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, which 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 to deliver the Report.

6. The Report was published on 20 January 2017. One of the main recommendations made is that compensation should be payable to those abused whilst resident in institutions within the HIA Inquiry Terms of Reference and therefore, that the Northern Ireland...
Executive should create a publicly funded compensation scheme. The Report also recommends that the appropriate method of administering the compensation scheme is to create a specific Historical Institutional Abuse Redress Board (“the Board”).

7. The purpose of this Bill is the establishment of the Board, which in keeping with the intentions as set out in the Hart Report should:
   - Be responsible for receiving and processing applications for, and making payments of, compensation (Volume 1, Chp 4, Para 32);
   - Be time limited. Applications should be made within five years from the coming into existence of the Board. The Scheme will close to new applicants after that period (Volume 1, Chp 4, Para 90).

8. As well as legislating to establish the Board, this Bill legislates for:
   - The composition and structure of the Board;
   - A person’s entitlement to make an application to the Board;
   - A person’s entitlement to make an application to the Board in respect of a deceased person;
   - Exclusion from entitlement to claim compensation;
   - How an application is made to and determined by the Board;
   - Powers to compel giving of evidence;
   - How compensation is assessed and awarded by the Board;
   - Appeal procedures;
   - Provision of information relating to legal advice and assistance; and
   - Making of a compensation scheme and procedural rules.

CONSULTATION

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

OPTIONS CONSIDERED

10. In developing this legislation in the continuing absence of Ministers, the Executive Office has taken its policy direction from the Hart Report, which recommends the establishment of the Historical Institutional Abuse Redress Board, but does not specify that it should be in statute. Other options were considered as follows:

11. Do nothing – do not establish a Historical Institutional Abuse Redress Board. This option was rejected as it would not fulfil the policy intent of the Hart Report.
12. Establish a Historical Institutional Abuse Redress Board on a non-statutory basis. This was rejected as the Hart Report recommended (Volume 1, Chp1, Para 90) that the Redress Board would need powers to compel evidence, particularly in those circumstances where an allegation has been made against an institution not investigated by the HIA Inquiry.

13. The option chosen was to establish a Historical Institutional Abuse Redress Board by statute, as it fulfils the requirements of the recommendations contained in the Hart Report.

OVERVIEW

14. The Bill consists of 17 clauses and 1 schedule.

COMMENTARY ON CLAUSES

Clause 1– Establishment of the Board

15. This clause establishes the Board as recommended by the Hart Report in January 2017. Further detail about the functions and structure of the Board is contained in the Schedule.

Clause 2 – Entitlement to claim compensation

16. This clause deals with who can submit an application for compensation to the Board.

17. An application for compensation can be made by or in respect of a person who suffered abuse while a child i.e. aged under 18 and while resident in an institution between 1922 and 1995, both dates inclusive. An application cannot be made in respect of a person who died before 29 September 2011; this is the date the Northern Ireland Executive announced that it intended to set up the HIA Inquiry.

18. 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”.

19. The Bill regards the institution as acting in loco parentis and therefore responsible for any abuse suffered by children in its’ care, whether they were resident in the institution, or absent from an institution but still under its care (for example staying with a family). Regardless of whether the abuser was connected to the institution or not, the institution is still responsible for failing to properly safeguard the child from abuse.

20. It should be noted that the definitions provided for in this clause will also be used in the Bill to establish the Commissioner for Survivors of Institutional Childhood Abuse.
Clause 3 – Exclusion from entitlement to claim compensation

21. This clause deals with circumstances in which a person cannot make an application to the Board for compensation.

22. Subsection (1) provides that an application may not be made by or in respect of a person if there has already been a court determination on compensation (favourable or otherwise) arising from a relevant matter; if the relevant matter has already been compensated for through an out of court settlement or if there are proceedings on a relevant matter pending before a court. Subsection (2) defines a relevant matter as a matter on which an application can be brought under this Act, but for subsection (1).

23. Subsection (3) means that a person can however apply for compensation if, under subsection (1), a court dismissed the claim solely because the proceedings were not brought within the timeframe for bringing such a claim.

24. Subsection (4) provides that a person can apply for compensation despite subsection (1) long as the application relates to abuse suffered in an institution which was managed by a different body, society or organisation than that against which the previous claim was made.

Clause 4 – Application for compensation

25. This clause provides that an application for compensation must be made before the end of the five year period starting from when the establishment of the Board is publicised in the Belfast Gazette.

26. Subsection (3) provides that only one application for compensation can be made to the Board but it may relate to abuse suffered in more than one institution.

27. Subsection (4) allows for the compensation scheme to make further provision for making an application to the Board.

Clause 5 – Entitlement to claim compensation in respect of a deceased person

28. This clause deals with applications to the Board in respect of a person who would have been entitled to apply for compensation but died on or after 29 September 2011.

29. Under subsection (1) only the deceased’s surviving spouse, civil partner, cohabiting partner or children can make an application for compensation if they are a residuary beneficiary of the deceased’s estate. A residuary beneficiary is a person who receives anything by a will that is not left specifically to that person or someone else. For example, if Paul makes a will leaving an amount of money to Mark and the remainder of his property to Jane, then Jane is the residuary beneficiary of Paul.

30. Subsection (5) defines residuary beneficiary to cover a case where there is a will and a case where there is not and the rules of intestacy therefore apply. The law of intestacy is used to determine how a person’s estate will be shared out in the absence of a will. In short, it will ensure that a person’s estate is shared out in an order that prioritises the closest family members first.

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31. Subsection (2) provides that where more than one person wishes to make an application for compensation, for example the surviving spouse and child/children, this can be made as a joint application to the Board.

32. Subsection (3) provides that the Board will decide if an application demonstrates that an applicant can be regarded as the deceased’s surviving cohabiting partner.

33. Subsection (4) allows for the compensation scheme to make provision for what happens when an applicant dies before the Board has made a determination on the application.

Clause 6 – Advisors

34. This clause provides that advisors may be appointed by the Board to provide judicial members with expert advice and that such appointments can be terminated by the Board at any time. Similar provision was made for the inquiry panel under the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013.

Clause 7 – Determination of application

35. This clause sets out the procedures the Board will follow in making a decision on an application for compensation.

36. Subsection (1) provides that a single judicial member of the Board will determine an application for compensation on behalf of the Board. Subsection (2) allows for the President of the Board to decide the order in which applications will be considered and in so doing, the President must have regard to the age and, where disclosed on the application form, the health of the applicant. Subsection (3) provides that the President will also select which judicial member will deal with each application for a determination to be made.

37. Subsection (4) sets out the basis on which an application will be determined. This may include any written material provided in support of the application, any fresh or oral evidence allowed to be admitted by the Board, any advice provided by advisors appointed by the Board and any other material which the Board considers relevant.

38. Subsection (5) provides that the Board may direct an oral hearing to be held and allow further evidence to be admitted if it considers that there are exceptional circumstances which make it necessary in the interests of justice to do so. Subsection (6) makes clear that an oral hearing must be held in private.

39. Subsection (7) provides that the Board if it considers it necessary, can access records of the Inquiry from the Public Record Office of Northern Ireland.

40. Subsection (8) sets out that a person’s entitlement to compensation is not affected by three factors. First, whether or not any matters to which the application relates were reported to the police. Second, whether or not the person by or in respect of whom the application is made engaged with the Inquiry; and third, whether or not the person by or in respect of whom the application is made, has been convicted of an offence.

41. Subsection (9) means that the Board must notify applicants in writing of its determination and briefly give reasons for the decision. Applicants must then respond
to the Board to advise if they wish to accept the determination. Subsection (10) provides for the Board to withdraw the offer of an award if an applicant does not provide a response to the Board (under subsection (9)) within the timeframe specified in the compensation scheme.

Clause 8 – Power to compel giving of evidence

42. This clause provides the Board with powers to compel the provision of evidence in order to assist in the determination of an application. A written notice may require a person to provide records, documents or other items of evidence or to attend a hearing to give oral evidence under oath.

43. Subsection (2) allows for a person to make a claim to the Board that he or she is unable to comply with a notice and in response, the Board under subsection (3) may confirm, revoke or vary the notice.

44. Subsection (4) means that if a person is required to provide documents or records to the Board and this involves disclosing information about another person which is irrelevant to the determination of the application, then the material must be provided in a redacted form.

45. Subsections (5) and (6) provide that a person may refuse to comply with a notice if, in proceedings before the High Court, the person would be entitled to refuse to comply with the requirement. In all other circumstances, the notice must be complied with.

46. Subsections (7) and (8) set out that it will be an offence if a person fails to comply with a requirement of a notice or intentionally carries out actions which will obstruct or alter the provision of information as may be required under a notice. Subsection (9) provides that a person found guilty of an offence under subsections (7) or (8) will be liable on summary conviction to imprisonment or a fine.

Clause 9 – Assessment of compensation

47. The Board will assess the amount of compensation to be awarded in accordance with the compensation scheme made by the Executive Office.

48. Subsection (3) provides that for an application, other than one made in respect of a deceased person, the compensation scheme must provide for a standard amount of compensation, an additional amount of compensation (not exceeding a specified maximum) which the Board considers justified by the severity of matters raised in the application and an amount of compensation if the person making the application was sent to Australia under the Child Migrants Programme.

49. Subsection (4) clarifies that a person sent to Australia under the Child Migrants Programme is also entitled to claim compensation if he or she suffered abuse in an institution in Northern Ireland, prior to being sent to Australia.

50. Subsection (5) provides that where an application is made in respect of a deceased person or where an applicant dies before the application is determined, the compensation scheme must allow for the amount of compensation which may be
This Memorandum refers to the Historical Institutional Abuse Redress Bill as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

awarded to be equivalent to 75% of the amount the deceased person would have received.

51. Under subsection (6), if there is more than one recipient of an award made in respect of a deceased person (for example a spouse and a child), the compensation scheme must provide that the share of the compensation which each person receives, equates to the proportion which his or her share of the residuary estate bears to the total of the shares of every other person entitled to compensation.

Example A

A spouse and one child are awarded £18,000 by the Board.

The spouse received 60% of the residuary estate, the child 30% and the remaining 10% was left to charity.

The spouse and child have therefore together received 90% of the residuary estate. Their proportionate share of this is two thirds (60%) to the spouse and one third (30%) to the child. The spouse and child respectively would therefore receive £12,000 and £6,000.

Example B

A spouse and two children are awarded £45,000 by the Board. The spouse received 80% of the residuary estate and the two children, 10% each.

The spouse would therefore receive £36,000 (80% of £45k) and each child, £4,500 (10% of £45K).

52. Subsection (7) provides that where an application relates to more than one institution, the compensation scheme may provide for only one standard amount of compensation to be paid.

53. Subsection (8) provides that the compensation scheme must state the maximum amount of compensation which may be awarded by the Board.

54. Subsection (9) means that the Board may make arrangements for a person who has been awarded compensation to have access to financial advice in respect of the award.

Clause 10 – Compensation awards: status etc.

55. This clause deals with a number of matters relating to the compensation award.

56. Subsections (1) and (2) provide for the award to be paid as one lump sum which will be exempt from tax and national insurance contributions.

57. Subsections (3), (4) and (5) provide that the award is to be disregarded in assessing a person’s eligibility to receive means-tested social security benefits, in assessing a person’s liability for paying towards the cost of their residential accommodation and in assessing a person’s eligibility for access to publicly funded legal services i.e. Legal Aid in Northern Ireland.

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58. Subsection (6) provides that a person awarded compensation by the Board may not, at a later date, claim for compensation through civil proceedings for any matters to which the application to the Board related.

Clause 11 – Appeal

59. This clause deals with the Board’s appeal procedure.

60. Subsection (1) provides that a person may appeal against the Board’s decision not to award compensation or against the amount of compensation the Board has determined should be awarded. As per subsection (2), a person must explain in writing, the grounds for the appeal.

61. Subsection (3) provides for the compensation scheme to make further provision for bringing an appeal.

62. Subsections (4) and (5) provide that the President will appoint a panel of three judicial members to reconsider the application and that the panel will not include the single judicial member who made the determination on the application to which the appeal relates.

63. Subsection (6) means that the panel will make a determination on the appeal subject to the same procedures used by the single judicial member in making the original decision on the application.

64. Subsection (7) provides for the panel to confirm or reverse the original decision or increase or decrease the amount of the award. Subsections (8) and (9) provide that the panel must reach a majority decision and that this decision will be final.

Clause 12 – Restrictions on public access

65. This clause deals with restrictions that the President of the Board may impose, by order. The purpose of such an order is to restrict disclosure or publication of any evidence or documents given, produced or provided to the Board and to restrict the disclosure of a person’s identity. Similar arrangements were made for the HIA Inquiry.

66. Subsections (2) and (3) set out matters which the President must take account of when determining the scope of a restriction order.

67. Subsection (4) provides for the President to vary or revoke a restriction order.

68. Subsection (5) means that the restrictions will remain in force indefinitely unless the Board specifies an expiry date within the order or the order is varied or revoked.

Clause 13 – Provision of information relating to legal advice and assistance

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

Clause 14 – Compensation scheme

70. This clause deals with the provisions the compensation scheme may make in relation to applications for compensation or appeals which will come before the Board. These will include what documents must accompany the application or appeal and the imposition of time limits. The scheme will also provide for assessment and payment of costs to legal representatives who have provided legal advice and assistance to applicant and provide for the reimbursement of relevant costs and expenses as may be necessary. Monies that are paid in error will also be recoverable under the scheme. The scheme will also provide that awards made to persons aged under 18 will be held in trust.

Clause 15 – Rules

71. This clause provides for the Executive Office to make procedural rules, with the approval of the Lord Chief Justice, which will be subject to the negative resolution procedure in the Northern Ireland Assembly.

Clause 16– Interpretation

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

Clause 17 – Commencement and short title

73. The Act will be called the Historical Institutional Abuse Redress Act (Northern Ireland) 20XX and will come into operation the day after it receives Royal Assent.

**SCHEDULE - THE HISTORICAL INSTITUTIONAL ABUSE REDRESS BOARD**

74. The schedule provides for the designation, composition, staffing and funding of the Board.

Paragraph 1 – Administration by a Department

75. While the Executive Office will be the sponsor department of the Board, the First Minister and deputy First Minister must in writing jointly designate a Department (or an agency thereof) to have responsibility for the day-to-day administration of the Board (“the Department”).

Paragraph 2 – Functions

76. The Board will exercise its functions on behalf of the Crown and may do anything which it considers appropriate in facilitating, or incidental or conducive to, the exercise of its functions. The Board does not have power to borrow money.

Paragraph 3 – President and other judicial members
This Memorandum refers to the Historical Institutional Abuse Redress Bill as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

77. The Lord Chief Justice (“LCJ”) will appoint the President of the Board and subject to the approval of the Executive Office as to numbers, other judicial members of the Board as the President considers necessary.

78. The President and judicial members must hold, or have held office as a High Court or County Court judge.

79. The President will be responsible for ensuring the efficient and effective discharge of the Board’s judicial functions.

80. The Executive Office may pay the President and each other judicial member of the Board such remuneration, allowances and sums for the provision of a pension as the Executive Office determines. The Executive Office may also reimburse the President and each judicial member for any expenses reasonably incurred.

Paragraph 4 – Delegation of functions of President

81. The President has the power to delegate any of his or her functions to another judicial member of the Board.

Paragraph 5 – Secretary and other staff

82. The Department will appoint a Secretary subject to the approval of the Office. The Department may also assign or appoint other members of staff as it considers necessary, subject to the approval of the Executive Office as to numbers. Staff appointed by the Department will be employed on Northern Ireland Civil Service terms and conditions.

Paragraph 6 – Evidence

83. A document purporting to be an instrument issued by the Board and to be signed by or on behalf of the Board is to be received in evidence, and unless proved otherwise, taken to be such an instrument. The Board may administer oaths.

Paragraph 7 – Funding

84. The Executive Office may make grants to the Department to cover the costs of administering the Board, awards of compensation made by the Board and amounts required to cover costs (and expenses) of applications and appeals.

85. Sub-paragraph (2) provides that the Board must pay to the Executive Office, any sums received in connection with exercising its functions. Sub-paragraphs (3) and (4) make further provision in relation to this.

Paragraph 8 – Annual Report

86. The Board is required to report back annually to the Executive Office on the exercise of its functions and on the use of financial resources at its disposal. The Executive Office must ensure a copy of each annual report is laid before the Northern Ireland Assembly and the Secretary of State.

Paragraph 9 – Disqualification from the Assembly

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87. This paragraph adds the Board to the list of bodies in Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act (1975), so ensuring that any judicial member (once in post) cannot also hold membership of the Northern Ireland Assembly.

Paragraph 10 – Freedom of Information

88. The Board is added to the list of public authorities in Part 7 of Schedule 1 to the Freedom of Information Act 2000. It will be bound by the requirements under this Act only in relation to its administrative functions.

Paragraph 11 – Public Services Ombudsman

89. This paragraph adds the Board is added to the list of tribunals whose administrative functions are subject to investigation by the Public Services Ombudsman in Northern Ireland. The principal purpose of the Ombudsman is to investigate alleged maladministration in government and public bodies.

FINANCIAL EFFECTS OF THE BILL

90. The estimated annual cost for the Redress Board to administer the compensation scheme is £1.035m.

HUMAN RIGHTS ISSUES

91. The provisions of the Bill are compatible with the Human Rights Act 1998.

EQUALITY IMPACT ASSESSMENT

92. The impact of these proposals has been screened in accordance with section 75 of the Northern Ireland Act 1998. The policy is not assessed as having an adverse impact for any Section 75 group as the key aim of the policy is to enable all victims and survivors of historical institutional abuse (or their eligible surviving spouse or children) to apply to the Board for financial compensation for the abuse suffered.

The policy may have a greater impact on some section 75 groups, for example, ‘age’ and ‘racial group’ reflecting the general demographic profile of the individuals who suffered abuse.

93. It is recognised that there are those who suffered from other forms of abuse out with 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.

94. The screening exercise on the proposals given effect in the Bill concludes that there will be no adverse impact on equality of opportunity, therefore a full Equality Impact Assessment is considered unnecessary.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

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95. The proposals in the Bill are not expected to result in any significant cost to businesses, the voluntary sector or to charities generally. The Executive Office has a small grants scheme which provides social support to victims and survivors of historical institutional abuse. The aim of the scheme is to help improve the lives of victims and survivors through the provision of funding for social support activity, enabling them to maintain engagement with the Executive Office and to support each other.

**DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN**

96. The proposals in the Bill will not directly necessitate the processing of personal information by the Executive Office beyond ordinary Departmental processes around filling the post of the Secretary and arranging for necessary staff.

97. Once in operation however, the Board will process personal information of victims and survivors or other family members who apply for compensation. It is not anticipated that the Executive Office will have any involvement in the processing of this personal information, however the Board will be required to abide fully by the General Data Protection Regulation (GDPR).

98. Due to this, a Privacy Impact Assessment is not required and this policy has been screened out at the legislative stage. The Secretary will however be required to consider this issue in relation to the handling of personal information once the Board is in operation.

**RURAL NEEDS IMPACT ASSESSMENT**

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

**LEGISLATIVE COMPETENCE**

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

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