



An Bille um Thaifid a Choimeád, 2019
Retention of Records Bill 2019

Meabhrán Mínitheach
Explanatory Memorandum



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RETENTION OF RECORDS BILL 2019

EXPLANATORY MEMORANDUM

This Explanatory Memorandum does not form part of the Bill and does not purport to be a legal interpretation.

Purpose of Bill

The purpose of the Bill is, by its long title, an Act to provide for the retention of certain records of the three redress bodies, the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee; to deem the records to be records of the Department of Education and Skills and to transfer those records to the National Archives; to amend the National Archives Act 1986, the Commission to Inquire into Child Abuse Act 2000 and the Residential Institutions Redress Act 2002; and to provide for related matters.

Under existing statutory provisions the entire records of the Residential Institutions Redress Board and of the Residential Institutions Redress Review Committee together with the bulk of the records of the Commission to Inquire into Child Abuse will be disposed of on the dissolution of the bodies.

This Bill provides for the retention, sealing and withholding from public inspection of certain records for a period of no less than 75 years and for the confidential disposal of any records not transferring to the National Archives. On the expiry of that 75 year period, access will be granted to the records only in accordance with regulation then made by the Minister for Education and Skills.

Provisions of Bill

The Bill comprises 11 sections.

Section 1 - Interpretation

Section 1 defines the terms used in the Bill. For the purposes of the Bill, the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee are each referred to as a “relevant body”.

Section 2 – Disposal of certain records

Section 2 provides a mechanism for the disposal of records not required to be retained. On receipt of a certificate from a relevant body that particular records or classes of records are not required to be retained, the Director of the National Archives, on being satisfied that the records in question do not warrant preservation, may grant an authorisation for the disposal of the records. Provision is also made for the inspection of records by the Director

and for the making available to the Director, for the purposes of the section, of records by a relevant body that may otherwise be prohibited from being disclosed. Records that are the subject of an authorisation under this section must be disposed of in a manner that ensures that their confidentiality is not affected and their contents are not ascertainable.

Section 3 - Transfer of records on dissolution of relevant body

Section 3 provides for the transfer of the records of a relevant body and for their sealing and withholding from public inspection. The records in question will be kept in a secure facility which is inaccessible to the public.

Subsection (1) provides that, on the dissolution of a relevant body, its records will be deemed to be records of the Department of Education and Skills and will be transferred to the National Archives. The existing provisions set out in sections 27(5) of the Commission to Inquire into Child Abuse Act 2000 and 28(3) of the Residential Institutions Redress Act 2002 which deemed that records of the Commission to Inquire into Child Abuse's Confidential Committee, the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee did not constitute Departmental records within the meaning of section 2(2) of the National Archives Act 1986 are being modified.

Subsection (2) provides that records transferred will be sealed and withheld from public inspection for a period, referred to as the "sealing period", of no less than 75 years from the date of transfer.

Subsection (3) provides that access to a record transferred will be granted only in accordance with regulations made under section 6 of the Bill while records in relation to which no regulations are made or regulations made do not apply, will remain sealed and withheld from public inspection.

Section 4 – Amendment of National Archives Act 1986

Section 4 amends section 2 of the National Archives Act 1986 by inserting a new paragraph (ba) after paragraph (b) in subsection (1) providing that the definition of "archives" includes, subject to the Bill, a record transferred under section 3(1) of the Bill.

Section 5 - Application of the National Archives Act 1986 to records

Section 5 provides that a number of sections of the National Archives Act 1986 will not apply to a record transferred under the Bill while other sections will not apply during the sealing period. The provisions of the 1986 Act that will not apply to a record transferring are sections 2(3), 7, 8, and 15 while those that will not apply for the duration of the sealing period are sections 9, 10, 11, 12, 16 and 19(1)(c) to (f). The purpose of these dis-applications is to ensure the integrity of the sealing period.

Section 6 – Regulations

Section 6(1) provides that the Minister may, no earlier than 12 months prior to the expiry of a period of 75 years from the date of transfer of a record and following consultation with the Director of the National Archives, make regulations specifying the circumstances under which access to the record will be granted.

Subsection (2) provides that where regulations are made prior to the expiry of a period of 75 years, they may not come into operation prior to the expiry of that period.

Subsections (3) and (4) provide that when a Minister proposes to make regulations he or she must have regard to the impact that any resultant disclosure of information may have on the well-being and emotional state of persons alive at the date of the making of the regulations.

Subsection (5) provides that regulations may apply to such class or classes of records as are specified in the regulations while subsection (6) provides that where regulations are proposed to be made, positive resolutions of each House of the Oireachtas are required to be passed.

Section 7 - Amendment of the Commission to Inquire into Child Abuse Act 2000

Section 7 amends the Commission to Inquire into Child Abuse Act 2000 by deleting the provision in section 7(6) of that Act which provided that the Commission would make arrangements for the disposal of its records including those of a Committee. Subsection 34(4) of that Act, which deals with the applicability of Freedom of Information legislation to records held by the Commission's Confidential Committee and transferred to another public body on the Commission's dissolution is being deleted.

Section 8 – Amendment of the Residential Institutions Redress Act 2002

Section 8 amends section 28 of the Residential Institutions Redress Act 2002 by modifying the provision in subsection (6) prohibiting publication of certain information included in an application to the Residential Institutions Redress Board by removing that prohibition on the expiry of the sealing period and by deleting subsections (7) and (8) which provided that the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee would each determine the disposal of documents relating to applications to them.

Section 9 – Restriction of Freedom of Information Act 2014

Section 9 provides that the Freedom of Information Act 2014 will not apply to a record transferring to the National Archives.

Section 10 - Expenses

Section 10 is a standard provision in relation to expenses.

Section 11 – Short title, collective citation and commencement

Section 11 provides for the short title, collective citations and the commencement of the Bill.

Financial Implications of the Bill

The main costs that will arise in relation to the Bill will be costs, if any, incurred in relation to the storage of the records. Those costs, and any costs incurred by the Minister and by the redress bodies will, with the approval of the Minister for Public Expenditure and Reform, be met from the Exchequer.

*An Roinn Oideachais agus Scileanna,
Feabhra, 2019.*