



**AN BILLE UM CHOIMISIÚN CHUN DROCHÚSÁID LEANAÍ
A FHIOSRÚ (LEASÚ) 2005
COMMISSION TO INQUIRE INTO CHILD ABUSE
(AMENDMENT) BILL 2005**

EXPLANATORY MEMORANDUM

Introduction

The purpose of this Bill is to give effect to the recommendations of the Report to the Government of the Review Group on the Commission to Inquire into Child Abuse, and the Report and subsequent recommendations of Mr Justice Ryan on the workings of the Commission. The amendments proposed in the Bill will better enable the Commission to complete a full inquiry into child abuse within a reasonable timeframe and at reduced cost. The Bill will also establish a statutory framework for the operation of an Education Fund for former residents of institutions and their families. Finally, the Bill will make a number of technical amendments to the Residential Institutions Redress Act 2002.

Provisions of the Bill

PART 1

PRELIMINARY AND GENERAL

Section 1 sets out the short title of the Bill and that parts of it can be interpreted and cited in combination with the legislation it is amending.

Section 2 defines “Principal Act” in the Bill as the Commission to Inquire into Child Abuse Act 2000.

PART 2

AMENDMENTS OF PRINCIPAL ACT

Section 3 amends certain definitions used in the Commission to Inquire into Child Abuse Act 2000 (*ie* the Principal Act). The change to the definition of “abuse” is designed to allow the Commission to make a finding of abuse where it might be reasonable to assume that the acts or omissions concerned caused serious harm to the person.

Sections 27 and 28 of the Principal Act require the disclosure of information given to the Commission or its committees to the Gardaí if the person is acting in good faith and reasonably believes that the disclosure is necessary in order to prevent a serious offence occurring. The new definition of “serious offence” will widen this obligation to prevent an offence carrying a sentence of at least 1 year’s imprisonment instead of the current requirement for the offence to carry a 5 year prison term.

Section 4 amends section 4 of the Principal Act by changing the functions of the Commission in a number of respects. It extends the functions to include a duty on the Commission to inquire into the manner in which children were placed in institutions and the circumstances in which they continued to be resident there. It also removes the requirement that it be satisfied that abuse occurred in order to determine the nature, causes and circumstances of abuse. This will remove the requirement for a two phase process in hearing evidence which would have led to unnecessary delays and costs in the Commission carrying out its functions. In effect, the section removes the obligation on the Investigation Committee to hear all complainants and gives it a discretion as to which witnesses it considers should be called to a full hearing to ensure that the Inquiry's functions are fulfilled.

Section 5 amends section 5 of the Principal Act by allowing the Commission to include in its report findings that abuse of children occurred in a particular institution where it would be reasonable to reach such a conclusion. This reduces the burden on the Commission which, at the moment, must be satisfied that a particular person actually suffered serious harm as a result of the acts they have complained of. The Commission will now be able to conduct its inquiry as a whole in one phase in respect of any particular institution or period. The Commission will also be able to identify the institution where the abuse took place and the person who committed the abuse provided that he or she has been convicted of an offence relating to the abuse.

In preparing its report the Commission will be required, insofar as its report is based on evidence recorded by the Confidential Committee, to have regard to the fact that the evidence received by the Confidential Committee could not be tested, challenged or corroborated.

Section 6 changes section 11 of the Principal Act by permitting the Investigation Committee to hold meetings in public if it considers this appropriate and to hold joint hearings which can be attended by survivors and their representatives, and respondents and their representatives, again where the Committee considers this appropriate. This will allow the Committee, for instance, to jointly take the evidence of a number of survivors who have made similar allegations in relation to particular individuals in a particular institution.

This section will also allow a Committee to sit in single member divisions. They could deal with non-controversial matters and thereby speed up the work of the Committee.

Section 7 amends section 12 of the Principal Act by providing that the Investigation Committee will provide an opportunity to survivors to recount the abuse they suffered in institutions as far as is reasonably practicable. This amendment, in combination with the amendment in *section 4*, will allow the Committee to call before it people whose accounts it considers will provide it with the greatest possibility of arriving at the truth of what occurred.

This section will also permit the Investigation Committee to inquire into the manner and circumstances in which children were placed and resident in institutions.

Section 8 amends section 13 of the Principal Act. It removes the obligation on the Investigation Committee to satisfy itself that abuse took place in individual cases before reporting its findings in relation to abuse of children in a particular institution. It also restricts the capacity of the Committee to name individual perpetrators of abuse to where a person has been convicted of a criminal offence involving abuse or has pleaded guilty to this kind of offence. Finally, the

section will allow the Committee to produce interim reports which are final in relation to the issues they deal with.

Section 9 amends section 14 of the Principal Act by conferring additional powers on the Investigation Committee in its taking of evidence. It will now be entitled to require the discovery of documents, to furnish interrogatories (or questions) which must be replied to, and to require parties to admit facts, statements and documents. The evidence obtained will be presumed to be *prima facie* evidence of the matters it relates to. Where a person, without good reason, refuses to comply with one of these requirements, or with a direction issued under section 14(1) of the Principal Act requiring the giving of evidence to the Committee, the chairperson of the Committee can award costs against him or her. Finally, the section provides that the Investigation Committee will take evidence of a person's conviction for abuse of a child as evidence before the Committee of that abuse.

Section 10 amends section 15 of the Principal Act. Following on from the findings of the Supreme Court in the *Abeylara* case, it removes the power of the Confidential Committee to make findings of a general nature. Instead, the Committee will have power to make general proposals with a view to having them considered by the Commission in deciding what recommendations it should make in its report.

Section 11 amends section 16 of the Principal Act by removing the power of the Confidential Committee to include in its report findings of a general nature. Instead, the Committee will now have power to prepare a report based on the evidence it has received and containing proposals of a general nature.

Sections 12, 13, 15 and 20 amend sections 17, 18, 21 and 31 respectively of the Principal Act by replacing the term "inquiry officer" with the term "authorised officer". These amendments are linked with *section 16* of the Bill.

Section 14 amends section 19 of the Principal Act. It provides that a person may cease giving evidence to the Investigation Committee subject to the consent of that Committee, the rights of others and the requirements of justice and may, with the consent of the Confidential Committee, give evidence to it of the abuse being alleged.

Section 16 amends section 23 of the Principal Act. "Inquiry officers" will now be known as "authorised officers" and may be consultants as well as members of staff of the Commission. In addition to their existing functions, they will also perform whatever other functions the Investigation Committee determines in order to assist it or the Commission carrying out their tasks.

Section 17 amends section 25 of the Principal Act by allowing applications to the High Court by the Commission for a direction to be heard in public or private, which will be at the discretion of the Court.

Section 18 allows the Commission to direct one committee to hear evidence in relation to a longer period of time than the other committee. In performing its functions, the Commission must take account of any reports made in relation to that longer period.

Section 19 provides a statutory procedure of judicial review in relation to Commission or Committee decisions. A person may question a determination of the Commission or a Committee by applying

to the High Court for a judicial review within 2 months of the determination. The High Court will grant leave if it is satisfied that there are substantial grounds for believing that the determination is invalid or ought to be expunged. The 2 month period can be extended if the Court considers that there are good reasons for doing this. An appeal of a decision on a judicial review by the High Court may be brought to the Supreme Court only if the High Court agrees that its decision involves a point of law of exceptional public importance and that it is in the public interest for the Supreme Court to hear the appeal.

Section 21 ensures the smooth transition of the Commission's work pending the enactment of this amending legislation.

PART 3

EDUCATION (FORMER RESIDENTS OF CERTAIN INSTITUTIONS FOR CHILDREN) FINANCE BOARD

Section 22 provides for definitions to be used in this part of the Bill.

Section 23 requires that within one year of the Act being passed by the Oireachtas the Minister must set a day to be the day the Education (Former Residents of Certain Institutions for Children) Finance Board is established.

Section 24 provides for the establishment of the Education (Former Residents of Certain Institutions for Children) Finance Board which will be a corporate body. The Board will be independent in the performance of its functions. Provision is also made for dissolution of the Board on completion of its work.

Section 25 states that the principal functions of the Board are to pay grants to former residents of institutions and their relatives, to determine and publish criteria on which decisions to pay grants will be based, and to provide information in relation to the educational services for which grants are available.

Section 26 requires the Minister for Finance to pay to the National Treasury Management Agency the sum of €12.7 million which was paid to the State as part of an agreement with certain religious congregations, plus any interest which that sum has since earned, less any sums paid before the Act is passed to former residents of institutions and their relatives to assist them to avail of educational services. The Agency will deposit the money in an investment account. The Agency will invest any monies not required in a given financial year in securities or authorised investments and returns from those investments will be paid into the account. Each year the Agency will pay a grant to the Education Finance Board to meet the Board's expenditure.

Section 27 permits the Board to pay grants to former residents of institutions or relatives of former residents to assist them to avail of educational services. The Board will have discretion as to the amount of the grant, the educational service for which it is paid, the frequency of payment, and the conditions to be attached to the grant. It will have to decide on criteria by which decisions on grants will be made and will have to publish those criteria.

Section 28 requires the Board to develop and publish the procedures governing the applications for grants, how the Board considers the applications, and how communication between the Board and applicants will happen. Grants paid to applicants can only be used to pay for the educational services specified by the Board. The

Ombudsman will be entitled to investigate decisions on grants made by the Board.

Section 29 provides that the Board will consist of a chairperson and 8 ordinary members appointed by the Minister for Education and Science. Four of the members must be former residents of institutions.

Section 30 provides for the employment of staff by the Board, their remuneration and terms and conditions of service.

Section 31 provides for the keeping of accounts by the Board and for the audit of such accounts by the Comptroller and Auditor General. The Minister will be required to have the accounts and the C&AG's report on them laid before the Houses of the Oireachtas.

Section 32 requires the Board to publish an annual report and to provide a copy of it to the Minister who must lay it before the Houses of the Oireachtas. The Board must provide the Minister with such information on its activities as requested by him or her and may also provide information relating to applications and decisions relating to grants to any other appropriate person. However, the Board will be precluded from providing information that could lead to the identity of an applicant being disclosed.

Section 33 provides for a procedure to remove the Board from office where the Minister believes that it has failed, neglected or refused to perform any of its functions, has failed to perform any of its functions effectively, or has contravened the Act in some other way. Provision is also made for the appointment of a replacement Board by the Minister.

PART 4

MISCELLANEOUS

Section 34 provides for a number of amendments to the Residential Institutions Redress Act 2002 including the following—

- The offence of giving false evidence to the Redress Board or the Review Committee is extended to any person who gives such evidence, regardless of whether or not they have made an application for an award
- In future, where an award is made but the applicant dies before deciding whether or not to accept it, the award will not die with them. Where they are survived by a spouse or child, he or she may proceed with the application on the deceased's behalf. If the deceased does not have a spouse or child, the applicant will be deemed to have accepted the award which will be paid to their estate
- The Board will have a discretion in deciding whether or not it needs to request a medical report on the applicant and removes the obligation on the applicant to appear in person at a Board hearing
- The Board will now have a discretion in relation to the evidence it is required to rely upon in cases where an application is made on behalf of a deceased person
- The Board will have power to establish a committee to regulate its procedure and business

- A cooling-off period will be provided for permitting an applicant who appeals an award to withdraw the appeal within 2 weeks of submitting it to the Review Committee
- Where the Board directs that an award must be paid in instalments or some other manner because the applicant is incapable of managing the monies, he or she will have 1 month to appeal this direction to the Review Committee
- The Board may arrange for awards payable in instalments to be administered by the Courts Service for the applicant's benefit in accordance with the direction and rules of court. The applicant will be entitled to apply to the Court to vary the terms on which the award is administered
- A number of changes are made to the names of institutions to delete duplications and correct errors in their names as they currently appear.

Section 35 provides for the Minister's power to make regulations and orders and the requirement that they be laid before the Houses of the Oireachtas. It also confirms the Government's power to extend the life of the Commission which will need to be extended by Order in May 2005.

The *Schedule* is concerned with the membership and meetings of the Education Finance Board. It provides for the seal of the Board, tenure of office, the offices of chairperson and deputy chairperson, meetings of the Board, minutes of meetings and its power to act notwithstanding vacancies and through standing orders or otherwise.

*An Roinn Oideachais agus Eolaíochta,
Márta 2005.*