

# HISTORICAL INSTITUTIONAL ABUSE (NORTHERN IRELAND) BILL [HL] EXPLANATORY NOTES

## What these notes do

These Explanatory Notes relate to the Historical Institutional Abuse (Northern Ireland) Bill [HL].

- These Explanatory Notes have been drafted in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Historical Institutional Abuse (Northern Ireland) Bill [HL] (“the HIA Bill”) will provide the legal framework for delivering two of the recommendations contained in the Report of the Historical Institutional Abuse Inquiry: establishing a Historical Institutional Abuse Redress Board (“the Redress Board”) to administer a publicly funded compensation scheme and the creation of a statutory Commissioner for Survivors of Institutional Childhood Abuse (“the Commissioner”).
- 2 The HIA Bill includes the following:
  - Powers to establish a Redress Board which will be responsible for receiving and processing applications for, and making payments of, compensation to victims and survivors of historical institutional abuse.
  - Provisions for the composition and management of the Redress Board. These allow for the appointment of judicial and non-judicial Redress Board members to form panels to make determinations on applications and for the administrative functions of the Redress Board to be managed by a designated department.
  - Provisions relating to entitlement to claim compensation, how an application for compensation is to be determined and the amounts of compensation that can be awarded.
  - Powers for the Redress Board to compel the giving of evidence where it is considered necessary in the interests of justice to do so.
  - Powers for the President of the Redress Board to issue a restriction order to prevent the disclosure of information or a person’s identity where it is in the public interest to do so.
  - Powers for The Executive Office to make procedural rules subject to the approval of the Lord Chief Justice of Northern Ireland.
  - Powers to establish the Commissioner who will be responsible for the co-ordination and availability of services and promote the interests of those who suffered abuse.
  - Duty for the Commissioner to appoint an advisory panel comprising only victims and survivors of abuse.
  - Powers which include enabling the Commissioner to undertake or commission research into matters concerning the interests of victims and survivors.
  - Duties for the Commissioner to encourage the provision and co-ordination of provision of relevant services in Northern Ireland to victims and survivors and to monitor the operation of specialist facilities.
  - Duties for the Commissioner to publicise the role of the Redress Board, provide advice and assistance to individuals making an application to the Redress Board and monitor the operation of the Redress Board.

## Policy background

- 3 On 29 September 2011 the Northern Ireland Executive announced that it intended to set up an Inquiry into abuse in residential homes in Northern Ireland and on 31 May 2012, the First Minister and deputy First Minister announced the agreed Terms of Reference for the Historical Institutional Abuse Inquiry (HIAI). The Terms of Reference are available online at: <https://www.hiainquiry.org/terms-reference>.
- 4 The Inquiry examined if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1922-1995. For the purposes of the Inquiry, a child meant any person under 18 years of age and an institution meant any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal), which took decisions about and made provision for the day to day care of children.
- 5 The Terms of Reference required the Inquiry to make recommendations and findings on the following matters:
  - an apology – by whom and the nature of the apology;
  - findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;
  - recommendations as to an appropriate memorial or tribute to those who suffered abuse; and
  - the requirement or desirability for redress to be provided by the institution or the Executive to meet the particular needs of victims
- 6 The Inquiry Report and Findings were published on 20 January 2017 and as per the Terms of Reference, it was for the Northern Ireland Executive to decide whether to accept the recommendations. The collapse of the Executive shortly after publication however meant the Executive did not have an opportunity to consider the report nor was it laid before the NI Assembly by the First Minister and deputy First Minister. The report is available online at: <https://www.hiainquiry.org/historical-institutional-abuse-inquiry-report-chapters>.
- 7 Given the continued uncertainty for victims and survivors created by the absence of the Northern Ireland Executive and Assembly, the Head of the Civil Service, David Sterling, wrote to Sir Jonathan Stephens, Permanent Secretary at the Northern Ireland Office, noting that decisions on recommendations would ultimately be for NI Ministers but setting out proposals for The Executive Office to commence work on preparing draft legislation in respect of two of the recommendations:
  - Establishing a Commissioner for Survivors of Institutional Childhood Abuse (COSICA); and
  - Establishing a Redress Board responsible for receiving and processing applications for, and making payments of, compensation to victims and survivors of historical institutional abuse.
- 8 The legislation was drafted as far as practicable in accordance with the recommendations outlined in the Inquiry Report. Following an extended public consultation on the draft legislation (19 November 2018 – 10 March 2019), The Executive Office published the Report on Responses to the consultation on 13 May 2019. The report is available online at: <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/execoffice/hia-public-consultation-response-report.pdf>.

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- 9 The consultation identified a number of issues requiring ministerial decisions which, at the request of the Secretary of State for Northern Ireland, were discussed and jointly resolved by six NI political parties. Following this, the draft bills were amended in light of the parties' recommendations and codified into one Bill in preparation for passage through the UK Parliament.

## Legal background

- 10 This Bill makes provision for the establishment of a Redress Board and a statutory Commissioner. The role of the Commissioner is to act as an advocate for those who were subject to abuse by ensuring the co-ordination and availability of services and identifying suitable means whereby such services can be made available to those who need them. Specifically, the Inquiry report recommended that the office of the Commissioner should be created by statute, allocated a separate budget and required to report once a year to the NI Assembly. This will ensure that the office is independent and adequately resourced.
- 11 The purpose of the Redress Board is to oversee payments of compensation to those who had been abused in residential children's homes within the Inquiry's Terms of Reference. Specifically, the Inquiry report recommended that the Board should have the necessary powers to compel institutions or individuals to provide information relating to a claim for compensation, particularly if the alleged abuse occurred in an institution that was not investigated by the Inquiry. In this regard, establishing the Board on a statutory basis gives the Board this requisite power and reduces the risk of legal challenge.

## Territorial extent and application

- 12 Clause 32 sets out the territorial extent of the Bill, that is the jurisdiction of which the Bill forms part. The Bill will extend to Northern Ireland only.
- 13 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

# Commentary on provisions of Bill/Act

## Part 1: The Historical Institutional Abuse Redress Board

### Clause 1: Establishment of the Board

- 14 This clause establishes the Historical Abuse Redress Board (“the Board”). Further detail about the functions and structure of the Board is contained in Schedule 1.

### Clause 2: Entitlement to claim compensation

- 15 This clause sets out who can submit an application for compensation to the Board.
- 16 An application for compensation can be made by or in respect of a person who suffered abuse while a child i.e. aged under 18 and while resident in an institution between 1922 and 1995, both dates inclusive.
- 17 The institutions acted *in loco parentis* and were, therefore, responsible for any abuse suffered by children in their care, whether they were resident in the institution, or absent from an institution but still under its care (for example staying with a family). Regardless of whether the abuser was connected to the institution or not, the institution is still responsible for failing to properly safeguard the child from abuse.
- 18 The term 'abuse' includes physical, sexual and emotional abuse, neglect, and maltreatment. The term 'maltreatment' is considered to cover the 'unacceptable practices' referred to in the Inquiry Report (for example, unpaid labour). The definition of abuse also includes those who have witnessed abuse of other children, or who experienced a harsh environment within an institution, as the Report makes clear that these are also forms of abuse. Finally, suffering abuse also refers to those who were sent to Australia under the programme commonly known as the “Child Migrants Programme”.

### Clause 3: Restrictions on entitlement to claim compensation

- 19 This clause deals with applications relating specifically to abuse suffered under the ‘Child Migrants Programme’ and the Independent Inquiry into Child Sexual Abuse (IICSA) scheme.
- 20 Subsections (1), 2(a) and (2)(b) relate to applications in respect of deceased persons. An application can be made to the Board in respect of a person who died on or after 1 April 1953 and before 1 March 2018. An application can also be made to the Board in respect of a person who died on or after 1 March 2018 if compensation has not already been awarded, or an application for compensation is not pending, under the IICSA scheme.
- 21 Subsection (2)(c) provides that a person who has not received an award, nor has an application for compensation pending under the IICSA scheme, can apply to the Board.
- 22 Subsection (3) means that a person may withdraw an application under the ICCSA scheme and apply to the Board instead.
- 23 Subsection (4) defines the ICCSA scheme. Under the IICSA scheme, a former child migrant sent away from anywhere in the UK and Crown Dependencies can claim a £20,000 compensation award. This is the same amount that will be awarded by the Board.

### Clause 4: Exclusions from entitlement to claim compensation

- 24 This clause sets out the circumstances in which a person cannot make an application to the Board for compensation.

- 25 Subsections (1)(a) and (1)(b) mean that an application may not be made by or in respect of a person if a court has previously dismissed a claim for compensation in a relevant matter or if there are proceedings on a relevant matter pending before a court.
- 26 Subsection (2) clarifies that a relevant matter is abuse suffered in an institution during the relevant period as defined in Clause 2.
- 27 Subsection (3) means that a person can apply for compensation if, under subsection (1)(a), a court dismissed the claim solely because the proceedings were not brought within the timeframe for bringing such a claim.
- 28 Subsection (4) means if a person withdraws a claim from court under subsection (1)(b) an application can then be made to the Board.
- 29 Subsection (5) provides that a person can make an application to the Board despite subsection (1) if the application relates to abuse suffered in an institution which was managed by a different body, society or organisation than that against which the previous claim was made.

### Clause 5: Application for compensation

- 30 This clause provides that an application for compensation must be made before the end of the five year period starting from when the establishment of the Board is publicised in the Belfast Gazette.
- 31 Subsection (3) provides that only one application for compensation can be made to the Board but it may relate to abuse suffered in more than one institution.
- 32 Subsections (4) and (5) mean that rules will provide further detail on how an application to the Board must be made and that these rules must allow for the option of audio or video recordings to be submitted as part of an application.

### Clause 6: Entitlement to claim compensation in respect of a deceased person

- 33 This clause means that an application can be made to the Board in respect of a person who would have been entitled to apply for compensation but died on or after 28 April 1953.
- 34 Under subsection (1) only the deceased's surviving spouse, civil partner, cohabiting partner or children can make an application for compensation if they are a residuary beneficiary of the deceased's estate. A residuary beneficiary is a person who receives anything by a will that is not left specifically to that person or someone else. For example, if Paul makes a will leaving an amount of money to Mark and the remainder of his property to Jane, then Jane is the residuary beneficiary of Paul.
- 35 Subsection (2) provides for a panel appointed on behalf of the Board, to receive applications from surviving spouse or children who are beneficiaries but not residuary beneficiaries of the deceased's estate, where they consider it is in the interests of justice to do so.
- 36 Subsection (3) means that the application may be made jointly by two or more persons, for example a surviving spouse and two children. Any reference to a 'person' making an application under this part of the Act therefore also refers to persons who have applied jointly.
- 37 Subsection (4) allows for Rules to make provision for what happens when an applicant dies before the Board has made a determination on the application.
- 38 Subsection (5) sets out the definition of a surviving co-habiting partner for the purposes of this clause.
- 39 Subsection (6) defines residuary beneficiary as a person entitled to the residuary estate under



a will or if the person has died without leaving a valid will, under the law of intestacy. When a person dies without leaving a valid will, their property (the estate) must be shared out according to certain rules. These are called the rules of intestacy.

40 Subsection (7) means that the reference to “a beneficiary of the deceased’s estate” (in clause 6(2)) is to be read in light of the definition of “residuary beneficiary” in subsection (6).

41 Subsection (8) sets out the definition of a child for the purposes of this clause.

42 Subsection (9) defines the composition of the panel referred to in subsection (2).

### Clause 7: Priority of applications

43 This clause places a duty on the President of the Board to decide the order of priority in which applications will be dealt with. In deciding the order, the President must take into account the age of the applicant and, if the information is made available in the application, the health of the applicant.

### Clause 8: Appointment of panel

44 This clause gives the President of the Board the power to appoint a Panel to make a determination on an application.

45 Subsection (2) sets out that a Panel will be made up of one judicial member and two non-judicial members. The judicial member will chair a panel.

46 Subsection (3) means that the Panel must decide if compensation should be awarded and if so, the amount of the award.

47 Subsection (4) means that a panel may also determine an application which it agreed to receive under section 6(2).

### Clause 9: Procedure

48 This clause sets out how the Panel will make a determination on an application.

49 Subsection (1) lists the range of material a Panel can consider when making its determination on an application.

50 Subsection (2) means that where it is practicable, a Panel must request information from the appropriate body, society or organisation which managed the institution to which the application relates to verify the accuracy of the information provided in the application. Subsection (8) provides that a Panel does not have to request this information if the applicant already provided evidence to the Inquiry. Subsection (9) confirms that having provided evidence to the Inquiry does not include the Acknowledgement Forum.

51 Subsection (3) provides a Panel with the power to allow fresh evidence to be admitted and direct an oral hearing to be held, if it considers it is necessary in the interests of justice to do so. Subsection (4) also allows a Panel to hold an oral hearing in public where it considers it in the interests of justice to do so.

52 Subsection (5) means that the Public Record Office of Northern Ireland must allow a Panel access to records of the Inquiry where these are required for the determination of an application.

53 Subsection (6) confirms that a person’s entitlement to compensation is not affected by three factors. First, whether or not any matters to which the application relates were reported to the police. Second, whether or not the person by or in respect of whom the application is made engaged with the Inquiry; and third, whether or not the person by or in respect of whom the application is made, has been convicted of an offence.

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- 54 Subsection (7) means that the Secretary to the Board must notify the applicant in writing of a Panel's determination and this must include a summary of the reasons underpinning the panel's decision.

### Clause 10: Power to compel giving of evidence

- 55 This clause provides a panel with the power to compel the provision of evidence in order to assist in the determination of an application.
- 56 Subsection (1) allows a Panel to issue a written notice requesting a person to provide records, documents or other items of evidence or to attend a hearing to give oral evidence under oath.
- 57 Subsection (2) provides for a person to make a claim to a panel that he or she is unable to comply with a notice. Subsection (3) allows a panel in response, to confirm, revoke or vary the notice.
- 58 Subsection (4) means that if a person is required to provide documents or records to a panel and this involves disclosing information about another person which is irrelevant to the determination of the application, then the material must be provided in a redacted form.
- 59 Subsections (5) and (6) provide that a person may refuse to comply with a notice if, in proceedings before the High Court, the person would be entitled to refuse to comply with the requirement. In all other circumstances, the notice must be complied with.
- 60 Subsections (7) and (8) set out that it will be an offence if a person fails to comply with a requirement of a notice or intentionally carries out actions which will obstruct or alter the provision of information as may be required under a notice. Subsection (9) provides that a person found guilty of an offence under subsections (7) or (8) will be liable on summary conviction to imprisonment or a fine.

### Clause 11: Advisors

- 61 This clause means the Board may appoint advisors to provide expert advice and that such appointments can be terminated by the Board at any time. For example, a panel may wish to obtain the views of a child trauma expert to assist in its determination of a complex application.

### Clause 12: Assessment of compensation

- 62 This clause sets out the amounts of compensation that can be awarded by a Panel.
- 63 Subsection (1) provides that a panel will determine what amount of compensation is to be awarded.
- 64 Subsection (2) sets out the amounts that can be awarded. An award may range from the minimum payment of £10,000 rising up to a maximum of £80,000 depending on the severity of the abuse suffered. A separate amount of £20,000 may also be awarded to a person who was sent to Australia under the 'Child Migrants Programme'. Subsection (3) confirms the maximum amount of compensation that can be awarded.
- 65 Subsection (4) means that a person entitled to compensation for being sent to Australia can also claim for compensation if he or she suffered abuse in an institution in Northern Ireland, prior to being sent to Australia.
- 66 Subsection (5)(a) makes provision for how compensation is to be shared out where there is more than one recipient of the award, as may arise under section 6. Subsection 5(b) allows a panel the power to allocate the shares of an award differently to the approach set out in paragraph (a) if it deems it would be in the interests of justice to do.

### Example (1)

£18,000 is awarded to a spouse and child.

The spouse, child and a sibling were the residuary beneficiaries of the deceased's estate. The spouse received 60% of the residuary estate, the child 30% and the sibling 10%.

Setting the sibling's share aside, the spouse and child together received 90% of the residuary estate and their proportionate share of this is two thirds (60%) to the spouse and one third (30%) to the child.

In this scenario, the spouse and child would therefore receive £12,000 and £6,000.

### Example (2)

£45,000 is awarded to a spouse and two children.

The spouse and two children were the three residuary beneficiaries of the deceased's estate. The spouse received 50% of the residuary estate and the two children, 25% each.

In this scenario, the spouse would therefore receive £22,500 and each child, £11,250.

- 67 Subsection (6) means that that where an application relates to more than one institution, only one amount of compensation will be paid.
- 68 Subsection (7) provides that the Board may arrange for a person who has been awarded compensation to have access to advice in respect of how to best to manage it.
- 69 Subsection (8) provides The Executive Office with the power by order to increase the amount of compensation that may be awarded. Subsection (10) confirms that any such order must be approved by the Northern Ireland Assembly.

## Clause 13: Actuarial adjustment of award

- 70 Subsection (3) provides a panel with the power to adjust the amount of compensation it has determined in respect of an application.
- 71 Subsection (1) sets out that the panel may make such an adjustment if the person making the claim has previously been paid compensation for the same abuse considered by the Panel and the Panel's determination is in excess of this. Subsection 2 defines what is meant by compensation previously paid as referenced in subsection (1)(b).
- 72 Subsections (4) and (5) outline the steps involved in making the adjustment. First, the GDP calculator will be used to establish the present day value of the award previously paid to the applicant e.g. a previous award of £13,000 is revalued at £21,000. If the panel has decided the applicant should be awarded £24,000 compensation, then the net amount to be paid to the applicant will be £3,000 (£24,000 less £21,000).

## Clause 14: Initial payment of award

- 73 This clause provides a panel with the power to order an initial payment of £10,000 on an

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application.

- 74 Subsection (1) means that the power to order an initial payment of £10,000 does not apply to a claim for abuse relating to having being sent to Australia under the Child Migrants Programme.
- 75 Subsection (2) provides a panel with the power, where it considers it appropriate to do so, to order the minimum amount of compensation £10,000 to be paid to a person before it has made its final determination on the application.
- 76 Subsection (3) provides that when a panel makes its final determination on the total compensation to be awarded, it must order for the additional amount above £10,000 to be paid to the applicant.
- 77 Subsection (4) confirms that where an award of compensation has been adjusted under section 13, it is this amount which is the total compensation referred to in subsection (3).

### Clause 15: Status etc. of award

- 78 This clause details a number of matters relating to the compensation award.
- 79 Subsection (1) provides for the award to be paid as one lump sum payment or two lump sum payments as may be necessary under clause 14.
- 80 Subsection (2) means that a person will not have to pay tax or national contributions on the award.
- 81 Subsections (3), (4) and (5) provide that the award is to be disregarded in assessing a person's eligibility to receive means-tested social security benefits, in assessing a person's liability for paying towards the cost of their residential accommodation and in assessing a person's eligibility for access to publicly funded legal services i.e. Legal Aid in Northern Ireland.
- 82 Subsection (6) means that a person awarded compensation by the Board may not, at a later date, claim for compensation through civil proceedings for any matters to which the application to the Board related.

### Clause 16: Right to appeal

- 83 This clause sets out arrangements for appealing against a determination on compensation.
- 84 Subsection (1) provides that a person may appeal against a decision not to award compensation or against the amount of compensation that has been determined. Subsection (2) sets out that a person must explain in writing, the reasons why an appeal is being made.
- 85 Subsection (3) provides that rules may set out more detail on the method and procedure for bringing an appeal.
- 86 Subsections (4) and (5) provide that the President will appoint a single judicial member to determine an appeal and this cannot be the chair of the panel which made the determination on the application to which the appeal relates.
- 87 Subsection (6) means that the single judicial member will make a determination on the appeal subject to the same procedures used by the panel in making the original determination on the application (after having fully re-considered all the facts and details provided).
- 88 Subsection (7) means that the provisions in section 14 are only applicable to an appeal where the appeal is against a determination that no compensation should be awarded.

89 Subsection (8) confirms that an appeal against the amount of compensation refers to the amount of compensation before any actuarial adjustment may have been made under section 13.

90 Subsection (9) allows for the single judicial member to confirm or reverse the original decision or increase or decrease the amount of compensation. This decision will be final as provided for in subsection (11).

#### Clause 17: Restrictions on public access

91 This clause enables the President of the Board to impose restrictions, by order.

92 Subsection (1) sets out that the purpose of such an order is to restrict disclosure or publication of any evidence or documents given, produced or provided to the Board and to restrict the disclosure of a person's identity.

93 Subsection (2) means that a panel or single judicial member may also impose a restriction order.

94 Subsections (3) and (4) set out matters which the President, panel or judicial member must take account of when determining the scope of a restriction order.

95 Subsection (5) provides for the President, panel or judicial member to vary or revoke a restriction order.

96 Subsection (6) means that the restrictions will remain in force indefinitely unless the President, panel or judicial member specifies an expiry date within the order, or the order is varied or revoked.

#### Clause 18: Information about legal advice and assistance

97 This clause places a duty on the Secretary of the Board, when requested by the Department of Justice to provide it with the names and addresses of applicants to the Board who have received legal advice and assistance and the details of the solicitors who have provided the advice and assistance. This is to allow the Legal Services Agency Northern Ireland to check that there is no duplication of advice being offered to applicants through legal advice and assistance arrangements under the Bill and advice and assistance provided under the statutory legal aid scheme in Northern Ireland.

#### Clause 19: Rules

98 This clause allows the Executive Office to make procedural rules.

99 Subsections (2), (3) and (4) list the provisions that may be contained in the rules.

#### Clause 20: Rules Procedure

100 Subsection (1) means the rules must be approved by the Lord Chief Justice of Northern Ireland and under subsection (2) these will be subject to the negative resolution procedure in the Northern Ireland Assembly.

## Part 2: The Commissioner for Survivors of Institutional Childhood Abuse

#### Clause 21: Establishment of the Commissioner

101 This clause provides for the establishment of an officer known as the Commissioner for Survivors of Institutional Childhood Abuse (the Commissioner) and who will be appointed by the Executive Office.

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## Clause 22: Principal aim of the Commissioner

102 This clause deals with the principal aim of the Commissioner in exercising their functions. It confers upon the Commissioner the duty to promote the interests of any persons who were abused as children (persons under 18 years old) in residential institutions in Northern Ireland between 1922 and 1995 (inclusive). These persons are referred to in the Bill as 'victims and survivors'.

## Clause 23: The Advisory Panel

103 This clause confers upon the Commissioner the duty to select and appoint an Advisory Panel consisting of individuals who are HIA victims and survivors.

104 It will be the role of the Advisory Panel to enable consultation and discussion between the Commissioner and HIA victims and survivors; and enable HIA victims and survivors to give expression to diverse views and opinions regarding matters relevant to them. This is similar to the role of the Victims and Survivors Forum which assists the Commissioner for Victims and Survivors of the conflict (The Victims and Survivors (Northern Ireland) Order 2006).

## Clause 24: General duties of the Commissioner

105 This paragraph sets out a series of important duties which the Commissioner must perform. These include:-

- the duty to provide advice to the Executive Committee of the Assembly, and any other body or persons providing services to HIA victims and survivors on matters pertaining to HIA victims and survivors;
- the duty to take reasonable steps to ensure that HIA victims and survivors are made aware of the Commissioner, his/her location and the ways in which they may communicate with the Commissioner.

## Clause 25: Powers of the Commissioner

106 This gives the Commissioner powers to do a number of things to help them fulfil an advocacy role for HIA victims and survivors. These powers enable the Commissioner to carry out a wide range of activities, including being able to influence the actions of many organisations and individuals that affect HIA victims and survivors' lives in many different ways.

107 The general powers include:

- the power to undertake research, compile information, and provide advice on matters concerning the interests of HIA victims and survivors;
- the power to publish matters relating to their interests, including the outcome of any research and any advice provided by the Commissioner;
- the power to make representations or recommendations to any persons about matters concerning the interests of HIA victims and survivors. It is envisioned that this power will enable the Commissioner to make recommendations to the Regulation and Quality Improvement Authority ("RQIA") and Northern Ireland Social Care Council ("NISCC") as recommended by Hart, as well as any other relevant body. The Inquiry Report recommended that the RQIA and NISCC in particular should have regard to any recommendations made to them, by the Commissioner, about practice issues relating to residential care. It is considered that it would be reasonable, in accordance with the usual principles of administrative law, to expect bodies involved with regulating residential care to have regard to recommendations made by the Commissioner (or any other expert body) and it is unnecessary to explicitly set this

out in statute.

### Clause 26: Co-ordination of service provision etc.

- 108 The Commissioner must encourage the provision, and the co-ordination of the provision, of relevant services to HIA victims and survivors. This includes services relating to physical and mental health, to overcome addiction, to provide counselling, to improve literacy and numeracy, to provide education or training, and access opportunities for work.
- 109 In carrying out these duties the Commissioner must take account of the current provision of relevant services to HIA victims and survivors and identify any gaps therein.
- 110 The Commissioner must also provide, or secure the provision of, advice and information to HIA victims and survivors on the relevant services that are available to them and the facilities that are available for the provision of those services, and how to obtain those services and access those facilities.
- 111 The Commissioner must, on becoming aware of a matter which comes within the area of responsibility of the Commissioner for Children and Young People in Northern Ireland, consult that Commissioner.

### Clause 27: Monitoring specialist facilities

- 112 The Commissioner must on an ongoing basis monitor the operation of any specialist facilities in Northern Ireland which provide support for HIA victims and survivors.
- 113 The term 'specialist facilities' means facilities providing services solely for the use of HIA victims and survivors, on any of the following issues:
- general counselling services for those who have suffered abuse as children in residential institutions in Northern Ireland, supported by appropriate links to the health service and to other relevant housing, education and employment services; and
  - practical help with literacy and numeracy, education, employment, housing and benefits advice tailored to the needs of individual HIA victims and survivors of institutional abuse.

### Clause 28: Functions relating to the Board, etc.

- 114 This clause provides that the Commissioner must make arrangements for publicising the role of, and must monitor the operation of the Historical Institutional Abuse Redress Board ("the HIA Redress Board").
- 115 Where a person is considering whether to make an application to the Redress Board for compensation, the Commissioner must provide the person with general advice and information on making the application and, if the person wishes to obtain information relating to any period spent as a resident in an institution while under the age of 18, such assistance in obtaining that information as it is reasonable for the Commissioner to provide.
- 116 The Commissioner must also monitor the operation of the Redress Board.
- 117 The Commissioner may establish or facilitate establishing a panel of solicitors who have the necessary expertise to provide legal advice and assistance to persons making an application for compensation to the Redress Board.

### Clause 29: Independent Review

- 118 This clause places a duty on the First Minister and deputy First Minister to commission an independent review of the operation of the Commissioner every five years. The review may be commissioned more frequently if the First Minister and deputy First Minister choose to do

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so.

119 The report must include an assessment of whether there continues to be a need for the Commissioner; and the First Minister and deputy First Minister acting jointly must, in light of that assessment, determine whether the office of the Commissioner is to continue.

### Clause 30: Defamation: privilege

120 This clause provides that for the purposes of the law of defamation, publication of any matter under this Act by the Commissioner is absolutely privileged.

## Part 3: General

### Clause 31: Interpretation

121 This clause sets out definitions of commonly used terms in the Bill.

### Clauses 32 -34: Commencement, extent and short title

122 This clause sets out that the provisions of the Act will come into force (i.e. begin to have an effect) as determined under order by The Executive Office.

## Schedules

### Schedule 1: The Historical Institutional Abuse Redress Board

123 Paragraph 1 sets out that the Redress Board is a body corporate and paragraph 2 means that the Executive Office must ensure the establishment of the Board is advertised in the Belfast Gazette.

124 Paragraph 3 requires The Executive Office to designate a department to exercise the administrative functions of the Board.

125 Paragraph 4 means that the Board or any member acting on its behalf must have regard to the Inquiry Report in exercising its functions. This duty does not apply to any functions which differ from recommendations made in the Inquiry Report.

126 Paragraph 5 sets out arrangements for the appointment and remuneration of staff. The Lord Chief Justice will appoint a President of the Board and, subject to the approval of the Executive Office as to numbers, other judicial members of the Board as the President considers necessary. The Executive Office will appoint other members of the Board from health or social care professions as it considers necessary. The Department will be responsible for remunerating and reimbursing members of the Board for expenses reasonably incurred.

127 Paragraph 6 requires the Department to provide administrative staff and this must include a secretary to the Board. The Department must also provide office accommodation and equipment.

128 Paragraph 7 allows the President of the Board to delegate any of his functions to another judicial member of the Board. The Board may also establish committees to which it may delegate functions or to provide advice to the Board or President.

129 Paragraph 8 means that the President's signature or that of his authorized staff authenticates or forms the seal of the Board.

130 Paragraph 9 sets out that any document signed by the Board or on behalf of the Board (i.e. with the 'Seal' of the Board will be permissible as documentary evidence in a court of Law/Judicial or administrative proceedings.



- 131 Paragraph 10 provides that the Department will receive funds from The Executive Office through the relevant standard procedures. Annual grants to the Department will form part of The Executive Office's budget and the Department will be invited to submit a budget bid to the Office for each financial year.
- 132 Paragraph 11 means the Board is required to report back annually to The Executive Office on the exercise of its functions and on the use of financial resources at its disposal. The Executive Office must ensure a copy of each annual report is laid before the Northern Ireland Assembly.
- 133 Paragraph 12 adds the Board to the list of bodies in Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act (1975), so ensuring that any judicial member (once in post) cannot also hold membership of the Northern Ireland Assembly.
- 134 Paragraph 13 means the Board is added to the list of public authorities in Part 7 of Schedule 1 to the Freedom of Information Act 2000. It will, therefore, fall within the scope of the Act, but only in relation to its administrative functions.
- 135 Paragraph 14 adds the Board to the list of tribunals whose administrative functions are subject to investigation by the Public Services Ombudsman in Northern Ireland. The principal purpose of the Ombudsman is to investigate alleged maladministration in government and public bodies.

## Schedule 2: The Commissioner for Survivors of Institutional Childhood Abuse

- 136 The Commissioner has an independent legal status distinct from the sponsoring Department of The Executive Office and permits the post to pass from one Commissioner to the next successor-in-office. The Commissioner would not be regarded as a servant or agent of the Crown and would not enjoy any status, immunity or privilege of the Crown. Arrangements for the Commissioner reflect those for other statutory bodies and Commissions.
- 137 Paragraph 2 provides the Commissioner with a general power to do anything related to his or her functions, unless it is specifically prohibited within this or other legislation. The Commissioner will be enabled to co-operate with other bodies in the UK and elsewhere. This will enable the Commissioner to build relationships, avoid duplication and cooperate well with other bodies in order to provide a strategic approach to addressing those issues of interest to or affecting victims and survivors.
- 138 The term of office for the Commissioner will be for 5 years with the opportunity for reappointment for one further term only. The Commissioner can be removed from office by the Executive Office on the grounds of misconduct or incapacity including specifically if the Commissioner has been convicted of a criminal offence, become bankrupt, failed to discharge his or her functions for a continuous period of 3 months, or become unable or unfit to carry out his or her functions.
- 139 The Commissioner is a full-time salaried appointment funded by TEO. Importantly, there is no compulsory retirement age for the Commissioner. This paragraph also makes provision for the payment of compensation, under special circumstances, to a person who no longer holds office as Commissioner.
- 140 The Commissioner has the power to employ staff as he or she considers necessary, subject to the approval of TEO as to numbers.
- 141 The Commissioner has the power to delegate his or her role of Commissioner and any or all of his or her accompanying functions to a member of staff within the Commission.
- 142 The Commissioner's signature or that of his or her authorised staff authenticates or forms the seal of the Commissioner's office on any documentation.

- 143 Any document signed by the Commissioner or that of his or her staff (i.e. with the 'Seal' of the Commissioner's office) will be permissible as documentary evidence in a court of Law/Judicial or administrative proceedings.
- 144 Paragraph 9 allows property, for example the offices of the Commissioner, to be transferred to his/her successor.
- 145 The Commissioner's office is to receive funds through the standard procedures for all non-Departmental public bodies and office holders in Northern Ireland. Annual grants to the Commissioner will form part of the TEO budget and the Commissioner would be invited to submit a budget bid to the Department for each financial year.
- 146 This paragraph sets out the arrangements for the financial accountability and audit requirements for the Commissioner's office. The Commissioner is required to keep proper accounting records and to prepare an annual financial statement of accounts in accordance with directions given by The Executive Office and in keeping guidance from the Department of Finance. The Commissioner's office is required to submit the annual statement of accounts, by financial year, to both the Office and to the Comptroller and Auditor General for examination, who will then report back on the statement of accounts to the Office. The Executive Office will be responsible for laying a copy of the annual statement of accounts and the Comptroller and Auditor General's report on these before the Assembly.
- 147 The Commissioner is required to report back annually to the appointing authority, that is to the Executive Office, on how he/she is carrying out the role of Commissioner and on the use of the financial resources at his or her disposal. This report should contain details of the steps taken by the Commissioner that year to comply with his or her duties, to make HIA victims and survivors aware of his or her functions, the location of the office and how HIA victims and survivors can communicate with the Commissioner, and the Commissioner's monitoring of specialist facilities as per clause 7. TEO is required to lay a copy of the annual report before the Assembly.
- 148 The Commissioner is required to report back annually to the Executive Office, on how he or she is carrying out the role of Commissioner and on the use of the financial resources at his or her disposal. The Executive Office is required to lay a copy of the annual report before the Assembly.
- 149 This paragraph adds the Commissioner to The Northern Ireland Assembly Disqualification Act (1975), so ensuring that the Commissioner and any member of his or her staff (once in post) cannot also hold membership of the Northern Ireland Assembly.
- 150 The Commissioner is added to Schedule 1 to the Freedom of Information Act 2000 and so is bound by its requirements, including the obligation to provide information through a publication scheme and in response to requests made under the general right of access. However the same exemptions (e.g. regarding personal data and information provided in confidence) will apply as with other public bodies.
- 151 This paragraph ensures that the Commissioner is added to the list of bodies that are subject to investigation by the Public Services Ombudsman in Northern Ireland. The principal purpose of the Ombudsman is to investigate alleged maladministration in government or public bodies. Further, the Commissioner would also be automatically bound by the statutory equality duty set out in section 75 of the Northern Ireland Act 1998, which requires public authorities to have due regard to the need to promote equality of opportunity and good relations. Inclusion in the Public Services Ombudsman Act also brings the Commissioner under the Commissioner for Public Appointments who will then regulate, monitor and report on the appointment process of the Commissioner.

## Commencement

152 The provisions of the Bill will come into force within two months of the Bill being granted Royal Assent.

## Financial implications of the Bill

153 The Inquiry Report recommended that the NI Executive should fund all costs and negotiate with the institutions in terms of their expected contribution. This will be a controversial and difficult discussion judging by the experiences of the Ryan Commission in the Republic of Ireland, where disputes are still ongoing some 9 years after the end of their Inquiry. If agreement to their contributions cannot be reached, the Report recommended that the NI Executive and the institutions concerned submit all issues to mediation. If mediation fails then all remaining issues should be dealt with by the NI Executive and the relevant institutions agreeing to submit to binding arbitration.

154 There is currently no funding allocated, as an Executive decision cannot be made on the Report or to approve the allocation of funding from the Block Grant. Once the Bill receives Royal Assent and comes into force, funding will be sought from the Executive in the usual manner.

## Parliamentary approval for financial costs or for charges imposed

155 This section will be completed when the Bill transfers to the House of Commons.

## Compatibility with the European Convention on Human Rights

156 The Government considers that the Historical Institutional Abuse (Northern Ireland) Bill [HL] is compatible with the European Convention on Human Rights (“ECHR”), although articles of the ECHR are engaged.

157 The Bill does not give rise to EU or international issues; creates new criminal offences; does not give rise to any unresolved devolution or constitutional issues; does not contain provisions which have retrospective effect or commence early and confers no powers to amend primary legislation.

158 Accordingly, the Secretary of State for Northern Ireland, Julian Smith, has made a statement under clause 19(1)(a) of the Human Rights Act 1998 to this effect.

## Related documents

159 The following documents are relevant to the Bill and can be read at the stated locations:

- <https://www.hiainquiry.org/terms-reference>
- <https://www.hiainquiry.org/historical-institutional-abuse-inquiry-report->

*These Explanatory Notes relate to the Historical Institutional Abuse (Northern Ireland) Bill [HL] Bill 11 as introduced in the House of Commons on 1 November 2019 ([Bill 11])*

[chapters.](#)

- <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/execoffice/hia-public-consultation-response-report.pdf>.

## Annex A - Territorial extent and application in the United Kingdom

This Bill will extend to Northern Ireland only.<sup>1</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clauses 1 to 32	No	No	No	Yes	N/A	N/A	N/A	No

### Subject matter and legislative competence of devolved legislatures

These clauses affect matters within the devolved (transferred) competence of the Northern Ireland Assembly. The Sewel Convention sets out that the UK Parliament will not normally legislate in an area of devolved competence without the agreement of the devolved legislatures. In the absence of the Executive and a sitting Assembly, there is neither the time available nor the practical ability for the Assembly to provide a Legislative Consent Motion. We are satisfied that the circumstances of this Bill come within the exception allowed by the convention.

<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

# **HISTORICAL INSTITUTIONAL ABUSE (NORTHERN IRELAND) BILL [HL]**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Historical Institutional Abuse (Northern Ireland) Bill [HL] as introduced in the House of Commons on 1 November 2019 (Bill 11).

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