2019 No. XXX

SUBORDINATE LEGISLATION

The Historical Institutional Abuse Subordinate Legislation (Northern Ireland) 2019a

Chapter xx

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a Following consultation, this draft will be finalised into a Scheme and Rules for the Redress Board. The draft primary legislation provides that the Rules are subject to the approval of the Lord Chief Justice.
The Executive Office, in exercise of powers conferred by sections 4(4), 5(4), 9, 14 and 15 of the Historical Institutional Abuse Redress Board Act 20XX, makes the following subordinate legislation.

**Citation and commencement**

1. This legislation may be cited as the Historical Institutional Abuse XX (Northern Ireland) Subordinate Legislation 20XX and shall come into operation on XXX.

**Interpretation**

2. —(1) In this Subordinate legislation —

   “the Act” means the Historical Institutional Abuse Redress Board Act 201X;
   “an applicant” means an individual applying to the Board for compensation under the Act;
   “application” means an application for compensation made under the Act;
   “certified copy” means, in relation to a birth certificate or death certificate, a copy certified by the General Register Office of Northern Ireland or equivalent body in another jurisdiction; or, in the case of another document, a copy certified by a solicitor or notary public;
   “Controller” means a person appointed by order of the court under the Mental Health (Northern Ireland) Order 1986;
   “the Inquiry” means the Inquiry into Historical Institutional Abuse as established by the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013;
   “judicial member” means a judicial member of the Board;
   “legal assistance” means the costs payable to an applicant’s solicitor or counsel as set out in Article 11 of this legislation;
Applications and procedure

3. —(1) This Article applies to an application other than one made in respect of a deceased person. The application must be made in writing in such form as the Board may from time to time determine and be submitted to the Board.

(2) Subject to paragraphs (4), (5) and (6) an applicant shall submit the following supporting documentation with the application form:
   (a) a certified copy of the applicant’s birth certificate;
   (b) a certified copy of a form of photograph identity of the applicant which is permitted by the Chief Electoral Officer of Northern Ireland as a proof of entitlement to vote in an election;
   (c) medical records, where relevant.

(3) Where an applicant’s name has changed since they were resident in the institution which is the subject of the application, evidence must be provided to the satisfaction of the Board of the change of name.

(4) An applicant may submit any other supporting documentation the applicant wishes the Board to consider.

(5) Where an applicant is unable to comply with paragraph 3(2) (a) or (b), the applicant must provide alternative evidence of their identity to the satisfaction of the Board.

(6) The requirement to provide medical records referred to in paragraph 3(2)(c) is not relevant:
   (a) where an applicant engaged with the Inquiry; or
   (b) where an applicant is claiming only in respect of being sent to Australia under the Child Migrants Programme.

(7) Where an applicant dies, having made an application which has not yet been determined, a person who would under section 5 of the Act have been entitled to make an application in respect of that applicant may continue the application, subject to the submission of the additional supporting evidence required by Article 4(3).

(8) An application may be made by a Controller or a person who holds a power of attorney in respect of a person who lacks the mental capacity to make the application. Such an application must be accompanied by proof of entitlement to make the application for that person.

Applications by the spouse and/or children of deceased

4. —(1) This Article applies to an application made under section 5 of the Act in respect of a deceased person.

(2) The application must be made in writing in such form as the Board may from time to time determine and be submitted to the Board.

(3) Subject to paragraphs (4), (5) and (6) an applicant shall submit the following supporting documentation with the application form:
   (a) a certified copy of the death certificate of the deceased;
   (b) a certified copy of the Will of the deceased, where relevant;
   (c) the grant of probate or grant of letters of administration, where relevant;
   (d) a certified copy of a form of photograph identity of the applicant which is permitted by the Chief Electoral Officer of Northern Ireland as a proof of entitlement to vote in an election and of the deceased;
   (e) the medical records of the deceased, where relevant.
(4) Where a deceased person’s name had changed since they were resident in the institution which is the subject of the application, evidence must be provided to the satisfaction of the Board of the change of name.

(5) An applicant may submit any other documentation relating to the deceased that the applicant wishes to submit to the Board for consideration.

(6) Where an applicant is unable to comply with paragraph 4(3)(d), the applicant must provide alternative evidence of their and the deceased person’s identity to the satisfaction of the Board.

(7) The requirement to provide medical records referred to in paragraph 4(3)(e) is not relevant:
   (a) where a deceased person engaged with the Inquiry; or
   (b) where an applicant is claiming only in respect of a deceased person who was sent to Australia under the Child Migrants Programme.

Requests for the provision of further information

5.—(1) A request from the Board to the applicant for the provision of further information which is made under section 7(4)(a) of the Act must—
   (a) be made in writing; and
   (b) specify such period, which must not be less than 14 days from the date of the written request, within which the further information is to be provided.

(2) Where any requested information is not provided within the specified period, the Board must—
   (a) send a written notice to the applicant reminding the applicant of the request; and
   (b) specify a further reasonable period, which must not be less than 14 days from the date of the written notice, within which the requested further information is to be provided.

(3) On the expiry of that further period, unless there are in the Board’s reasonable opinion exceptional circumstances, the judicial member must determine the application on the basis of all the information relating to the application which is then before the judicial member, whether or not the requested further information has been provided.

Private Oral Hearings

6.—(1) Where the Board, under section 8(1)(b) of the Act, by serving of a notice requires a person to attend on one or more dates an oral hearing convened by the Board and to give oral evidence on oath to the Board, the following provisions shall have effect.

(2) Where an oral hearing is ordered, the notice served by the Board under section 8(1)(b) of the Act, must specify the time and place of the hearing.

(3) An applicant shall inform the Board as soon as possible following receipt of a notice issued under paragraph (2), and not less than 14 days before the date of the hearing, if they are unable to attend on that date. The applicant may suggest an alternative date or dates which the Board will, acting reasonably, endeavour to facilitate.

(4) The applicant may bring a companion to support them at the hearing.

(5) Any legal adviser of a person may attend an oral hearing and may speak on behalf of the applicant or present evidence or information in support of the application.
Amount of compensation

7.—(1) The amount of compensation which may be awarded on an application other than one made in respect of a deceased person is—

(a) a standard amount of £7,500 shall be paid to anyone who suffered abuse;
(b) if the Board is satisfied that an additional payment is justified by the severity of the matters raised by the application, an additional amount determined by the Board but not exceeding £72,500; and
(c) if the person by or in respect of whom the application is made was sent to Australia under the Child Migrants Programme, an amount of £20,000.

(2) A person entitled to compensation under paragraph 7(1)(c) is entitled to compensation under paragraph 7(1)(a) or (b) only if the Board has determined that the person also suffered abuse within section 2(3)(a) to (c) of the Act (abuse in an institution in Northern Ireland).

(3) The amount of compensation which may be awarded on an application made in respect of a deceased person is equivalent to 75% of the amount to which the person would have been entitled if they had made the application.

(4) In the case of an application made in respect of a person who died after the application was made and is proceeding by virtue of section 5(4) of the Act, the amount of compensation which may be awarded in respect of the application is equivalent to 75% of the amount to which the person would have been entitled had they been alive when the determination was made by the Board.

(5) Where, on such an application, more than one person is entitled to compensation under section 5 of the Act, the share of the compensation to which each of those persons is entitled is—

(a) where the deceased has left a Will, the proportion of the compensation to which each person is entitled is 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 compensation;
(b) where the deceased did not leave a Will, the share will be decided by the law of intestacy in the country or territory in which the deceased person was residing at the time of their death.

(6) On an application for compensation, under section 9(7) of the Act, which relates to more than one institution, only one amount of £7,500 (or, if subsection (4) of this Article applies, 75% of that amount) may be awarded under paragraph 1(a) regardless of the number of institutions concerned.

(7) The maximum amount of compensation which may be awarded on an application under this subordinate legislation is—

(a) £80,000; or
(b) if the person by or in respect of whom the application is made was sent to Australia under the Child Migrants Programme, £100,000.

Notification of determination

8.—(1) The determination, including the amount of compensation to be awarded and confirmation of this decision, shall be sent to the applicant and any institution mentioned in the application form, within 14 days of it having being made.

(2) Within 28 days of the date of issue of the determination, the applicant should inform the Board in writing that they either—

(a) accept the determination; or
(b) wish to appeal the determination or award in accordance with Article 10 below.
**Appeal against a determination**

9.—(1) An appeal under section 11 of the Act must be made in writing in such form as the Board may from time to time determine.

(2) The Board shall send its written decision to the applicant, and to any institution and legal advisers. The decision will set out the outcome of the appeal together with the reasons for the decision reached by the Board.

(3) Acceptance of the decision of the Board made under paragraph (2) shall be provided to the Board in writing within 14 days of the date of issue of the decision.

(4) If written acceptance of an award under this paragraph has not been received by the Board within the period, the Board may withdraw the award.

**Payment of awards**

10.—(1) On the acceptance of determination under Article 9(2)(a) or under paragraph 9(3) the applicant must supply the details of the bank account into which the sum of compensation awarded will be lodged.

(2) Upon receipt of a signed acceptance of determination and confirmation on bank account details, the Board shall pay a lump sum by BACS transfer into the bank account nominated by the applicant.

(3) If the Board discovers that a compensation payment has been made in error they must inform the applicant in writing, within 14 days of discovery of the error, of the sum which must be repaid to the Board.

(4) The notification under paragraph (3) shall inform the applicant the date by which the sum must be repaid.

(5) The Board may allow the applicant to repay the sum by instalments.

(6) If an award is made in respect of a child the Board shall arrange for the money to be held in trust until the child reaches the age of 18.

**Legal Assistance**

11.—(1) A solicitor acting on behalf of an applicant, may apply to the Board to recover the costs of legal assistance to the applicant.

(2) An application for recovery of costs under paragraph (1) must be made in writing in such form as the Board may from time to time determine.

(3) In the case of a successful application for compensation, the Board shall pay to the solicitor an amount equivalent to the amount which would have been paid under Table 2 (“Costs where no notice of intention to defend is served and judgment is marked under Order 12”) of Appendix 2 of the County Court Rules (Northern Ireland) 1981.\(^a\)

(4) In the case of an unsuccessful application, the Board shall pay the solicitor the amount of £150, unless the Board considers the application is without merit.

(5) In the case of an application which involved one or more oral hearings, including any hearings on an appeals, paragraph 3 will not apply and the Board shall instead pay a single amount equivalent

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\(^a\) The Executive Office has requested advice from the County Court Rules Committee to extend these tables to cover awards of over £30,000 up to the maximum of £80,000, in appropriate steps.
to the amount which would have been paid under Table 1 ("Ordinary civil bills") of Appendix 2 of the County Court Rules (Northern Ireland) 1981. Where counsel was engaged, the payment will include the counsel’s fee set out in Table 1.¹

(6) The assessment of the amount of legal assistance to be paid will not take account of any amount paid in respect of the “Child Migrants Programme” under section 9(3)(c) of the Act, except that the Board shall pay an amount of £150 for legal assistance for any application which relates to only that programme.

(7) In addition to the amounts specified at paragraphs 11(3), (4), (5) or 6, a fee charged by a general practitioner for a copy of their notes relating to the applicant, where obtained to support an application, may be refunded by the Board on presentation of a receipt from the general practitioner.

(8) The costs of any additional expert report may be refunded by the Board, on presentation of a receipt, provided advance approval for the expenditure has been sought from the Board. Such approval should be sought in writing setting out the reasons why the expert’s report is necessary.

(9) Upon receipt of an application for the recovery of costs of legal assistance the Board shall assess the claim and confirm in writing to the applicant’s solicitor the amount that will be paid.

(10) The Board shall pay the sum for legal assistance by BACS transfer into the bank account nominated by the solicitor within 28 days of written confirmation of the amount under paragraph 11(3), (4), (5) or 6 by the Board.

Advice on financial management of award

12. - (1) The Board shall establish such procedures as it considers appropriate through which an applicant who has received an award may be given advice as to financial management of the compensation award.

Expenses of Applicants and Witnesses

13. – (1) The Board may, with the approval of the Office, award such amounts as the Board determines are reasonable to a person in respect of expenses properly incurred, or to be incurred, in attending the Board.
EXPLANATORY NOTE
(This note is not part of the Subordinate Legislation)

This Scheme, made under sections 4(4), 5(4), 9, 14 and 15 of the Historical Institutional Abuse Redress Board Act 20XX, deals with the process of applying for, the assessment of and payment of compensation from the HIA Redress Board.

Articles 3 and 4 deal with the applications process for and procedures for applicants and applications in respect of individuals who died on or after the 29 September 2011, and sets the documents that must accompany an application for compensation.

Article 5 enables the Board to request by notice further information required by them to assess an application for compensation.

Article 6 deals with the procedure when the Board convenes an oral hearing and provides that an applicant may bring a companion to support them at the hearing as well as their legal representative.

Article 7 sets out the amounts of compensation that may be awarded by the Redress Board for a successful application. This Article also sets out the sums that may be awarded in respect of an application on behalf of a deceased individual.

Articles 8 and 10 details how the Board will notify an applicant of the Board’s decision and out how the Board will make payments of compensation.

Article 9 provides for an appeals procedure.

Article 11 allows legal representatives to recover the costs of assisting an applicant applying to the Board for compensation and their attendance at any oral hearings convened by the Board.

Article 12 permits the Board to make arrangements to have financial management advice provided to an individual who has been awarded compensation by the Board.

Article 13 permits the President of the Board to pay the expenses incurred by an applicant or witnesses in attending the Board.