Commissioner for Survivors of Institutional Childhood Abuse Bill

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The Commissioner for Survivors of Institutional Childhood Abuse
Commissioner for Survivors of Institutional Childhood Abuse

A

BILL

TO

Establish the Commissioner for Survivors of Institutional Childhood Abuse.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

The Commissioner

The Commissioner for Survivors of Institutional Childhood Abuse

1.—(1) There is to be an officer known as the Commissioner for Survivors of Institutional Childhood Abuse (referred to in this Act as “the Commissioner”).

(2) The Commissioner is to be appointed by the First Minister and deputy First Minister acting jointly.

(3) The Schedule makes further provision about the Commissioner.

Principal aim of the Commissioner

2.—(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).

(2) Persons of the description given in subsection (1) are referred to in this Act as “victims and survivors”.

(3) A reference to having suffered abuse is a reference to—

(a) having suffered sexual, physical or emotional abuse or abuse in the form of 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”.

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(4) “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.

(5) A reference to an institution does not include a reference to an institution at which education was provided, other than—

(a) a certified school 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
(d) a young offenders centre under the Treatment of Offenders Act (Northern Ireland) 1968.

(6) A reference to being resident in an institution includes a reference to being absent from the institution while under the care of—

(a) the body, society or organisation which provided accommodation for the child in the institution, or
(b) a person authorised by that body, society or organisation.

(7) But subsection (6) does not apply to a case which comes within subsection (3)(c); and accordingly subsection (3)(c) is to be read as referring only to a person who was exposed to a harsh environment while in the institution in question.

(8) “Child” means a person aged under 18.

The Advisory Panel

3.—(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.

(4) The Commissioner may reimburse each member of the Advisory Panel for such expenses as the member reasonably incurs in acting as such.

Functions

General duties of the Commissioner

4.—(1) The Commissioner must provide advice on matters concerning the interests of victims and survivors to the Executive Committee of the Assembly or a person providing services to victims and survivors—

(a) as soon as reasonably practicable after receiving a request for advice, and
(b) on whatever other occasions the Commissioner thinks appropriate.

(2) The Commissioner must take reasonable steps to ensure that victims and survivors are made aware of—

(a) the functions of the Commissioner,
Powers of the Commissioner
5.—(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;
(b) provide advice or information on matters concerning the interests of victims and survivors;
(c) publish matters concerning the interests of victims and survivors, including—
(i) the results of research undertaken or commissioned under subsection (1);
(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.

Co-ordination of service provision etc.
6.—(1) The Commissioner must encourage the provision, and the co-ordination 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,
(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 identify any gaps in the provision of them.
(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
(b) how to obtain those services and access those facilities.

Monitoring specialist facilities
7. 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,
(b) help to improve literacy or numeracy, or
(c) advice on opportunities for education or work or on entitlements to
housing or benefits.

Duties relating to the Historical Institutional Abuse Redress Board

8.—(1) The Commissioner must make arrangements for publicising the role of
the Historical Institutional Abuse Redress Board (“the Board”).

(2) Where a person is considering whether to make an application to the Board
for compensation under the Historical Institutional Abuse Redress Board Act 20--,
the Commissioner must provide the person with—

(a) such general advice and information on making the application as the
person requests, and
(b) if the person wishes to obtain information relating to any period in which
he or she 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.

(3) The Commissioner must monitor the operation of the Board.

Independent review

9.—(1) The First Minister and deputy First Minister acting jointly must, every
five years, commission an independent person—

(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.

(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 is to continue.

Defamation: privilege

10. For the purposes of the law of defamation, publication of any matter under
this Act by the Commissioner is absolutely privileged.

Supplementary

Interpretation

11.—(1) In this Act—

“child” has the meaning given in section 2(8);
“the Commissioner” means the Commissioner for Survivors of Institutional
Childhood Abuse;
“information” includes information recorded in any form;
"institution" has the meaning given in section 2(4) and (5);
"interests" includes rights;
"the Office" means the Executive Office;
"victims and survivors" has the meaning given in section 2(2).
(2) A reference in this Act to having suffered abuse is to be construed in accordance with section 2(3).
(3) A reference in this Act to being resident in an institution is to be construed in accordance with section 2(6).

Final

Commencement and short title

12.—(1) This Act comes into operation on the day after the day on which it receives Royal Assent, subject to subsection (2).
(2) If the Historical Institutional Abuse Redress Board Act 20-- is not in operation when this Act comes into operation, section 8 of this Act comes into operation immediately after that Act comes into operation.
(3) This Act may be cited as the Commissioner for Survivors of Institutional Childhood Abuse Act (Northern Ireland) 20--.
SCHEDULE

THE COMMISSIONER FOR SURVIVORS OF INSTITUTIONAL CHILDHOOD ABUSE

Status

1.—(1) The person for the time being holding the office of Commissioner for Survivors of Institutional Childhood Abuse is, by that name, to be a corporation sole.

(2) The Commissioner 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) The property held by the Commissioner is not to be regarded as property of, or property held on behalf of, the Crown.

General powers

2.—(1) The Commissioner may do anything which the Commissioner considers to be appropriate for facilitating, or 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.

(3) The power under sub-paragraph (1) also includes—

(a) a power to acquire, hold or dispose of real or personal property, and

(b) a power to enter into contracts.

(4) But the power under sub-paragraph (1) does not include a power to borrow money.

(5) 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.

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 First Minister and deputy First Minister.

(6) The First Minister and deputy First Minister acting jointly 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 him or her, 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 First Minister and deputy First Minister, 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 (N.I. 19).

Salary, etc.

4.—(1) The 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 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 Office determines that there are special circumstances that make it right for the person to receive compensation, the Office may make to the person a payment of such amount as it determines.

(3) A determination by the Office under this paragraph requires the approval of the Department of Finance.

Staff

5.—(1) The Commissioner may, with the approval of the 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.

(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.

(5) A determination by the Commissioner under this paragraph requires the approval of the Office and of the Department of Finance.

(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 (N.I. 10) can apply; and in
Schedule 1 to that Order, the following entry is accordingly inserted at the appropriate place—

“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.

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 member of the Commissioner’s staff who has been authorised under paragraph 6 for that purpose.

Evidence

8. A document purporting to be an instrument issued by the Commissioner and to be duly executed under the Commissioner’s seal or to be 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.

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.

   (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 Office may make grants to the Commissioner of such amounts as it determines.

   (2) The Commissioner must pay to the 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 Office may direct with the approval of the Department of Finance.

   (4) Any sums received by the Office under this paragraph must be paid into the Consolidated Fund.

Accounts

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 Office may direct with the approval of the Department of Finance.

(3) The Commissioner must, within such period after the end of each financial year as the Office may direct, send copies of the statement of accounts relating to that year to—
   (a) the Office, and
   (b) the Comptroller and Auditor General.

(4) The Comptroller and Auditor General 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
   (b) send a copy of the Comptroller and Auditor General’s report to the Office.

(5) The Office must lay before the Assembly—
   (a) a copy of the statement of accounts, and
   (b) a copy of the Comptroller and Auditor General’s report.

(6) In this paragraph, “financial year” means—
   (a) the period beginning with the day on which the first person appointed under section 1(2) takes office and ending with the next 31st March following that date, and
   (b) each successive period of twelve months ending with 31st March.

Annual report

12.—(1) The Commissioner must, as soon as practicable after the end of each financial year, send to the 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 year to which the report relates for the purpose of complying with the Commissioner’s duties.

(3) The Office must, in the case of each report sent to it under this paragraph—
   (a) lay a copy of the report before the Assembly, and
   (b) send a copy of the report to the Secretary of State.

(4) In this paragraph, “financial year” has the meaning given in paragraph 11.

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”.

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15. In Schedule 3 to the Public Services Ombudsman Act (Northern Ireland) 2016 (listed authorities), under the heading “Miscellaneous” insert at the appropriate place—

“The Office of the Commissioner for Survivors of Institutional Childhood Abuse”.