

Historical Institutional Abuse (Northern Ireland) Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Northern Ireland Office, have been ordered to be published as HL Bill 7 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Duncan of Springbank has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Historical Institutional Abuse (Northern Ireland) Bill [HL] are compatible with the Convention rights.

Historical Institutional Abuse (Northern Ireland) Bill [HL]

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TO

Establish the Historical Institutional Abuse Redress Board and to confer an entitlement to compensation in connection with children who were resident in certain institutions in Northern Ireland; and to establish the Commissioner for Survivors of Institutional Childhood Abuse.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

PART 1

THE HISTORICAL INSTITUTIONAL ABUSE REDRESS BOARD

The Board

1 Establishment of the Board

- (1) The Historical Institutional Abuse Redress Board is established (and referred to in this Act as “the Board”). 5
- (2) Schedule 1 makes further provision about the Board.

Entitlement to compensation

2 Entitlement to claim compensation

- (1) An application for compensation under this Part may be made by or in respect of a person who suffered abuse while a child and while resident in an institution at some time between 1922 and 1995 (both inclusive); but this is subject to sections 3 and 4. 10
- (2) A reference to having suffered abuse is a reference to – 15
- (a) having suffered sexual, physical or emotional abuse or neglect or maltreatment,

- (b) having witnessed one or more other children suffer abuse of a kind referred to in paragraph (a),
- (c) having otherwise been exposed to a harsh environment, or
- (d) having been sent to Australia under the programme commonly known as the “Child Migrants Programme”. 5
- (3) “Institution” means an institution in Northern Ireland in which a body, society or organisation with responsibility for the care, health and welfare of children provided residential accommodation for children, took decisions about them and made provision for their day-to-day care.
- (4) A reference to an institution does not include a reference to an institution at which education was provided, other than – 10
- (a) a school certified under the Children Act 1908,
- (b) a training school under the Children and Young Persons Act (Northern Ireland) 1950 or 1968,
- (c) a Borstal institution, or 15
- (d) a young offenders centre under the Treatment of Offenders Act (Northern Ireland) 1968.
- (5) A reference to being resident in an institution includes a reference to being absent from the institution while under the care of – 20
- (a) the body, society or organisation which provided residential accommodation for the child in the institution, or
- (b) a person authorised by that body, society or organisation.
- (6) But subsection (5) does not apply to a case within subsection (2)(c); and subsection (2)(c) is accordingly to be read as referring only to a person who was exposed to a harsh environment while in the institution in question. 25
- (7) The reference in subsection (1) to a person who suffered abuse while resident in an institution is, in a case within subsection (2)(d), to be read as a reference to a person who was resident in an institution immediately before being sent to Australia as mentioned in that provision.
- 3 Restrictions on entitlement to claim compensation 30**
- (1) An application for compensation under this Part may not be made in respect of a person who died before 28 April 1953.
- (2) An application for compensation for having suffered the abuse referred to in section 2(2)(d) may be made under this Part only – 35
- (a) in respect of a person who died on or after 28 April 1953 and before 1 March 2018,
- (b) in respect of a person who died on or after 1 March 2018 and in respect of whom compensation has not been awarded, and no application for compensation is pending, under the IICSA scheme for having suffered that abuse, or 40
- (c) by a person who has not been awarded compensation, and who does not have an application for compensation pending, under the IICSA scheme for having suffered that abuse.
- (3) Subsection (2)(b) or (c) does not prevent an application for compensation for having suffered the abuse referred to in section 2(2)(d) being made under this Part if the applicant withdraws the application under the IICSA scheme. 45

- (4) In this section, “the IICSA scheme” means a scheme for compensation established by Her Majesty’s Government in the United Kingdom in response to the inquiry established under section 1 of the Inquiries Act 2005 and known as the Independent Inquiry into Child Sexual Abuse.

4 Exclusions from entitlement to claim compensation 5

- (1) An application for compensation may (subject to subsections (3) to (5)) not be made under this Part by or in respect of a person who suffered abuse if –
- (a) a court has dismissed a claim arising from a relevant matter brought by or in respect of that person, or
 - (b) proceedings on a claim arising from a relevant matter brought by or in respect of that person against a government department (including a Northern Ireland department) or other public body or any other body, society or organisation are pending before a court. 10
- (2) A “relevant matter” is a matter on which an application for compensation under this Part could be based, but for subsection (1)(a) or (b). 15
- (3) Subsection (1)(a) does not apply if the claim in question was dismissed solely because the period of limitation for bringing proceedings on the claim had expired.
- (4) Subsection (1)(b) does not prevent an application for compensation being made under this Part if the claimant withdraws the claim in question. 20
- (5) An application for compensation may be made under this Part despite subsection (1)(a) or (b) if it relates to abuse suffered in an institution managed by a body, society or organisation other than a body, society or organisation which managed any institution to which the claim referred to in subsection (1)(a) or (b) related. 25
- (6) The reference in subsection (5) to managing an institution is a reference to providing residential accommodation in that institution.

5 Application for compensation

- (1) An application for compensation under this Part must be made to the Board.
- (2) The application must be made before the end of the period of five years beginning with the date on which the establishment of the Board is advertised in the Belfast Gazette. 30
- (3) In the case of each person by or in respect of whom an application for compensation under this Part for the person having suffered abuse may be made –
- (a) only one application may be made, but
 - (b) that application may relate to more than one institution. 35
- (4) The application must be made in accordance with such provision as may be made in rules.
- (5) Rules must include provision for the material which may be provided in support of an application for compensation under this Part to include material in the form of audio or video recordings. 40

6 Entitlement to claim compensation in respect of deceased person

- (1) In the case of a person who died on or after 28 April 1953, an application for compensation under this Part may (subject to subsection (2)) be made only by –
- (a) the deceased’s surviving spouse, civil partner or cohabiting partner, if that person is a residuary beneficiary of the deceased’s estate; 5
 - (b) any surviving child of the deceased, if that person is a residuary beneficiary of the deceased’s estate.
- (2) In a case where the surviving spouse, civil partner or cohabiting partner, or a surviving child, of a person who died on or after 28 April 1953 is a beneficiary of the deceased’s estate, but not a residuary beneficiary, a panel appointed by the President of the Board may, on behalf of the Board, agree to receive an application for compensation under this Part from that person if the panel considers that it would be in the interests of justice to do so. 10
- (3) An application for compensation under this Part may be made jointly by two or more of the persons entitled to apply under subsection (1) or (2); and, in the case of such an application, any reference in this Act to a person making an application under this Part is to be read as a reference to those persons acting jointly. 15
- (4) Where an applicant for compensation under this Part dies before the application is determined, the application may continue to proceed in accordance with provision made in rules. 20
- (5) A person is the surviving cohabiting partner of a deceased person if, immediately before the death, they were not married to, or civil partners of, each other but were living together as if they were. 25
- (6) A reference in this section to a residuary beneficiary of a deceased person’s estate is a reference to a person who is a beneficiary of some or all of the deceased’s residuary estate under the deceased’s will or under the law of intestacy in the country or territory in which the deceased was residing at the time of death. 30
- (7) A reference in this section to a beneficiary of a deceased person’s estate other than a residuary beneficiary is to be read in light of subsection (6).
- (8) In this section, “child”, in relation to a person, does not include a step-child of that person or a child of that person’s civil partner or cohabiting partner; and a reference in this section to a child is not limited to a person aged under 18. 35
- (9) A panel appointed under subsection (2) is to consist of –
- (a) one judicial member of the Board, who is to be the chair of the panel, and
 - (b) two other members of the Board, neither of whom is a judicial member.

Determination of application

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7 Priority of applications

- (1) It is for the President of the Board to decide the order of priority in which applications for compensation under this Part are to be determined.

- (2) In making a decision under subsection (1), the President must have particular regard to—
- (a) the age of each applicant, and
 - (b) in so far as it is disclosed on the application, the health of each applicant.

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8 Appointment of panel

- (1) An application for compensation under this Part is to be determined on behalf of the Board by a panel appointed by the President of the Board.
- (2) A panel appointed under this section is to consist of—
- (a) one judicial member of the Board, who is to be the chair of the panel, and
 - (b) two other members of the Board, neither of whom is a judicial member.
- (3) The panel must determine—
- (a) whether compensation should be awarded on the application, and
 - (b) if so, the amount of compensation that should be awarded.
- (4) A panel appointed under section 6(2) may determine any application which it agreed to receive under that provision (as well as any other application for compensation under this Part); and, where it does so, the panel is to be treated for the purposes of this Act as if it had been appointed under this section.

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9 Procedure

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- (1) An application for compensation under this Part is to be determined by the panel appointed under section 8 on the basis of—
- (a) any material provided in support of the application,
 - (b) any material provided in response to a request by the panel (whether the request is made to the applicant, made for the purposes of subsection (2) or made for some other purpose),
 - (c) any evidence admitted under subsection (3) or given in a hearing directed under that subsection,
 - (d) any evidence provided or given pursuant to a notice under section 10,
 - (e) any advice from an advisor appointed under section 11, and
 - (f) any other material which the panel considers relevant.
- (2) The panel must, in so far as it is practicable to do so and in accordance with such provision as may be made in rules, request the body, society or organisation which provided residential accommodation in an institution to which the application relates to provide whatever information would enable the panel to verify the accuracy of information provided in support of the application.
- (3) The panel may, if it considers that there are exceptional circumstances which make it necessary to do so in the interests of justice—
- (a) allow fresh evidence to be admitted;
 - (b) direct an oral hearing to be held with the evidence to be given on oath.
- (4) An oral hearing directed by the panel under subsection (3)(b) is to be held in private unless the panel considers that it would be in the interests of justice for the hearing to be held in public.

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- (5) Where the panel decides that it needs access to the records of the Inquiry in order to determine the application, the Public Record Office of Northern Ireland must allow the panel access to those records in accordance with whatever restrictions are in force under section 8 of the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013. 5
- (6) The entitlement to compensation on the application is not affected by –
- (a) whether or not any matters to which the application relates were reported to the police;
 - (b) whether or not the person by or in respect of whom the application is made provided evidence to the Inquiry; 10
 - (c) whether or not the person by or in respect of whom the application is made has been convicted of an offence.
- (7) After the panel has determined the application, the secretary to the Board must notify the applicant in writing of the determination; and the notification must be accompanied by a summary of the panel’s reasons for the determination. 15
- (8) The duty under subsection (2) does not arise if the person by or in respect of whom the application is made provided evidence to the Inquiry.
- (9) In this section, “the Inquiry” means the inquiry held under the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013; but the references in this section to the Inquiry do not include a reference to that part of the Inquiry described in its terms of reference as the Acknowledgement Forum. 20

10 Power to compel giving of evidence

- (1) For the purpose of determining an application for compensation under this Part, the panel appointed under section 8 may by notice in writing require a person – 25
- (a) to provide the panel on or before a specified date with specified records, documents, objects or other items of evidence, or
 - (b) to attend on one or more specified dates a hearing convened by the panel and to give oral evidence on oath to the panel.
- (2) A person to whom a notice under this section is given may make a claim to the panel that – 30
- (a) the person is unable to comply with the notice, or
 - (b) it is not reasonable in all the circumstances to require the person to comply with the notice.
- (3) On a claim under subsection (2), the panel may confirm, revoke or vary the notice. 35
- (4) A person who is required by a notice under this section to provide records or documents must, if doing so would disclose information about another person which is irrelevant to the determination of the application under this Part and the disclosure of which would breach an obligation of confidence, provide the records or documents in a redacted form. 40
- (5) A notice under this section has effect in spite of anything which would otherwise prohibit a person from complying with the notice.
- (6) But a requirement of a notice does not have effect if –

- (a) complying with the requirement would involve the disclosure of information which, although made in compliance with the requirement, would contravene the data protection legislation, or
 - (b) the person would be entitled in proceedings before the High Court in Northern Ireland to refuse to comply with the requirement. 5
- (7) A person commits an offence if the person fails to comply with a requirement of a notice under this section.
- (8) A person commits an offence if the person conceals, destroys, distorts or alters, or arranges for the concealment, destruction, distortion or alteration of anything required, or which there are reasonable grounds for believing might be required, to be provided to the panel by a notice under this section. 10
- (9) A person who is guilty of an offence under subsection (7) or (8) is liable on summary conviction to imprisonment for a term not exceeding six months, a fine not exceeding level 3 on the standard scale or both.
- (10) In this section, “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act). 15

11 Advisors

- (1) The Board may appoint one or more persons to act as advisors to the Board.
- (2) A person may be appointed as an advisor only if it appears to the Board that the person has expertise that makes that person a suitable person to provide advice to the Board. 20
- (3) The Board may at any time terminate the appointment of an advisor.

Award of compensation

12 Assessment of compensation

- (1) The amount of an award of compensation under this Part is to be assessed by the panel appointed under section 8 in accordance with this section and section 13. 25
- (2) The amount of compensation which may be awarded is –
 - (a) an amount of £10,000,
 - (b) an amount not exceeding £70,000 if the panel is satisfied that an additional amount is justified by the severity of the matters raised by the application, and 30
 - (c) an amount of £20,000 if the application is made by or in respect of a person who was sent to Australia under the programme commonly known as the “Child Migrants Programme”. 35
- (3) Accordingly, the maximum amount of compensation which may be awarded on an application under this Part is –
 - (a) £80,000, or
 - (b) if the application is made by or in respect of a person who was sent to Australia under the programme commonly known as the “Child Migrants Programme”, £100,000. 40

- (4) A person entitled to compensation under subsection (2)(c) is entitled to compensation under subsection (2)(a) or (b) only if the panel has determined that the person by or in respect of whom the application is made also suffered the abuse referred to in section 2(2)(a), (b) or (c) (abuse in institution in Northern Ireland). 5
- (5) In a case where more than one person is entitled to compensation by virtue of section 6, the proportion of the compensation to which each person is entitled is—
- (a) the proportion which that person’s share of the deceased’s residuary estate bears to the total of the shares of every other person entitled to the compensation, or 10
- (b) where the application is made by virtue of section 6(2) or the panel considers in the case of an application made by virtue of section 6(1) that the result which would be brought about under paragraph (a) of this subsection would not be in the interests of justice, such proportion as the panel considers would be in the interests of justice. 15
- (6) In the case of an application which relates to more than one institution, only one determination of an amount of compensation may be made under each of paragraphs (a), (b) and (c) of subsection (2) (or, in a case of the kind mentioned in subsection (5), only one determination under each of those paragraphs in accordance with that subsection), regardless of the number of institutions concerned. 20
- (7) The Board may make arrangements for facilitating access for a person who is awarded compensation under this Part to advice on the financial management of the award. 25
- (8) The Executive Office may by order amend this section so as to increase the amount of compensation which may be awarded on an application under this Part.
- (9) An order under subsection (8) may include transitional or saving provision.
- (10) The power to make an order under subsection (8) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979; and an order may not be made under that subsection unless a draft of the order has been laid before, and approved by a resolution of, the Northern Ireland Assembly. 30
- 13 Actuarial adjustment of award** 35
- (1) This section applies in a case where—
- (a) an award of compensation is made under this Part, but
- (b) compensation for having suffered the abuse in question has previously been paid to or in respect of the person who suffered it, and
- (c) the amount of compensation awarded under this Part exceeds the amount of compensation referred to in paragraph (b). 40
- (2) The reference in subsection (1)(b) to the payment of compensation is a reference to the payment of compensation—
- (a) in proceedings on a claim,
- (b) in settlement of a claim (whether or not proceedings on the claim were brought before a court), 45
- (c) under a scheme established under a statutory provision, or

- (d) from any other source.
 - (3) The panel appointed under section 8 may adjust the amount of the award of compensation under this Part by taking the following two steps.
 - (4) The first step is to determine the value of the amount of compensation referred to in subsection (1)(b) by using the ratio published by the Treasury and known as the Gross Domestic Product deflator by reference to the period –
 - (a) beginning with the date on which that compensation was paid, and
 - (b) ending with the date on which the establishment of the Board was advertised in the Belfast Gazette.
 - (5) The second step is to deduct from the amount of the award of compensation under this Part an amount equivalent to the value determined under subsection (4).
 - (6) In this section, “statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954.
- 14 Initial payment of award**
- (1) This section applies in the case of an application for compensation for having suffered the abuse referred to in section 2(2)(a), (b) or (c) (abuse in an institution in Northern Ireland).
 - (2) Where the panel appointed under section 8 determines that compensation should be awarded but has yet to determine the amount of compensation, it may, if it considers it appropriate to do so in all the circumstances, order the amount of £10,000 to be paid as compensation under section 12(2)(a) pending the completion by the panel of its determination of the amount of compensation.
 - (3) Where an order has been made under subsection (2) and the total compensation subsequently awarded on the application exceeds £10,000, the panel must order an amount equivalent to the excess to be paid as compensation.
 - (4) If the amount of the award of compensation is adjusted under section 13, the reference in subsection (3) of this section to the total compensation awarded is a reference to the total of the award after the adjustment is made.
- 15 Status etc of award**
- (1) An award of compensation under this Part is to be paid –
 - (a) as a single lump sum, or
 - (b) if the award is by way of two payments in accordance with section 14, as a lump sum for each payment.
 - (2) An award of compensation under this Part does not give rise to a charge to any tax or to a liability to pay national insurance contributions.
 - (3) An award of compensation under this Part is to be disregarded for the purposes of an assessment of a person’s eligibility for a social security benefit the entitlement to which depends on the carrying out of a means test.
 - (4) An award of compensation under this Part is to be disregarded for the purposes of an assessment of a person’s ability to pay under regulations made

under Article 36(6) or 99(5) of the Health and Personal Social Services (Northern Ireland) Order 1972 (cost of providing residential accommodation).

- (5) An award of compensation under this Part is to be disregarded for the purposes of an assessment of a person’s financial resources under –
- (a) Part 3 of the Legal Aid Advice and Assistance (Northern Ireland) Order 1981, or
 - (b) regulations under Part 2 of the Access to Justice (Northern Ireland) Order 2003.
- (6) A person who is notified under section 9(7) that the person is entitled to an award of compensation on an application under this Part, or on whose application a payment is ordered to be made under section 14(2), may not bring proceedings on a claim for compensation based on matters to which the application relates.

Appeal

- 16 Right to appeal** 15
- (1) A person who applied for compensation under this Part may appeal against a determination under section 8 –
- (a) that no compensation is to be awarded to the person, or
 - (b) as to the amount of compensation to be awarded to the person.
- (2) The person bringing the appeal must, when doing so, set out in writing the grounds of the appeal. 20
- (3) An appeal under this section must be made in accordance with such provision as may be made in rules.
- (4) An appeal under this section is to be determined on behalf of the Board by a single judicial member of the Board. 25
- (5) It is for the President of the Board to select the judicial member who is to determine the appeal; but the President may not select the judicial member who was the chair of the panel which made the determination under section 8.
- (6) An appeal under this section is to be by way of a reconsideration; and accordingly sections 9, 10 and 12 to 14 apply in relation to the appeal as they apply in relation to an application for compensation, but with references to the panel appointed under section 8 to be read as references to the single judicial member of the Board selected under this section. 30
- (7) Section 14 applies by virtue of subsection (6) in relation to an appeal only in the case of an appeal under subsection (1)(a). 35
- (8) In a case where the amount of an award of compensation was adjusted under section 13 (actuarial adjustments), the reference in subsection (1)(b) of this section to an amount of compensation is to be read as a reference to the amount of the award before the adjustment was made.
- (9) On an appeal under this section, the single judicial member of the Board may – 40
- (a) confirm the decision,
 - (b) reverse the decision, or
 - (c) increase or reduce the amount of the award of compensation.

- (10) Where a single judicial member of the Board acts under subsection (9)(b) to reverse a decision, the member may make an award of compensation in accordance with section 12.
- (11) A decision on an appeal under this section is final.

Miscellaneous

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17 Restrictions on public access

- (1) The President of the Board may by order (a “restriction order”) impose specified restrictions on—
 - (a) disclosure or publication of evidence or documents given, produced or provided on the determination of an application or appeal under this Part; 10
 - (b) disclosure or publication of the identity of any person.
- (2) The power under subsection (1) is also exercisable—
 - (a) on the determination of an application under this Part by the panel appointed under section 8, or 15
 - (b) on the determination of an appeal under this Part by the single judicial member of the Board selected under section 16.
- (3) A restriction order must specify only such restrictions—
 - (a) as are required by any law, or
 - (b) as the President, or the panel or judicial member of the Board concerned, considers to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4). 20
- (4) Those matters are—
 - (a) the extent to which a restriction on disclosure or publication might inhibit the allaying of public concern; 25
 - (b) any risk of harm or damage that could be avoided or reduced by any such restriction;
 - (c) any conditions as to confidentiality subject to which a person acquired information which that person is to give or has given to a panel appointed under section 8 or a single judicial member selected under section 16; 30
 - (d) the extent to which not imposing any particular restriction would be likely—
 - (i) to cause delay or to impair the efficient and effective discharge on behalf of the Board of its functions in determining an application or an appeal under this Part, or 35
 - (ii) otherwise to result in additional cost (whether to public funds or to a person making an application or bringing an appeal under this Part or to any other person).
- (5) The President, or the panel or judicial member of the Board concerned, may vary or revoke a restriction order by making a further order. 40
- (6) Restrictions imposed under this section continue in force indefinitely unless—
 - (a) under the terms of the relevant order, the restrictions expire at a specified time, or
 - (b) the relevant order is varied or revoked under subsection (5). 45

18 Information about legal advice and assistance

- (1) The secretary to the Board must, on a request from the Department of Justice in Northern Ireland, provide that Department with –
- (a) the name and address of each person who has made an application for compensation, or brought an appeal, under this Part and who has been receiving legal advice and assistance on the application or appeal, and 5
 - (b) details of the solicitors who have been providing the advice and assistance.
- (2) This section does not authorise the provision of information in contravention of any law which restricts or prevents provision of the information (including section 17). 10

19 Rules

- (1) Rules may make procedural provision for the purposes of this Part.
- (2) The provision which may be made in rules under this Part includes provision – 15
- (a) to specify information, documents or other material which must be provided in support of an application or appeal and the form in which information, documents or other material may or must be provided;
 - (b) to impose time limits;
 - (c) for the assessment and payment of the costs incurred in connection with legal advice and assistance; 20
 - (d) for the reimbursement of other costs or expenses of a specified description;
 - (e) for the making of payments under section 14;
 - (f) for enabling an award of compensation to be held on trust in such cases as the panel (on an application) or single judicial member of the Board (on an appeal) may determine; 25
 - (g) for enabling the recovery of a payment made in error.
- (3) The provision which may be made under subsection (2)(c) includes provision requiring the secretary to the Board to pay on each application for payment of costs a specified amount to the solicitor making the application, regardless of whether or not the application for payment of costs is granted. 30
- (4) But the rules may also provide that the secretary to the Board is not required to make a payment by virtue of subsection (3) if the secretary is satisfied that the application for payment of costs is wholly without merit. 35
- (5) Rules under this Part may confer a discretion.
- (6) Rules under this Part may contain incidental, supplementary, transitional or saving provision.

20 Rules: procedure

- (1) The power to make rules under this Part is exercisable by the Executive Office; but the Executive Office may not make rules without having obtained the approval of the Lord Chief Justice of Northern Ireland. 40
- (2) The power to make rules under this Part is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979; and a statutory

rule under this section is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954).

PART 2

THE COMMISSIONER FOR SURVIVORS OF INSTITUTIONAL CHILDHOOD ABUSE

The Commissioner

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21 Establishment of the Commissioner

- (1) An officer known as the Commissioner for Survivors of Institutional Childhood Abuse is established (and referred to in this Act as “the Commissioner”).
- (2) The Commissioner is to be appointed by the Executive Office. 10
- (3) Schedule 2 makes further provision about the Commissioner.

22 Principal aim of the Commissioner

- (1) The principal aim of the Commissioner in exercising functions under this Act is to promote the interests of any person who suffered abuse while a child and while resident in an institution at some time between 1922 and 1995 (both inclusive). 15
- (2) Persons of the description given in subsection (1) are referred to in this Part as “victims and survivors”.

The Advisory Panel

23 The Advisory Panel

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- (1) The Commissioner must appoint a panel of persons, all of whom are victims and survivors.
- (2) The panel is to be known as “the Advisory Panel”.
- (3) The function of the Advisory Panel is to provide a forum for consultation and discussion with victims and survivors. 25
- (4) The Commissioner may reimburse each member of the Advisory Panel for such expenses as the member reasonably incurs in acting as such.

Functions

24 General duties of the Commissioner

- (1) The Commissioner must provide advice on matters concerning the interests of victims and survivors to the Executive Office or a person providing services to victims and survivors— 30
 - (a) as soon as reasonably practicable after receiving a request for advice, and
 - (b) on whatever other occasions the Commissioner thinks appropriate. 35

- (2) The Commissioner must take reasonable steps to ensure that victims and survivors are made aware of –
- (a) the functions of the Commissioner,
 - (b) the location of the Commissioner, and
 - (c) the ways in which they may communicate with the Commissioner. 5

25 Powers of the Commissioner

- (1) The Commissioner may undertake or commission research into matters concerning the interests of victims and survivors.
- (2) The Commissioner may –
- (a) compile information concerning the interests of victims and survivors; 10
 - (b) provide advice or information on matters concerning the interests of victims and survivors;
 - (c) publish anything concerning the interests of victims and survivors, including – 15
 - (i) the results of research undertaken or commissioned under subsection (1), and
 - (ii) advice provided by the Commissioner.
- (3) The Commissioner may make representations or recommendations to any person about matters concerning the interests of victims and survivors.

26 Co-ordination of service provision etc 20

- (1) The Commissioner must encourage the provision, and the coordination of the provision, of relevant services in Northern Ireland to victims and survivors.
- (2) “Relevant service” means a service designed –
- (a) to improve a person’s physical or mental health,
 - (b) to help a person to overcome an addiction, 25
 - (c) to provide a person with counselling,
 - (d) to improve a person’s literacy or numeracy,
 - (e) to provide a person with other education or training, or
 - (f) to enable a person to access opportunities for work.
- (3) In carrying out the duty under subsection (1), the Commissioner must take account of the current provision of relevant services to victims and survivors and must identify any gaps in the provision of those services. 30
- (4) The Commissioner must provide, or secure the provision of, advice and information to victims and survivors on –
- (a) the relevant services that are available to them and the facilities that are available for the provision of those services, and 35
 - (b) how to obtain those services and access those facilities.
- (5) The Commissioner must, on becoming aware in the course of exercising the Commissioner’s functions of a matter which comes within the area of responsibility of the Commissioner for Children and Young People in Northern Ireland, consult that Commissioner. 40

27 Monitoring specialist facilities

The Commissioner must monitor the operation of whatever facilities there are currently available in Northern Ireland which are solely for providing victims and survivors with –

- (a) counselling and supplementary information about how to access health services, housing services, education services or employment services, 5
- (b) help to improve literacy or numeracy, or
- (c) advice on opportunities for education or work or on entitlements to housing or social security benefits.

28 Functions relating to the Board, etc 10

- (1) The Commissioner must make arrangements for publicising the role of the Board.
- (2) Where a person is considering whether to make an application to the Board for compensation under Part 1, the Commissioner must provide the person with –
 - (a) such general advice and information on making the application as the person requests, and 15
 - (b) if the person wishes to obtain information relating to any period in which the person by or in respect of whom the application would be made was 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. 20
- (3) The Commissioner must monitor the operation of the Board.
- (4) The Commissioner may establish, or make arrangements for establishing, a panel of solicitors, the members of which the Commissioner is satisfied have the necessary expertise for providing legal advice and assistance on applications and appeals under Part 1. 25

Miscellaneous

29 Independent review

- (1) The First Minister and deputy First Minister acting jointly must, every five years, commission an independent person – 30
 - (a) to review the operation of the Commissioner, and
 - (b) to send a report to the First Minister and deputy First Minister on the findings of the review.
- (2) The First Minister and deputy First Minister acting jointly may commission an independent person to act as mentioned in subsection (1) at such other times as they determine; and, if they do so, the period of five years referred to in subsection (1) accordingly runs from the date on which they do so. 35
- (3) 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 should continue. 40

30 Defamation: privilege

For the purposes of the law of defamation, publication of anything under this Part by the Commissioner is absolutely privileged.

PART 3

GENERAL

5

31 Interpretation

(1) In this Act –

“the Board” means the Historical Institutional Abuse Redress Board;

“child” means a person aged under 18, subject to section 6(8);

“the Commissioner” means the Commissioner for Survivors of Institutional Childhood Abuse; 10

“the Executive Office” means the Executive Office in Northern Ireland;

“information” includes information recorded in any form;

“institution” has the meaning given in section 2(3) and (4);

“interests” includes rights; 15

“victims and survivors” has the meaning given in section 22(2).

(2) A reference in this Act to having suffered abuse is to be construed in accordance with section 2(2) and (7).

(3) A reference in this Act to being resident in an institution is to be construed in accordance with section 2(5) and (6). 20

32 Extent

This Act extends to Northern Ireland only.

33 Commencement

(1) This Part comes into force on the day on which this Act is passed.

(2) Parts 1 and 2 come into force on such day as the Executive Office may by order appoint; and different days may be appointed for different purposes. 25

(3) The power to make an order under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

34 Short title

This Act may be cited as the Historical Institutional Abuse (Northern Ireland) Act 2019. 30

SCHEDULES

SCHEDULE 1

Section 1

THE HISTORICAL INSTITUTIONAL ABUSE REDRESS BOARD

Status

- 1 (1) The Board is a body corporate. 5
- (2) The Board is not to be regarded –
 - (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.
- (3) Section 19 of the Interpretation Act (Northern Ireland) 1954, except for subsection (1)(a)(iv) and (vi), applies to the Board, subject to the provisions of this Act; and, for the purposes of that section, the Board is to be treated as if it were established by an Act of the Northern Ireland Assembly. 10

Advertisement in the Belfast Gazette

- 2 The Executive Office must secure that the establishment of the Board is advertised in the Belfast Gazette. 15

Administrative functions exercisable by Northern Ireland Department

- 3 (1) The Executive Office must in writing designate a Northern Ireland Department to exercise the administrative functions of the Board on the Board's behalf.
- (2) The designated Department (whether in its own capacity or in the capacity of an agency of that Department) is, accordingly, to exercise the administrative functions of the Board on the Board's behalf; and references in this Schedule to "the Department" are references to the designated Department. 20

Functions

- 4 (1) In the exercise of the Board's functions, the Board or any member of the Board acting on its behalf, must have regard to the Report of the Historical Institutional Abuse Inquiry (ISBN 978-1-908820-91-4), being the report of the Inquiry held under the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013; but this duty does not apply in so far as any of the Board's functions depart from the recommendations made in the Report. 30
- (2) The Board, or any member of the Board acting on its behalf, may do anything which the Board or member considers to be appropriate for facilitating, or to be incidental or conducive to, the exercise of its functions.

- (3) The power under sub-paragraph (2) does not include a power to borrow money.

President and other members

- 5 (1) The Lord Chief Justice of Northern Ireland is to appoint a person as the President of the Board. 5
- (2) The Lord Chief Justice of Northern Ireland is to appoint such persons to serve as the other judicial members of the Board as the President considers necessary, but with the number subject to the approval of the Executive Office.
- (3) A person may be appointed under sub-paragraph (1) or (2) only if the person holds or has held office – 10
- (a) as a judge of the Court of Judicature of Northern Ireland, or
- (b) as a judge or deputy judge of a county court in Northern Ireland.
- (4) The Executive Office is to appoint such number of persons to serve as the other members of the Board as the Executive Office considers necessary. 15
- (5) A person may be appointed under sub-paragraph (4) only if the person has professional qualifications or experience in the field of health or social care which the Executive Office considers relevant.
- (6) The President has responsibility for ensuring the efficient and effective discharge of the Board’s functions. 20
- (7) The Department may pay to or in respect of the President and each other member of the Board such remuneration, such allowances, and such sums for the provision of a pension as the Executive Office determines.
- (8) The Department may reimburse the President and each other member of the Board for such expenses as the member reasonably incurs in acting as such. 25

Staff, accommodation etc.

- 6 (1) The staff required for the Board are, with the approval of the Executive Office as to numbers, to be provided by the Department.
- (2) The staff provided under sub-paragraph (1) must, in particular, include a person to act as the secretary to the Board. 30
- (3) The Department may assign one or more members of its staff to act as a deputy secretary to the Board; and a deputy secretary is entitled to act on behalf of the secretary.
- (4) The office accommodation and equipment required for the Board are to be provided by the Department. 35

Delegation and committees

- 7 (1) Any function of the President may be exercised by another judicial member of the Board who has been authorised (whether generally or specifically) by the President for that purpose.
- (2) The Board may establish one or more committees to advise the Board or the President. 40

- (3) The Board may establish one or more committees to which the Board may delegate functions.

Seal

- 8 The application of the seal of the Board must be authenticated –
- (a) by the signature of the President, or 5
 - (b) by the signature of a person who is authorised under paragraph 7(1) for that purpose.

Evidence

- 9 (1) A document purporting to be an instrument issued by the Board and to be duly executed under the Board’s seal or signed by or on behalf of the Board is to be received in evidence and, unless the contrary is proved, taken to be such an instrument. 10
- (2) The Board may administer oaths for the purposes of this Act.

Funding

- 10 (1) The Executive Office may make to the Department grants of such amounts as the Executive Office determines for the purpose of funding – 15
- (a) the costs of exercising the administrative functions of the Board,
 - (b) the awards of compensation made under this Part, and
 - (c) the amounts the Board is required to pay under this Part in respect of costs and expenses incurred in connection with applications and appeals. 20
- (2) The Board must pay to the Executive Office all sums received by it in the course of, or in connection with, the exercise of the Board’s functions.
- (3) But sub-paragraph (2) does not apply to such sums, or sums of such description, as the Executive Office may direct with the approval of the Department of Finance in Northern Ireland. 25
- (4) Any sums received by the Executive Office under this paragraph must be paid into the Consolidated Fund of Northern Ireland.

Annual report

- 11 (1) The Board must, as soon as practicable after the end of each financial year, send to the Executive Office a report on the exercise of the Board’s functions during that year. 30
- (2) The Executive Office must, in the case of each report sent to it under this paragraph, lay a copy of the report before the Northern Ireland Assembly.
- (3) In this paragraph, “financial year” means – 35
- (a) the period beginning with the day on which the Board is established under section 1 and ending with the next 31 March following that date, and
 - (b) each successive period of twelve months ending with 31 March.

Disqualification from the Assembly

- 12 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices: bodies of which all members are disqualified), at the appropriate place, insert –
- “The Historical Institutional Abuse Redress Board”. 5

Freedom of information

- 13 In Part 7 of Schedule 1 to the Freedom of Information Act 2000 (offices and bodies in Northern Ireland which are public authorities for the purposes of the Act), at the appropriate place, insert –
- “The Historical Institutional Abuse Redress Board, in relation to its administrative functions.” 10

Public Services Ombudsman

- 14 In Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 (listed authorities), under the heading “Miscellaneous”, at the appropriate place, insert –
- “The Historical Institutional Abuse Redress Board established under section 1 of the Historical Institutional Abuse (Northern Ireland) Act 2019”. 15

SCHEDULE 2

Section 21

THE COMMISSIONER FOR SURVIVORS OF INSTITUTIONAL CHILD ABUSE 20

Status

- 1 (1) The person for the time being holding the office of Commissioner for Survivors of Institutional Childhood Abuse is, by that name, a corporation sole.
- (2) The Commissioner is not to be regarded – 25
- (a) as the servant or agent of the Crown, or
- (b) as enjoying any status, immunity or privilege of the Crown.
- (3) The property held by the Commissioner is not to be regarded as property of, or property held on behalf of, the Crown.

General powers 30

- 2 (1) The Commissioner may do anything which the Commissioner considers to be appropriate for facilitating, or to be incidental or conducive to, the exercise of the Commissioner’s functions.
- (2) The power under sub-paragraph (1) includes a power to co-operate with other bodies which exercise functions (whether in the United Kingdom or elsewhere) relating to persons who suffered abuse while children and while resident in accommodation provided for them by a body, society or organisation with responsibility for the care, health and welfare of children. 35

- (3) The power under sub-paragraph (1) does not include a power to borrow money.
- (4) The reference in sub-paragraph (2) to being resident in accommodation includes a reference to being absent from the accommodation while under the care of –
 - (a) the body, society or organisation which provided the accommodation, or
 - (b) a person authorised by that body, society or organisation.

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Tenure of office

- 3 (1) A person holds and vacates office as the Commissioner in accordance with the terms of that person’s appointment; but that is subject to the following provisions of this paragraph.
- (2) An appointment as the Commissioner is for a term of five years.
- (3) A person who ceases to be the Commissioner on the expiry of that person’s first term of office is eligible for re-appointment.
- (4) But a person who has been re-appointed by virtue of sub-paragraph (3) is not eligible for appointment or re-appointment as the Commissioner at any time after the end of that person’s second term of office.
- (5) A person may at any time resign from office as the Commissioner by giving written notice to the Executive Office.
- (6) The Executive Office may remove a person from office as the Commissioner if satisfied that the person –
 - (a) has been convicted of an offence,
 - (b) has become bankrupt, has had a bankruptcy restrictions order, debt relief order or debt relief restrictions order made in respect of that person, or has made a voluntary arrangement,
 - (c) has, without reasonable excuse, failed to discharge the functions of the Commissioner for a continuous period of three months, or
 - (d) has, in the opinion of the Executive Office, become unfit or unable to exercise the functions of the Commissioner.
- (7) Each of the expressions used in sub-paragraph (6)(b) has the same meaning as in the Insolvency (Northern Ireland) Order 1989.

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Salary, etc

- 4 (1) The Executive Office may pay to or in respect of the Commissioner such remuneration, such allowances, and such sums for the provision of a pension as the Executive Office determines.
- (2) Where a person ceases to hold office as the Commissioner otherwise than on the expiry of the person’s term of office and the Executive Office determines that there are special circumstances that make it right for the person to receive compensation, the Executive Office may make to the person a payment of such amount as it determines.
- (3) A determination by the Executive Office under this paragraph requires the approval of the Department of Finance in Northern Ireland.

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Staff

- 5 (1) The Commissioner may, with the approval of the Executive Office as to numbers, appoint such staff as the Commissioner considers necessary.
- (2) The remuneration and other conditions of service of the persons appointed as members of the Commissioner’s staff are to be determined by the Commissioner. 5
- (3) The Commissioner may make payments towards the provision of such pensions or allowances to or in respect of the persons appointed as members of the Commissioner’s staff as the Commissioner determines.
- (4) The reference in sub-paragraph (3) to pensions or allowances includes a reference to pensions or allowances by way of compensation for loss of employment. 10
- (5) A determination by the Commissioner under this paragraph requires the approval of the Executive Office and of the Department of Finance in Northern Ireland. 15
- (6) Employment as a member of the Commissioner’s staff is among the kinds of employment to which a superannuation scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 can apply; and, accordingly, in Schedule 1 to that Order, under the heading “Other Bodies”, at the end insert – 20
- “Employment by the Commissioner for Survivors of Institutional Childhood Abuse.”

Delegation of functions of Commissioner

- 6 Any function of the Commissioner may be exercised by a member of the Commissioner’s staff who has been authorised (whether generally or specifically) by the Commissioner for that purpose. 25

Seal

- 7 The application of the seal of the Commissioner must be authenticated –
- (a) by the Commissioner’s signature, or
- (b) by the signature of a person who is authorised under paragraph 6 for that purpose. 30

Evidence

- 8 A document purporting to be an instrument issued by the Commissioner and to be duly executed under the Commissioner’s seal or signed by or on behalf of the Commissioner is to be received in evidence and, unless the contrary is proved, taken to be such an instrument. 35

Property

- 9 (1) Any real or personal property vested in the Commissioner must (unless and until disclaimed or disposed of) vest in the Commissioner’s successor in office. 40

- (2) Where there is a vacancy in the office of Commissioner at the time when real or personal property would otherwise have vested, the property must vest in the successor on that person’s appointment.

Funding

- 10 (1) The Executive Office may make grants to the Commissioner of such amounts as it determines. 5
- (2) The Commissioner must pay to the Executive Office all sums received by the Commissioner in the course of, or in connection with, the exercise of the Commissioner’s functions.
- (3) But sub-paragraph (2) does not apply to such sums, or sums of such description, as the Executive Office may direct with the approval of the Department of Finance in Northern Ireland. 10
- (4) Any sums received by the Executive Office under this paragraph must be paid into the Consolidated Fund of Northern Ireland.

Accounts 15

- 11 (1) The Commissioner must –
- (a) keep proper accounts and proper records in relation to the accounts, and
 - (b) prepare a statement of accounts in respect of each financial year.
- (2) The statement of accounts must be in such form, and contain such information, as the Executive Office may direct with the approval of the Department of Finance in Northern Ireland. 20
- (3) The Commissioner must, within such period after the end of each financial year as the Executive Office may direct, send copies of the statement of accounts relating to that year to – 25
- (a) the Executive Office, and
 - (b) the Comptroller and Auditor General for Northern Ireland.
- (4) The Comptroller and Auditor General for Northern Ireland must –
- (a) examine, certify and report on every statement of accounts sent to the Comptroller and Auditor General by the Commissioner under this paragraph, and 30
 - (b) send the Executive Office a copy of the report of the Comptroller and Auditor General for Northern Ireland.
- (5) The Executive Office must lay before the Northern Ireland Assembly – 35
- (a) a copy of the statement of accounts, and
 - (b) a copy of the report of the Comptroller and Auditor General for Northern Ireland.
- (6) In this paragraph, “financial year” means – 40
- (a) the period beginning with the day on which the first person appointed under section 21(2) takes office and ending with the next 31 March following that date, and
 - (b) each successive period of twelve months ending with 31 March.

Annual report

- 12 (1) The Commissioner must, as soon as practicable after the end of each financial year, send to the Executive Office a report on the exercise of the Commissioner’s functions during that year.
- (2) A report under this paragraph must give details of the steps taken by the Commissioner in the financial year to which the report relates for the purpose of complying with the Commissioner’s duties. 5
- (3) The Executive Office must, in the case of each report sent to it under this paragraph, lay a copy of the report before the Northern Ireland Assembly.
- (4) In this paragraph, “financial year” has the meaning given in paragraph 11. 10

Disqualification from the Assembly

- 13 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices), at the appropriate place, insert –
- “Commissioner for Survivors of Institutional Childhood Abuse”.

Freedom of information

- 14 In Part 7 of Schedule 1 to the Freedom of Information Act 2000 (offices and bodies in Northern Ireland which are public authorities for the purposes of the Act), at the appropriate place, insert –
- “Commissioner for Survivors of Institutional Childhood Abuse”.

Public Services Ombudsman

- 15 In Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 (listed authorities), under the heading “Miscellaneous”, at the appropriate place, insert –
- “The Office of the Commissioner for Survivors of Institutional Childhood Abuse”.

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Historical Institutional Abuse (Northern Ireland) Bill [HL]

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B I L L

To establish the Historical Institutional Abuse Redress Board and to confer an entitlement to compensation in connection with children who were resident in certain institutions in Northern Ireland; and to establish the Commissioner for Survivors of Institutional Childhood Abuse.

Lord Duncan of Springbank

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