR essentially establishes a holistic age assessment procedure, characterised in the literature as including 'narrative accounts, physical assessment of puberty and growth, and cognitive, behavioural and emotional assessments.'[74] Owing to the complexities of interpreting and perhaps reconciling the multidisciplinary and medical assessments, it is necessary that the decision maker is appropriately trained in the various methods – and limits – of age assessment. Where there is still a doubt about the applicant's age after the holistic age assessment, the benefit of the doubt should be given. This principle is clearly stated in Committee on the Rights of the Child General Comment No. 6 and further reinforced in Joint General Comment No. 4 of the Committee on the Rights of the Child and No. 23 of the Committee on Migrant Workers.[75]

4. Conclusion

[71] CJEU, Judgment of 25 January 2018, *F v. Bevándorlási és Állampolgársági Hivatal*, Case C-473/15, ECLI:EU:C:2018:36.

[72] See Swiss Refugee Council, 'International Guidelines on Age Assessment Procedures: An Aide-Mémoire for Legal Representatives, Legal Advisers and Persons of Trust'.

[73] See generally, EASO, Age Assessment Practices in EU+ Countries: Updated Findings, 2021.

[74] Hjern, Brendler-Lindqvist and Norredam, above n. 33.

[75] Committee on the Rights of the Child, General Comment No. 6, above n. 20; and Committee on the Rights of the Child and Committee on the Rights of All Migrant Workers and Members of their Families, Joint General Comment Nos 4 and 23, above n. 14.

Ireland's current system of age assessment is not fit for purpose and needs to be improved to make it more child-rights compliant and reliable. The implementation of the EU Pact on Migration and Asylum presents an opportunity for reform. While the key Pact measure relating to age assessment – the APR – establishes important standards on age assessment, these need to be supplemented with further guidance from soft-law and jurisprudence. The importance of getting age assessment right is underscored by the large number of very serious consequences that follow from being determined to be an adult in the age assessment procedure under the EU Pact. These include: mutual recognition of age assessment by EU Member States, which could affect an applicant who moves irregularly or who is transferred under the Asylum and Migration Management Regulation;[76] the loss of a representative to assist the applicant in navigating reception conditions and the international protection procedure; being placed in adult accommodation; being more susceptible to detention;[77] being more susceptible to a plethora of extraordinary procedures with lesser procedural guarantees; and being without the benefit of the principle of the best interests of the child – a horizontal principle that applies to all Pact measures that relate to children. These implications foreground the importance of a proper and robust age assessment procedure. As recommended by the Committee of Ministers of the Council of Europe, '[a] clear framework should be in place which sets out the referral to age assessment, the implementation process and procedures and the decision-making process, complemented, where necessary, by additional instructions and guidance.'[78] Echoing the Irish Human Rights and Equality Commission, it is recommended that 'as a matter of urgency and in advance of the publication of the Bill, the State should clarify its position and publish the detail of its intended age assessment process under the new system, so that meaningful pre-legislative scrutiny can take place.'[79] It is recommended that the State's position and eventually the International Protection Bill (or secondary legislation as appropriate) should establish the following:

- ***The Minister is the entity authorised to undertake age assessment***
- ***The age assessment professionals engaged by the Minister should not come from the same organisation that represents the child in the age assessment process (Tusla)***

[76] Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013. See, in this regard, UN Human Rights Committee, *OYKA v Denmark*, CCPR/C/121/D/2770/2016.

[77] There is a considerable body of ECtHR jurisprudence relating to the detention of UAM following incorrect or no age assessment under Article 3 (prohibition of inhuman or degrading treatment) and 5 (right to liberty) ECHR. For a cross-section see: *T.K. v Greece*, Application No. 16112/20,18 January 2024; *Darboe and Camara v Italy*, above n. 27; *Abdullahi Elmi and Aweys Abubakar v Malta*, Application No. 25794/13 and 28151/13, 22 January 2017; *H.A. and Others v Greece*, Application No. 19951/16, 28 January 2019; and *ShD and Others v Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, Application Number 14165/16, 13 June 2019.

[78] Council of Europe, above n. 14, p. 19.

[79] Irish Human Rights and Equality Commission, Observations on the General Scheme of the International Protection Bill 2025, p. 17: https://www.ihrec.ie/publications/observations-on-the-general-scheme-of-the-international-protection-bill-2025 [accessed 7 October 2025].

- ***The role of the representative is to assist and represent the UAM in any age assessment process conducted by the Minister***
- ***Age-disputed UAM are entitled to free legal advice and representation and the services of an interpreter***
- ***There should be a direct right of appeal of the age assessment decision to a body that is not the determining authority***
- ***While awaiting age assessment or an appeal of age assessment, the applicant should be given the benefit of the doubt and treated as a UAM***
- ***Age assessment is not required in the case of all applicants claiming or suspected to be children***
- ***Age assessment may be necessary where substantiated doubts as to the applicant's minority arise***
- ***While doubts as to the applicant's age may arise at the screening stage, age assessment should not be conducted at the screening stage***
- ***Safeguards relating to the assessment of evidence as to age and the benefit of the doubt should be established***
- ***The Minister should develop a model for psycho-social assessments which could be based on current Tusla guidelines***
- ***Medical examinations should not be introduced in the age assessment context***
- ***If medical examinations are provided for in legislation, there should be detailed safeguards***
- ***An unambiguous commitment to make the best interests of the child a primary consideration in all matters concerning the child, including age assessment.***