This Memorandum refers to the Commissioner For Survivors of Institutional Childhood Abuse Bill as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

COMMISSIONER FOR SURVIVORS OF INSTITUTIONAL CHILDHOOD ABUSE BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum (the “Memorandum”) has been prepared by The Executive Office in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. Where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

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. On 31 May 2012, the First Minister and deputy First Minister announced the agreed Terms of Reference for the Historical Institutional Abuse Inquiry and Investigation (the “HIA Inquiry”) and advised the Northern Ireland Assembly of the appointment of the Chairman of the Inquiry and the panel members for the Acknowledgement Forum. The Acknowledgement Forum enabled historical institutional abuse (“HIA”) victims and survivors to recount their experiences on a confidential basis. It operated as a separate body within the HIA Inquiry accountable to and under the chairmanship of the HIA Inquiry Panel Chair.

4. The Terms of Reference originally provided that the HIA Inquiry would examine the period between 1945 and 1995; however, after consultation, the First Minister and deputy First Minister granted that the Terms of Reference would be amended to extend the ambit of the HIA Inquiry from 1922 to 1995 (inclusive).

5. An application for an extension of an additional year to allow the HIA Inquiry to conduct its public hearings and investigations, to complete its work, and deliver its report (the “Hart Report”) was granted, and the Terms of Reference of the HIA Inquiry were formally amended by The Inquiry into Historical Institutional Abuse (Amendment of Terms of Reference) Order (Northern Ireland) 2015. This came into operation on 11 February 2015, giving the HIA Inquiry an extension to three and a half years from 19 January 2013, to carry out its investigations. The Terms of Reference for the Inquiry allowed a further six months was allowed to deliver the Hart Report.

6. The Hart Report was published on 20 January 2017. One of the substantial and overarching recommendations made relates to the creation of a statutory Commissioner...
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for Survivors of Institutional Childhood Abuse (“the Commissioner”). The detail around the responsibilities of this position make it clear that the Commissioner would have a role in encouraging the co-ordination and provision of relevant services, a monitoring role across a broad range of areas (including the operation of the proposed HIA Redress Board), as well as an advocacy role, supported by an advisory panel composed of HIA victims and survivors of historical institutional abuse (the “Advisory Panel”).

7. The purpose of this Bill is the establishment of the post of the Commissioner, who in keeping with the intention as set out in the Hart Report (Chp 4, Para 6), should:
   • be entirely independent of government and the organisations that ran the institutions, but should be funded by government;
   • act as an advocate for all those who were abused as children in residential institutions in Northern Ireland between 1922 and 1995;
   • encourage the co-ordination and provision of relevant services free of charge for those who were so abused;
   • be a central point of contact for providing advice on the services and facilities available; and provide assistance to those who suffered abuse to contact those services. This may include providing a hotline and internet advice;
   • be responsible for monitoring the matters relating to provision by government of general counselling services and practical help with literacy and numeracy, education, employment, housing and benefits advice tailored to the needs of HIA victims and survivors;
   • assist in the provision of advice and information to those who wish to apply for compensation to the HIA Redress Board;
   • assist people to access records about the time they spent in homes including admission and discharge dates to enable them to apply for compensation to the HIA Redress Board; and,
   • monitor the operation of the proposed HIA Redress Board.

8. As well as legislating to establish the post of the Commissioner, this Bill legislates for:
   • the recruitment of staff;
   • the appointment of an Advisory Panel;
   • the imposition of duties and provision of powers to enable the Commissioner to carry out their functions;
   • the requirement of the Commissioner to report annually to the Executive Office, which will then lay that report in the NI Assembly;

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- the requirement for a review of the operation and need for the Commissioner every five years; and
- the procedure for the winding up of the Commissioner subject to recommendation by review that it is no longer required.

9. As the Commissioner is a new post, there is no existing law which relates directly to it. However, the Hart Report which recommends its establishment was produced as a result of the HIA Inquiry, which itself was established by the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013.

CONSULTATION

10. It is the intention to consult on the draft Bill before its finalisation.

OPTIONS CONSIDERED

11. In developing this legislation, and in the absence of Ministers, the Executive Office has taken its policy direction from the Hart Report, which recommends the establishment of the Commissioner by statute. Other options considered were as follows:

12. Do nothing; do not establish a Commissioner for Survivors of Institutional Childhood Abuse. This option was rejected as it would not fulfil the policy intent of implementing the Hart Report.

13. Extend the power of an existing Commissioner to undertake the role outlined for the Commissioner in the Hart Report. This option was rejected as the Hart Report recommended a dedicated Commissioner for Survivors of Institutional Childhood Abuse.

14. Establish an Advocate for Survivors of Institutional Childhood Abuse on a non-statutory basis. This was rejected as the Hart Report recommended that the Commissioner should be established on a statutory basis. Additionally a non-statutory position cannot have the same level of independence as a statutory Commissioner. However, given the delay in bringing forward legislation because of the political situation, TEO is making plans for an Interim Advocate with responsibility for the representation of the interests of HIA victims and survivors in the meantime.

15. The option chosen was to establish a Commissioner for Survivors of Institutional Childhood Abuse by statute, as recommended by the Hart Report.

OVERVIEW

16. The Bill consists of 12 clauses and 1 schedule.

COMMENTARY ON CLAUSES

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Clause 1 - The Commissioner for Survivors of Institutional Childhood Abuse

17. This clause provides for the establishment of the Commissioner as recommended by the Hart Report in January 2017.

Clause 2 - Principal aim of the Commissioner

18. 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’.

19. The term 'abuse' includes physical, sexual and emotional abuse, neglect, and maltreatment. The term 'maltreatment' is considered to be analogous to the ‘unacceptable practices’ of which the Hart Report speaks (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 their institution, as the Hart 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”.

20. The Bill regards the institution as acting in loco parentis and therefore is responsible for any abuse suffered by children in its care, whether they were resident in the institution, or 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.

21. It should be noted that the definitions provided for in this clause will also be used in the Bill to establish the HIA Redress Board.

Clause 3 - The Advisory Panel

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

23. 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 4 - General duties of the Commissioner

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

25. 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.

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 Hart 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 6 - Co-ordination of service provision etc.

26. 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.

27. 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.
28. 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.

Clause 7 – Monitoring Specialist Facilities

29. 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.

30. The term 'specialist facilities' means facilities providing services solely for the use of HIA victims and survivors, on any of the following issues:
   (a) 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
   (b) 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 8 - Duties relating to the Historical Institutional Abuse Redress Board

31. 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”).

32. 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.

33. The Commissioner must also monitor the operation of the Redress Board.

Clause 9 - Independent review

34. 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 so.

35. 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 10 - Defamation: privilege

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36. 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.

Clause 11 - Interpretation

37. This clause defines a number of terms used throughout the Bill.

Clause 12 - Commencement and short title

38. This clause provides for the short title of the Commissioner for Survivors of Institutional Childhood Abuse Bill and provides for the majority of the Act to come into operation on the day following the date of Royal Assent. It also provides for the clause relating to the Redress Board to come into operation at the same time as the legislation establishing the Redress Board.

SCHEDULE 1

39. The schedule provides for the status, general powers, tenure of office and general staffing and procedural arrangements. It provides for a tenure of 5 years with eligibility for one further term of 5 years and provides for accountability to the Executive Office and the Assembly in relation to Accounts and to the Executive Office and to the Assembly in relation to an Annual Report. A copy of the Annual Report is also to be sent to the Secretary of State.

Paragraph 1 - Status

40. This ensures that the Commissioner has an independent legal status distinct from the sponsoring Department of TEO and permits the post to pass from one Commissioner to the next successor-in-office.

41. 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.

Paragraph 2 – General Powers

42. This would provide the Commissioner with a general power which allows the Commissioner to do anything related to the Commissioner’s functions, unless it is specifically prohibited within this or other legislation. Importantly, 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 HIA victims and survivors. TEO will draw to the Commissioner’s attention the importance of the Commissioner making every effort to agree memoranda of understanding with relevant and appropriate organisations. This approach will ultimately better protect the rights and interests of HIA victims and survivors as well as ensuring efficient use of resources.

Paragraph 3 – Tenure of Office

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43. 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 First Minister and the deputy First Minister 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/her functions for a continuous period of 3 months, or become unable or unfit to carry out his/her functions.

**Paragraph 4 – Salary, etc.**

44. 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.

**Paragraph 5 - Staff**

45. The Commissioner has the power to employ staff as he/she considers necessary, subject to the approval of TEO as to numbers.

**Paragraph 6 – Delegation of the Functions of the Commissioner**

46. The Commissioner has the power to delegate his/her role of Commissioner and any or all of his/her accompanying functions to a member of staff within the Commission.

**Paragraph 7 - Seal**

47. The Commissioner’s signature or that of his/her authorised staff authenticates or forms the seal of the Commissioner’s office on any documentation.

**Paragraph 8 - Evidence**

48. Any document signed by the Commissioner or that of his/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.

**Paragraph 9 - Property**

49. This allows property, for example the offices of the Commissioner to be transferred to his/her successor.

**Paragraph 10 - Funding**

50. 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.

**Paragraph 11 - Accounts**

51. This paragraph sets out the arrangements for the financial accountability and audit requirements for the Commissioner’s office. The Commissioner is required to keep
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proper accounting records and to prepare an annual financial statement of accounts in accordance with directions given by TEO 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 TEO and to the Comptroller and Auditor General for examination, who will then report back on the statement of accounts to TEO. TEO would then 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.

Paragraph 12 – Annual Report

52. To ensure accountability, the Commissioner is required to report back annually to the appointing authority, that is to the First Minister and the deputy First Minister, on how he/she is carrying out the role of Commissioner and on the use of the financial resources at his/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/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 and to send a copy of the annual report to the Secretary of State for Northern Ireland.

Paragraph 13 - Disqualification

53. This paragraph adds the Commissioner to The Northern Ireland Assembly Disqualification Act (1975), so ensuring that the Commissioner and any member of his/her staff (once in post) cannot also hold membership of the Northern Ireland Assembly.

Paragraph 14 – Freedom of Information

54. 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.

Paragraph 15 – Public Services Ombudsman

55. 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/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.
FINANCIAL EFFECTS OF THE BILL

56. Annual costs are estimated to be in the region of £700,000. It is envisioned that the Commissioner will operate for up to ten years, with a review of ongoing need after five years. Therefore, the estimated costs after five years would be in the region of £3,500,000, and after ten years £7,000,000.

HUMAN RIGHTS ISSUES

57. From the outset, the context for establishing a Commissioner for Survivors of Institutional Childhood Abuse has been grounded in the safeguarding and promotion of the interests of HIA victims and survivors of Institutions. The provisions of the Bill are compatible with the Human Rights Act 1998.

EQUALITY IMPACT ASSESSMENT

58. The impact of these proposals has been assessed in accordance with section 75 of the Northern Ireland Act 1998. The policy is likely to have a differential impact on HIA victims and survivors who were resident in Institutions during the period 1922 to 1995 inclusive. The effect will however be positive, in relation to the promotion of the interests of HIA victims and survivors. It is not likely to be discriminatory either directly or indirectly. The policy will impact on HIA victims and survivors of historical institutional abuse, both male and female, irrespective of sexual orientation, religious belief or political belief.

59. The legislation has been drafted on the basis of the Hart Report, which made recommendations following consultation with HIA victims and survivors. All support and advocacy provided by the Commissioner will be additional to current provision.

60. The focus of the Commissioner will be on HIA victims and survivors who fall within the Terms of Reference of the Inquiry into Historical Institutional Abuse, and who suffered abuse in institutions between the period 1922 to 1955 as defined by this Bill. The Commissioner will however also be able to bring recommendations relating to current practices to the appropriate authority if necessary, as stipulated in clause 4.

61. It is recognised that there are those who suffered from other forms of abuse outwith the Terms of Reference of the Inquiry. This issue is being considered by the Interdepartmental Working Group looking at Mother and Baby Homes/Magdalene Asylums (Laundries) and Clerical Child Abuse more generally.

62. A screening exercise on the proposals given effect in the Bill concluded that there would be no adverse impact on equality of opportunity. A full Equality Impact Assessment was therefore considered unnecessary.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

63. The proposals in the Bill are not expected to result in any significant cost to businesses, the voluntary sector or to charities.
DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

64. The proposals in the Bill will not directly necessitate the processing of personal information, beyond ordinary Departmental processes around filling the post of Commissioner and arranging for necessary staff.

65. However it is anticipated that once in operation, the Commissioner will process the personal information of HIA victims and survivors who make use of its services. It is not anticipated that the Executive Office will have any involvement in the processing of this personal information. However, the Commissioner will be required to abide fully by the General Data Protection Regulation.

66. Due to this, a Privacy Impact Assessment is not required and this policy has been screened out at the legislative stage. The Commissioner will however be required to consider this issue in relation to his/her handling of personal information once he/she is in operation.

RURAL NEEDS IMPACT ASSESSMENT

67. A Rural Needs Impact Assessment was undertaken and screened out.

LEGISLATIVE COMPETENCE

68. This paragraph cannot be completed due to the ongoing political lacuna.