Historical Institutional Abuse Redress Board Bill

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Schedule The Historical Institutional Abuse Redress Board
Historical Institutional Abuse Redress Board

A

BILL

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.

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

The Board

Establishment of the Board

1.—(1) There is to be a body called the Historical Institutional Abuse Redress Board (referred to in this Act as “the Board”).

(2) The Schedule makes further provision about the Board.

Compensation

Entitlement to claim compensation

2.—(1) An application for compensation may be made under this Act 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).

(2) An application for compensation under this Act may not be made in respect of a person who died before 29th September 2011.

(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 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
(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 residential 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) In this section, “child” means a person aged under 18.

Exclusion from entitlement to claim compensation

3.—(1) An application for compensation under this Act may (subject to subsections (3) and (4)) not be made by or in respect of a person if—

(a) a court has made a determination in relation to the person in proceedings on a claim for compensation arising from a relevant matter (whether or not the court’s determination was in the person’s favour),
(b) compensation has been paid to or in respect of the person in settlement of a claim arising from a relevant matter (whether or not proceedings on the claim were brought before a court), or
(c) proceedings on a claim arising from a relevant matter brought by or in respect of the person against a government department or other public body or any other body, society or organisation are pending before a court.

(2) A “relevant matter” is a matter on which an application under this Act could be based, but for subsection (1).

(3) An application for compensation under this Act may be made despite subsection (1)(a) if the claim in question was dismissed solely because the period of limitation for bringing proceedings on the claim had expired.

(4) An application for compensation under this Act may be made despite subsection (1)(a), (b) or (c) if the body, society or organisation which managed the institution to which the claim in question related is not the body, society or organisation which managed the institution to which the application relates (or, where the application relates to more than one institution, any of the institutions).
(5) The reference in subsection (4) to managing an institution is a reference to providing residential accommodation in that institution.

**Application for compensation**

4.—(1) An application for compensation under this Act 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.

(3) In the case of each person by or in respect of whom an application for compensation under this Act may be made—

(a) only one application may be made, but

(b) that application may relate to more than one institution.

(4) The application must be made in accordance with such provision as may be made in the compensation scheme (as to which, see sections 9 and 14).

**Entitlement to claim compensation in respect of deceased person**

5.—(1) In the case of a person who died on or after 29th September 2011, an application for compensation under this Act may 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;

(b) any surviving child of the deceased, if that person is a residuary beneficiary of the deceased’s estate.

(2) An application for compensation under this Act may be made jointly by two or more of the persons referred to in subsection (1); and, in the case of such an application, any reference in this Act to a person making an application under this Act is to be read as a reference to those persons acting jointly.

(3) It is for the Board to decide as part of its determination of an application for compensation under this Act, and having regard to all the circumstances, whether a person is to be regarded as the deceased’s surviving cohabiting partner.

(4) Where an applicant for compensation under this Act dies before the application is determined, the application may continue to proceed in accordance with provision made by the compensation scheme.

(5) 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.

(6) 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.

**Advisors**

6.—(1) The Board may appoint one or more persons to act as advisors to the Board.
Historical Institutional Abuse Redress 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.

(3) The Board may at any time terminate the appointment of an advisor.

Determination of application

7.—(1) An application for compensation under this Act is to be determined by the Board; and the function of making the determination is exercisable by a single judicial member of the Board acting on its behalf.

(2) It is for the President of the Board to decide the order of priority in which applications for compensation under this Act are to be heard; and in so deciding, the President must have particular regard to—

(a) the age of each applicant, and

(b) so far as it is disclosed on the application, the health of each applicant.

(3) It is also for the President of the Board to select the judicial member of the Board to whom an application for compensation is to be allocated for determination.

(4) Each application is to be determined solely by reference to—

(a) any written material provided in support of the application or in response to a subsequent request by the Board,

(b) any evidence admitted under subsection (5) or given in a hearing directed under that subsection,

(c) any advice from an advisor appointed under section 6, and

(d) any other material which the Board considers relevant.

(5) In determining the application, the Board 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.

(6) The Board does not have power to direct an oral hearing to be held in public; and, accordingly, an oral hearing directed by the Board may only be held in private.

(7) Where the Board decides that it needs access to the records of the Inquiry in order to determine an application for compensation under this Act, the Public Record Office of Northern Ireland must allow the Board access to those records in accordance with whatever restrictions are in force under section 8 of the Historical Institutional Abuse Act (Northern Ireland) 2013.

(8) The entitlement to compensation on an application under this Act 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 engaged with the Inquiry, and
(c) whether or not the person by or in respect of whom the application is made has been convicted of an offence.

(9) The Board, having determined an application under this Act, must notify the applicant in writing of its determination and must briefly give reasons for its determination; and the applicant, having received the notification, must respond to the Board by indicating whether or not the applicant accepts the determination.

(10) If the Board has determined that an applicant is entitled to an award of compensation but does not, before the end of such period as the compensation scheme specifies, receive a response from the applicant under subsection (9), the Board may withdraw the award.

(11) In this section, “the Inquiry” means the inquiry held under the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013; and the reference in subsection (8)(b) to having engaged with the Inquiry is a reference to—

(a) having provided a statement in the proceedings of the part of the Inquiry described in its terms of reference as the Acknowledgment Forum, or

(b) having provided evidence to the Inquiry.

**Power to compel giving of evidence**

8.—(1) For the purpose of determining an application for compensation under this Act, the Board may by notice in writing require a person—

(a) to provide the Board 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 Board and to give oral evidence on oath to the Board.

(2) A person to whom a notice under this section is given may make a claim to the Board that—

(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 Board may confirm, revoke or vary the notice.

(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 Act and which should not be disclosed without that other person’s consent, provide the records or documents in a redacted form.

(5) A person is entitled to refuse to comply with a requirement of a notice given under this section if, in proceedings before the High Court, the person would be entitled to refuse to comply with the requirement.

(6) Subject to that, a notice under this section has effect in spite of any statutory provision, or any agreement, which would otherwise prohibit a person from complying with the notice.

(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 Board by a notice under this section.

(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.

**Assessment of compensation**

9.—(1) The Office must make a compensation scheme for the purposes of this Act.

(2) The amount of an award of compensation under this Act is to be assessed by the Board in accordance with the compensation scheme.

(3) In the case of an application not made in respect of a person who died on or after 29th September 2011, the compensation scheme must provide for—

(a) a standard amount of compensation,

(b) an amount of compensation, not exceeding a specified maximum, if the Board is satisfied that an additional amount is justified by the severity of the matters raised by the application, and

(c) an amount of compensation if the person by or in respect of whom the application is made was sent to Australia under the programme commonly known as the “Child Migrants Programme”.

(4) The compensation scheme must provide that a person entitled to compensation under subsection (3)(c) is entitled to compensation under subsection (3)(a) or (b) only if the Board has determined that the person also suffered abuse within section 2(3)(a) to (c) (abuse in institution in Northern Ireland).

(5) In the case of an application made in respect of a person who died on or after 29th September 2011 (including a person who, having made the application, died before it was determined), the compensation scheme must (subject to subsection (6)) provide for the amount of compensation which may be awarded to be equivalent to 75% of the amount to which the person would have been entitled under the scheme if the person had made the application.

(6) In a case where more than one person is entitled to compensation by virtue of section 5, the compensation scheme must provide for the proportion of the compensation to which each person is entitled to be the proportion which his or her share of the deceased’s residuary estate bears to the total of the shares of every other person entitled to the compensation.

(7) In the case of an application which relates to more than one institution, the compensation scheme may provide for only one award of the amount specified in the scheme under subsection (3)(a) (or, in a case of the kind mentioned in subsection (5) or (6), that amount determined in accordance with the scheme), regardless of the number of institutions concerned.

(8) The compensation scheme must specify the maximum amount of compensation which may be awarded on an application under this Act (with entitlement to that maximum amount depending on whether the person by or in respect of whom the application is made was sent to Australia under the programme commonly known as the “Child Migrants Programme”).
(9) The compensation scheme may require the Board to make arrangements for facilitating access for a person who is awarded compensation under this Act to advice on the financial management of the award.

Compensation awards: status etc.

10.—(1) An award of compensation under this Act is to be paid as a single lump sum.

(2) An award of compensation under this Act 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 Act 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 Act 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 Act 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 made under Part 2 of the Access to Justice (Northern Ireland) Order 2003.

(6) A person who is awarded compensation on an application or appeal under this Act may not bring proceedings on a claim for compensation based on any of the matters to which the application or appeal relates.

Appeal

11.—(1) A person who applied for compensation under this Act may appeal against—

(a) a decision by the Board not to award compensation to the person, or

(b) a decision by the Board as to the amount of compensation that should be awarded to the person.

(2) The person bringing the appeal must, when doing so, set out in writing the grounds of the appeal.

(3) An appeal under this section must be made in accordance with such provision as may be made in the compensation scheme.

(4) An appeal under this section is to be determined by a panel of three judicial members of the Board.

(5) It is for the President of the Board to select the judicial members to form the panel to which the appeal is to be allocated; but the judicial member who exercised the Board’s function in making the determination to which the appeal relates may not be selected.

(6) An appeal under this section is to be by way of a reconsideration; and accordingly sections 7(4) to (11) and 8 apply in relation to the appeal as they apply in relation to an application for compensation.
(7) On an appeal under this section, the panel may—
   (a) confirm the decision,
   (b) reverse the decision, or
   (c) increase or reduce the amount of compensation awarded.

(8) A decision on an appeal under this section is to be decided by a majority of the panel.

(9) A decision on an appeal under this section is final.

**Restrictions on public access**

12.—(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 to the Board under this Act;
   (b) disclosure or publication of the identity of any person.

(2) A restriction order must specify only such restrictions—
   (a) as are required by a statutory provision or rule of law, or
   (b) as the President considers to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (3).

(3) Those matters are—
   (a) the extent to which a restriction on disclosure or publication might inhibit the allaying of public concern;
   (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 the Board;
   (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 of the Board’s functions, or
      (ii) otherwise to result in additional cost (whether to public funds or to a person making an application or bringing an appeal under this Act or to any other person).

(4) The President may vary or revoke a restriction order by making a further order.

(5) 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 (4).

**Provision of information relating to legal advice and assistance**

13.—(1) The Board must, on a request from the Department of Justice, provide the Department with—
Historical Institutional Abuse Redress Board

(a) the name and address of each person who has made an application for compensation, or brought an appeal, under this Act and who has been receiving legal advice and assistance on the application or appeal, and

(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 statutory provision which prevents provision of the information.

Further provision

Compensation scheme

14.—(1) The provision which the compensation scheme may make in relation to applications for compensation or appeals under this Act includes provision—

(a) to specify documents or other information which must accompany an application or appeal;

(b) to impose time limits;

(c) for the assessment and payment of the costs incurred in connection with legal advice and assistance;

(d) for the reimbursement of other costs or expenses of a specified description;

(e) for enabling the holding of an award on trust in specified cases;

(f) for enabling the recovery of a payment made in error.

(2) The provision which may be made under subsection (1)(c) includes provision requiring the Board to pay on each application for payment of costs a specified amount to the solicitors making the application, regardless of whether or not the application is granted; but the scheme may also provide that the Board is not required to make the payment on an application if it is satisfied that the application is wholly without merit.

(3) The scheme may confer a discretion on a person.

(4) The scheme may contain incidental, supplementary or transitional provision.

(5) The scheme is to be given effect by order subject to negative resolution.

Rules

15.—(1) Rules may make procedural provision for the purposes of this Act.

(2) The power to make the rules is exercisable by the Office; but the Office may not make rules without having obtained the approval of the Lord Chief Justice.

(3) The rules may contain incidental, supplementary or transitional provision.

(4) The rules are subject to negative resolution.

Supplementary

Interpretation

16. In this Act—

“the Board” has the meaning given in section 1;

“the compensation scheme” means the scheme under section 9;

“institution” has the meaning given in section 2;
“the Office” means the Executive Office.

Final

Commencement and short title

17.—(1) This Act comes into operation on the day after that on which it receives Royal Assent.

(2) This Act may be cited as the Historical Institutional Abuse Redress Board Act (Northern Ireland) 20--.
SCHEDULE

THE HISTORICAL INSTITUTIONAL ABUSE REDRESS BOARD

Administration by a Department

1.—(1) The First Minister and Deputy First Minister acting jointly must in writing designate a Department as having responsibility for the administration of the Board.

(2) The designated Department (whether in its own capacity or in the capacity of an agency of that Department) is, accordingly, responsible for the administration of the Board; and references in this Schedule to the Department are references to the designated Department.

Functions

2.—(1) The Board’s functions are exercisable on behalf of the Crown.

(2) The Board may do anything which it considers to be appropriate for facilitating, or 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 judicial members

3.—(1) The Lord Chief Justice is to appoint a person as the President of the Board.

(2) The Lord Chief Justice is to appoint such persons as the other judicial members of the Board as the President considers necessary, but with the number subject to the approval of the Office.

(3) The President has responsibility for ensuring the efficient and effective discharge of the Board’s functions by the judicial members of the Board.

(4) A person may be appointed under this paragraph only if the person holds or has held office—

(a) as a judge of the Court of Judicature, or

(b) as a judge of a county court.

(5) The Department may pay to the President and each other judicial member of the Board such remuneration, such allowances, and such sums for the provision of a pension as the Office determines.

(6) The Department may reimburse the President and each other judicial member for such expenses as the member reasonably incurs in acting as such.

Delegation of functions of President

4. 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.
Secretary and other staff

5.—(1) The Department may, with the approval of the Office, assign or appoint a person as the secretary to the Board.

(2) The Department may, with the approval of the Office as to numbers, assign or appoint such other members of staff as the Department considers necessary.

(3) Each person appointed as a member of staff is to be employed on the terms and conditions which apply to employment in the Northern Ireland civil service.

Evidence

6.—(1) 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 the contrary is proved, taken to be such an instrument.

(2) The Board may administer oaths for the purposes of this Act.

Funding

7.—(1) The Office may make to the Department grants of such amounts as the Office determines for the purpose of funding—

(a) the costs of the administration of the Board,

(b) the awards of compensation made by the Board, and

(c) the amounts it is required to pay under this Act in respect of costs and expenses incurred in connection with applications and appeals.

(2) The Board must pay to the 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 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.

Annual report

8.—(1) The Board must, as soon as practicable after the end of each financial year, send to the Office a report on the exercise of the Board’s functions during that year.

(2) 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.

(3) In this paragraph, “financial year” means—

(a) the period beginning with the day on which the Board is established under section 1 and ending with the next 31st March following that date, and

(b) each successive period of twelve months ending with 31st March.
Disqualification from the Assembly

9. 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”.

Freedom of information

10. In Part 7 of Schedule 1 to the Freedom of Information Act 2000 (offices and bodies 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.”

Public Services Ombudsman

11. In Schedule 4 to the Public Services Ombudsman Act (Northern Ireland) 2016 (tribunals), at the end insert—

“The Historical Institutional Abuse Redress Board established under section 1 of the Historical Institutional Abuse Redress Board Act 20--”.