



An Bille um Adhlacthaí Forais, 2022
Institutional Burials Bill 2022

Mar a ritheadh ag Dáil Éireann

As passed by Dáil Éireann



AN BILLE UM ADHLACTHAÍ FORAIS, 2022
INSTITUTIONAL BURIALS BILL 2022

Mar a ritheadh ag Dáil Éireann

As passed by Dáil Éireann

CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement
2. Interpretation
3. Expenses
4. Service of documents
5. Offences and penalties
6. Regulations and orders

PART 2

CHAPTER 1

Directors of Authorised Interventions

7. Government Order directing establishment of Office of Director of Authorised Intervention
8. Manifestly inappropriate burials and safeguarding important objectives of general public interest
9. Director of Authorised Intervention
10. Functions of Director
11. Resignation, removal or disqualification of Director or person to be appointed Director
12. Office of Director and staff of Director
13. Advisory Board
14. Membership of Advisory Board
15. Appointment of members of Advisory Board
16. Terms and conditions of membership of Advisory Board
17. Member ceasing to be member of Advisory Board

18. Ineligibility to become member of Advisory Board and disqualification to act as member
19. Power to appoint consultants and advisers and enter into contracts
20. Membership of either House of Oireachtas, European Parliament or local authority
21. Grants to Director
22. Accounts
23. Annual report
24. Accountability of Director to Public Accounts Committee
25. Accountability of Director to other Oireachtas committees
26. Amendment of Schedule 13 to Taxes Consolidation Act 1997

CHAPTER 2

Information sharing and data protection

27. Information and documents to be made available to Director
28. Application to District Court to compel production of information or documents
29. Request for information contained in database and related records of Commission of Investigation into Mother and Baby Homes
30. Prohibition on disclosure of confidential information
31. Processing of personal data and special categories of personal data
32. Regulations for purposes of data protection

PART 3

FORENSIC EXCAVATION AND RECOVERY AND POST-RECOVERY ANALYSIS OF HUMAN REMAINS AND SUSPENSION OF RELEVANT WORKS

33. Proceeding with relevant works and related activities: access to land
34. No exhumation under Local Government (Sanitary Services) Act 1948 while relevant works underway
35. Forensic excavation and recovery and post-recovery analysis of human remains
36. Obligation to notify An Garda Síochána and coroner of certain evidence
37. Principal burial land or ancillary burial land as crime scene
38. Obligation to provide certain information where criminal investigation being conducted
39. Resumption of relevant works after suspension under section 36 or 37

PART 4

IDENTIFICATION OF HUMAN REMAINS AND RELATED PROVISIONS IN RESPECT OF SAMPLES AND DNA PROFILES

CHAPTER 1

Preliminary and General (Part 4)

40. Interpretation (Part 4)
41. Authorised person

CHAPTER 2

Identification Programme

42. Promotion measures and information campaign: Identification Programme
43. Objection to participation by eligible family member in Identification Programme
44. Objection by parent, child or sibling to participation by another eligible family member in Identification Programme
45. Register of notifications
46. Identification Programme: purpose and composition
47. Review of operation of Identification Programme
48. Participation in Identification Programme
49. Nominee of relevant person
50. Notification of whether or not familial link established

CHAPTER 3

Participation in Identification Programme of certain persons who give samples pursuant to administrative arrangements and who are not relevant persons

51. Use of samples given pursuant to administrative arrangements in certain circumstances
52. Generation of DNA profile from sample referred to in section 51
53. Nominee of applicable person
54. Notification to nominee of applicable person as to whether or not familial link established
55. Use of sample referred to in section 51 where person providing sample participates in Identification Programme
56. Destruction of sample referred to in section 51 in certain circumstances

CHAPTER 4

Final arrangements

57. Final arrangements for recovered human remains

CHAPTER 5

Samples, generating DNA profiles and DNA profile comparison

58. Generation of more than one DNA profile from a sample
59. Taking of sample from human remains and generating DNA profile
60. Taking of sample from relevant person and generating DNA profile
61. Taking of sample for elimination purposes and generating DNA profile
62. Re-taking of sample

CHAPTER 6

Databases: DNA (Historic Remains) Database and Personal Information (Historic Remains) Database

63. Establishment of DNA (Historic Remains) Database and Personal Information (Historic Remains) Database

- 64. Functions of Director of FSI
- 65. Permitted searching of Databases

CHAPTER 7

Oversight Committee and review of operation of Databases

- 66. Request that DNA Database System Oversight Committee perform functions under Act
- 67. Functions of Oversight Committee
- 68. Meetings and Procedures
- 69. Administrative support and engagement of consultants or advisers
- 70. Cooperation with Oversight Committee
- 71. Review and report by Oversight Committee
- 72. Final report of Oversight Committee

CHAPTER 8

Destruction of samples, deletion of DNA profiles and information held on Databases and destruction of Databases

- 73. Destruction of samples, deletion of DNA profiles and related information at request of Director
- 74. Destruction of samples, deletion of DNA profiles and related information: relevant person withdraws consent
- 75. Destruction of samples taken from relevant persons, deletion of related DNA profiles and related information
- 76. Destruction of samples taken from applicable persons, deletion of related DNA profiles and related information
- 77. Destruction of samples taken for elimination purposes and deletion of related DNA profiles and related information
- 78. Return of samples taken from human remains to Director and deletion of related DNA profiles

CHAPTER 9

Regulations and Appeals

- 79. Regulations for purposes of continuing DNA profile comparison after Identification Programme completed
- 80. Regulations: general (Part 4)
- 81. Appeals

PART 5

ACCESS TO LAND TO CARRY OUT WORKS AND ACTIVITIES, COMPENSATION FOR USE OF LAND AND REMEDIAL WORKS ON LAND

- 82. Definition (Part 5)
- 83. Access to land, carrying out of works and activities on land and compensation: general
- 84. Public body and consent to relevant works and related activities
- 85. Notice of intention to carry out relevant works on principal burial land

86. Application to court for order authorising relevant works on principal burial land
87. Notice of intention to carry out relevant works on ancillary burial land
88. Application to court for order authorising relevant works on ancillary burial land
89. Notice of intention to carry out related activities on ancillary land
90. Application to court for order authorising related activities on ancillary land
91. Statement of compensation
92. Application for compensation by person other than owner or occupier of land
93. Calculation and payment of compensation
94. Application to Circuit Court by person who refuses an offer of compensation
95. Remedial works on principal burial land, ancillary burial land and ancillary land
96. Exercise of jurisdiction by District Court and Circuit Court
97. Amendment of section 4 of Act of 2000

PART 6

DISSOLUTION OF OFFICE OF DIRECTOR, TRANSFER OF FUNCTIONS, ASSETS AND LIABILITIES AND RECORDS

98. Dissolution day
99. Transfer of functions to relevant Minister
100. Liability for loss occurring before dissolution day
101. Transfer of land and other property to relevant Minister
102. Transfer of rights and liabilities and continuation of leases, licences and permissions granted by Director
103. Preservation of contracts, agreements and arrangements entered into by Director
104. Provisions consequent upon transfer of functions, assets and liabilities
105. Final accounts and final report of Director
106. Review of operation of Office
107. Deposit of records of Director with relevant Minister

SCHEDULE

PROVISIONS APPLICABLE TO DIRECTORS OF AUTHORISED INTERVENTIONS

ACTS REFERRED TO

Assisted Decision-Making (Capacity) Act 2015 (No. 64)
Commissions of Investigation Act 2004 (No. 23)
Companies Act 2014 (No. 38)
Comptroller and Auditor General (Amendment) Act 1993 (No. 8)
Coroners Act 1962 (No. 9)
Courts (Supplemental Provisions) Act 1961 (No. 39)
Criminal Justice Act 2006 (No. 26)
Data Protection Act 2018 (No. 7)
European Parliament Elections Act 1997 (No. 2)
Interpretation Act 2005 (No. 23)
Local Government (Sanitary Services) Act 1948 (No. 3)
Local Government Act 2001 (No. 37)
Medical Practitioners Act 2007 (No. 25)
National Archives Act 1986 (No. 11)
Ombudsman Act 1980 (No. 26)
Planning and Development Act 2000 (No. 30)
Taxes Consolidation Act 1997 (No. 39)
Tribunals of Inquiry (Evidence) Acts 1921 to 2011



AN BILLE UM ADHLACTHAÍ FORAIS, 2022
INSTITUTIONAL BURIALS BILL 2022

Bill

entitled

An Act to provide for the appointment from time to time by the Government of a corporation sole, to be called a Director of Authorised Intervention, for the purposes of excavating land associated with an institution owned, operated, controlled or funded by a public body and, having regard to the need to accord dignity to persons buried in that land, recovering human remains buried in that land in a manifestly inappropriate manner; to provide for post-recovery analysis of recovered human remains; to provide, where appropriate, for the establishment of an Identification Programme; to provide for the participation of certain relatives of persons thought to be buried in the land concerned in the Programme; to provide for the establishment, by Forensic Science Ireland, of a DNA (Historic Remains) Database and a related Database for personal information for the purposes of that Programme; to provide for final arrangements for the human remains recovered from such land; for those and related purposes to enable a Director in certain circumstances to access and carry out works over principal burial land and ancillary burial land and, where necessary, on land ancillary to principal burial land and ancillary burial land and to provide for the payment of compensation in certain circumstances to persons for interference with an interest in or right over such land; to provide for the carrying out of remedial works on land when work on the land concerned is completed; to provide for the establishment of an Advisory Board to provide advice and guidance to a Director in the performance of his or her functions; to provide that a relevant Minister may make regulations, having regard to potential developments in forensic science, to enable forensic testing of samples in certain circumstances for the purposes of identification of human remains after an Identification Programme is completed; to provide, on the dissolution of an Office of Director, for the transfer of any remaining functions, rights, liabilities and records to a relevant Minister; to amend the Taxes Consolidation Act 1997 and the Planning and Development Act 2000; and to provide for related matters.

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Institutional Burials Act 2022.
- (2) This Act shall come into operation on such day or days as the Minister may by order 5
or orders appoint either generally or with reference to any particular purpose or
provision and different days may be appointed for different purposes or different
provisions.

Interpretation

2. (1) In this Act— 10
 - “Act of 1962” means the Coroners Act 1962;
 - “Act of 2000” means the Planning and Development Act 2000;
 - “Act of 2004” means the Commissions of Investigation Act 2004;
 - “Act of 2014” means the Companies Act 2014;
 - “Act of 2018” means the Data Protection Act 2018; 15
 - “adjudicator” has the meaning assigned to it by *section 81(3)*;
 - “Advisory Board” has the meaning assigned to it by *section 13(1)*;
 - “ancillary burial land” means relevant residential land—
 - (a) adjacent to principal burial land, and
 - (b) where burials, associated with burials that took place on that principal burial 20
land, have taken place;
 - “ancillary land” means land that is not principal burial land or ancillary burial land
and on which it is proposed to carry out related activities;
 - “applicable person” has the meaning assigned to it by *section 52(1)*;
 - “coroner” means a coroner appointed under the Act of 1962; 25
 - “Databases” has the meaning assigned to it by *section 63(1)*;
 - “Data Protection Regulation” means Regulation (EU) 2016/679 of the European
Parliament and of the Council of 27 April 2016¹ on the protection of natural persons
with regard to the processing of personal data and on the free movement of such data,
and repealing Directive 95/46/EC (General Data Protection Regulation); 30
 - “Director” has the meaning assigned to it by *section 7(1)*;
 - “Director of FSI” means the officer who is for the time being in charge of FSI;
 - “dissolution day” shall be construed in accordance with *section 98*;
 - “DNA” means deoxyribonucleic acid;

1 OJ No. L 119, 4.5.2016, p.1

“DNA (Historic Remains) Database” shall be construed in accordance with *section 63(1)(a)*;

“DNA profile” means, subject to *section 58*, information comprising a set of identification characteristics of the DNA derived from an examination and analysis of a sample from a person that is clearly identifiable as relating to the person and that is capable of comparison with similar information derived from an examination and analysis of a sample from another person that is clearly identifiable as relating to that other person; 5

“DNA profile comparison” shall be construed in accordance with *subsection (2)*;

“dwelling” means a building used for residential purposes and includes a building where a part of the building only is used for residential purposes; 10

“eligible family member” means a person who believes on reasonable grounds that—

- (a) he or she is, in relation to a deceased person, a child, parent, sibling, half-sibling, grandparent, grandchild, aunt, uncle, niece or nephew (whether of the whole blood or the half-blood), grandniece or grandnephew of the person, and 15
- (b) the deceased person is buried in the principal burial land or ancillary burial land in respect of which an Identification Programme is undertaken;

“elimination index” shall be construed in accordance with *section 63(1)(a)(iii)*;

“enactment” has the same meaning as it has in the Interpretation Act 2005;

“familial link” means, between a relevant person or an applicable person, as the case may be, on the one hand and a person whose human remains have been recovered on the other hand, that those 2 persons are likely to be related to each other within the degree of relationship asserted by the relevant person or the applicable person; 20

“family members’ index” shall be construed in accordance with *section 63(1)(a)(ii)*;

“final arrangements” means, in relation to recovered human remains or samples taken from those remains, final arrangements made in accordance with *section 57*; 25

“forensic excavation and recovery” means, in relation to principal burial land or ancillary burial land—

- (a) the excavation of the land and recovery of human remains buried in the land, and
- (b) the treatment of the remains so recovered, 30

in a manner sufficient to satisfy legal requirements regarding the use and storage of evidence in connection with the identification of human remains, including in criminal proceedings;

“forensic testing” means, in relation to human remains or a sample taken from those remains or from a living person— 35

- (a) the examination and analysis of the remains or sample, or both, as the case may be,
- (b) the carrying out, on the human remains or sample, of biochemical or other scientific tests and techniques that are used in connection with the identification of human remains or persons, and 40

(c) if possible, the generation of a DNA profile of a person from the sample taken from those remains or from that person;

“FSI” means Forensic Science Ireland of the Department of Justice;

“Identification Programme” shall be construed in accordance with *section 46*;

“institution” means a current or former residential facility (howsoever described) for adults or children, or both, in respect of which a public body has or had a relevant role; 5

“land” has the same meaning as it has in the Act of 2000;

“local authority” has the same meaning as it has in the Local Government Act 2001;

“market value” has the same meaning as it has in the Courts (Supplemental Provisions) Act 1961; 10

“member of staff of FSI” means an officer of the Minister for Justice who is assigned to perform duties in FSI;

“Minister” means the Minister for Children, Equality, Disability, Integration and Youth; 15

“nominee” means—

(a) in relation to a relevant person, a person who consents, in the prescribed form, to act as a nominee under *section 49* and who has not withdrawn his or her consent under that section, and

(b) in relation to an applicable person, a person who consents to act as a nominee having been nominated by an applicable person at the time of giving a sample referred to in *section 51* and who has not withdrawn his or her consent under *section 53*; 20

“occupier” means, in relation to land, a person, other than the owner, who is in or is entitled to be in lawful possession of the land; 25

“Office” has the meaning assigned to it by *section 12(1)*;

“Oversight Committee” means the DNA Database System Oversight Committee;

“owner” means, in relation to land, a person who holds the highest freehold or leasehold estate or interest in the land;

“personal data” has the same meaning as it has in the Data Protection Regulation; 30

“Personal Information (Historic Remains) Database” shall be construed in accordance with *section 63(1)(b)*;

“post-recovery analysis” has the meaning assigned to it by *section 35(2)*;

“prescribe” means prescribe by regulations;

“principal burial land” means land— 35

(a) associated with an institution where burials have taken place—

(i) of persons who died while resident at the institution, and

- (ii) which were manifestly inappropriate,
 - and
 - (b) which is the subject of an order made by the Government under *section 7*;
- “processing” has the same meaning as it has in the Data Protection Regulation;
- “public body” means— 5
- (a) a Minister of the Government,
 - (b) the Director of the Comptroller and Auditor General,
 - (c) the Director of the Ombudsman established by section 2 of the Ombudsman Act 1980,
 - (d) a local authority, or 10
 - (e) a body (other than a company formed and registered under the Act of 2014 or an existing company within the meaning of that Act) established by or under any enactment;
- “register” has the meaning assigned to it by *section 45(1)*;
- “related activities” means, in relation to ancillary land— 15
- (a) using that land for the purpose of accessing principal burial land or ancillary burial land, or both, as the case may be, and
 - (b) carrying out such works on that land as are necessary for the purposes of facilitating relevant works on the principal burial land or ancillary burial land, or both, as the case may be; 20
- “relevant Minister” shall be construed in accordance with *subsection (4)*;
- “relevant person” means a person who has been notified by a Director under *section 48* or *section 81(7)* that he or she may participate in an Identification Programme and who has not withdrawn from participation under *section 48*;
- “relevant residential land” means a portion of land in residential use which does not— 25
- (a) extend further than 2 metres from the boundary of the land, and
 - (b) encroach on any part of a dwelling situate on the land;
- “relevant role” shall be construed in accordance with *subsection (3)*;
- “relevant works” means any work on principal burial land or ancillary burial land, as the case may be, which is necessary for the performance of the functions of a Director; 30
- “sample” means a sample taken under this Act and—
- (a) in relation to a living person, means a biological sample taken from the person, and
 - (b) in relation to human remains, means a sample of biological material taken from those remains; 35

“special categories of personal data” has the same meaning as it has in the Act of 2018;

“unidentified human remains index” shall be construed in accordance with *section 63(1)(a)(i)*.

- (2) A reference to a DNA profile comparison is a reference to the comparison of— 5
- (a) the DNA profile of a relevant person or an applicable person, as the case may be, entered in the family members’ index of the DNA (Historic Remains) Database and the DNA profile of a person entered on the human remains index of that Database for the purposes of ascertaining that there is a familial link, that can be indicated statistically, between the 2 persons, or 10
 - (b) the DNA profile of a person entered on the human remains index of the DNA (Historic Remains) Database with the DNA profile of another person entered in that human remains index of that Database for the purposes of ascertaining whether the DNA profiles relate to the same person.
- (3) A public body shall be considered to have, or to have had, a relevant role in relation to an institution where the body performs or performed any functions in relation to the institution, including by— 15
- (a) operating the institution,
 - (b) engaging another person to operate the institution on behalf of the body,
 - (c) inspecting or regulating the institution, or 20
 - (d) funding, in whole or in part, the institution.
- (4) A relevant Minister means a Minister of the Government—
- (a) who has or had a relevant role in relation to the institution,
 - (b) within whose remit lies or lay responsibility for another public body which has or had a relevant role in relation to the institution, or 25
 - (c) whom the Taoiseach considers is best placed, having regard to the remit of that Minister’s Department and the nature of the institution concerned, to be the relevant Minister for the purposes of this Act.

Expenses

3. The expenses incurred by the Minister and a relevant Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas. 30

Service of documents

4. (1) Subject to *subsection (3)*, a notice or other document that is required or authorised by or under this Act to be served on or given to a person shall be addressed to the person concerned by name and may be so served on or given to the person in one of the following ways: 35
- (a) by delivering it in person;

(b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;	
(c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;	5
(d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.	10
(2) For the purposes of this section, a company formed and registered under the Act of 2014 or an existing company within the meaning of that Act shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.	15
(3) Where a notice or other document is required or authorised by or under this Act to be served on or given to the owner or occupier of land and the name of the owner or of the occupier cannot be ascertained by reasonable inquiry, it may be addressed to “the owner” or “the occupier”, as the case may require, without naming him, her or it.	
Offences and penalties	20
5. (1) A person who, without lawful excuse, interferes with or obstructs a Director or his or her servant or agent in carrying out relevant works or related activities shall be guilty of an offence.	
(2) A person who uses a sample taken or treated as having being taken, or a DNA profile generated, under this Act for a purpose other than a purpose authorised by this Act shall be guilty of an offence.	25
(3) A person who is guilty of an offence under this section or <i>section 30(2)</i> is liable on summary conviction to a class A fine or imprisonment for a period not exceeding 12 months, or both.	
Regulations and orders	30
6. (1) An order or regulation under this Act may contain such incidental, supplementary and consequential provisions as the Minister, or in the case of a regulation under <i>section 79</i> , a relevant Minister, or in the case of an order under <i>section 7</i> , the Government, considers necessary or expedient for the purposes of the order or regulation, as the case may be.	35
(2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.	40

- (3) Where the Government propose to make an order under *section 7*, a draft of the proposed order and a statement of the reasons for making the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving the draft has been passed by each House of the Oireachtas.

PART 2

5

CHAPTER 1

Directors of Authorised Interventions

Government Order directing establishment of Office of Director of Authorised Intervention

7. (1) Subject to *subsection (2)*, the Government may, from time to time, having considered a proposal made by a relevant Minister with the consent of the Minister for Public Expenditure and Reform, by order— 10
- (a) direct the relevant Minister, in accordance with *section 9*, to establish an Office of Director of Authorised Intervention (in this Act referred to as a “Director”)—
 - (i) for such period as the relevant Minister may by order specify under that section, and 15
 - (ii) to perform the functions set out in *paragraphs (a) to (k) of section 10* and any additional functions specified under *paragraph (b)*,
 - (b) specify such additional functions (if any), set out in *paragraph (l) of section 10*, as they consider appropriate to be performed by the Director, and 20
 - (c) identify, by reference to a map appended to the order, the land in respect of which the Director may perform his or her functions.
- (2) The Government may make an order under *subsection (1)* where—
- (a) they are satisfied as to the matters set out in *subsection (3)*,
 - (b) none of the circumstances set out in *subsection (4)* apply, 25
 - (c) they have not formed the view set out in *subsection (5)*, and
 - (d) a resolution approving the draft order has been passed by each House of the Oireachtas in accordance with *section 6(3)*.
- (3) The Government may make an order under *subsection (1)* where they are satisfied that— 30
- (a) on land associated with an institution, burials have taken place—
 - (i) of persons who died while resident at the institution, and
 - (ii) which, having regard to the matters specified in *section 8(1)*, were manifestly inappropriate,

- (b) works to be conducted on the land by the Director in the performance of his or her functions would not extend within the curtilage or 10 metres (whichever is the lesser) of any dwelling on the land, and
 - (c) having regard to the consideration specified in *section 8(3)*, the making of the order is necessary for the purposes of safeguarding important objectives of general public interest. 5
- (4) The Government shall not make an order under *subsection (1)* where—
 - (a) there is an ongoing investigation by the Garda Síochána into the circumstances surrounding human remains found on the land and the Government, having consulted with the Garda Commissioner, is of the view that the making of an order is premature pending the outcome of that investigation, 10
 - (b) there is an ongoing inquest by a coroner under the Act of 1962 into the circumstances surrounding human remains found on the land and the Government, having consulted with the coroner concerned, is of the view that the making of an order is premature pending the outcome of that inquest, 15
 - (c) the land—
 - (i) comprises, in whole or in part, a burial ground for the purposes of section 44 of the Local Government (Sanitary Services) Act 1948, or
 - (ii) could not be excavated without disturbing appropriately buried human remains that the Government consider, in all the circumstances, should not be recovered, 20
 - (d) recovery of human remains from the land would be unsafe or unreasonably difficult,
 - (e) evidence is available that the last known burial in the land was carried out before 1 January 1922, or 25
 - (f) to do so would obstruct or interfere with—
 - (i) an official or legal inquiry, investigation or process, or
 - (ii) proceedings pending or due before a court, a tribunal of inquiry established under the Tribunals of Inquiry (Evidence) Acts 1921 to 2011 or a commission of investigation established under the Act of 2004. 30
- (5) The Government may refuse to make an order under *subsection (1)* where other substantive reasons exist which cause the Government to form the view that memorialisation of the burials on the land, without further intervention, is more appropriate.
- (6) Subject to *section 6(3)*, the Government may from time to time, having considered a proposal made by a relevant Minister with the consent of the Minister for Public Expenditure and Reform, having regard to any information which a Director provides to the relevant Minister, by subsequent order amend an order made under *subsection (1)* or under this subsection to do any or all of the following: 35
 - (a) direct that certain functions set out in *paragraphs (a) to (k)* of *section 10* shall not be performed by the Director; 40

- (b) direct that additional functions set out in *paragraph (l) of section 10* and specified in that order shall not be performed by the Director;
- (c) specify additional functions, set out in *paragraph (l) of section 10*, to be performed by the Director;
- (d) amend, by reference to a map appended to the order, the land in respect of which the Director may perform his or her functions. 5

Manifestly inappropriate burials and safeguarding important objectives of general public interest

8. (1) The matters referred to in *section 7(3)(a)(ii)* are whether, in relation to the burials concerned, the human remains— 10
- (a) are uncoffined,
 - (b) are buried in such a manner that they would not have complied with the requirements, at the time of such burial, specified in the Burial Grounds Regulations,
 - (c) are buried in a way that would not reasonably be considered to provide a dignified interment, or 15
 - (d) are buried collectively and in a manner or in a location that is repugnant to common decency and would reasonably have been so considered at the time the burials took place.
- (2) For the purposes of *subsection (1)*, regard shall be had to available evidence including— 20
- (a) any expert technical reports or other reliable information in respect of the condition, location and age of the burials concerned, and
 - (b) any reliable and corroborated statement made by a person with knowledge of the circumstances and location of the burials concerned. 25
- (3) In determining whether the making of an order under *section 7(1)* is necessary for the purposes of safeguarding important objectives of general public interest, the Government shall consider whether the proposed intervention is proportionate having regard to—
- (a) public health, 30
 - (b) the need to accord dignity to persons buried in the land,
 - (c) the need to respect the views of the relatives of persons buried in the land,
 - (d) the potential impact on the land concerned, including the potential impact on—
 - (i) residents whose dwellings adjoin the land, and
 - (ii) archaeological features (if any) of the land, 35
 - (e) the social and economic interests of the State, and
 - (f) alternative options (if any) available to accord dignity to persons buried in the land.

- (4) In this section, “Burial Grounds Regulations” means the Rules and Regulations for the Regulation of Burial Grounds 1888, & c, dated 6th July, 1888.

Director of Authorised Intervention

9. (1) A relevant Minister shall, as soon as practicable but in any event no later than 6 months after the date of a Government order under *section 7(1)*, by order establish an Office of Director and the order shall specify— 5
- (a) the period of time for which the office shall continue in operation (in this section referred to as the “initial period”), and
- (b) a title, by reference to the principal burial land or the institution associated with that land, by which the Director shall be called and known. 10
- (2) A relevant Minister may by order extend, for such period or further periods as he or she considers appropriate, the period of time for which an office established under *subsection (1)* shall continue in operation—
- (a) in the case of the first period of extension, before the expiry of the initial period, and 15
- (b) in the case of a second or subsequent period of extension, before the expiry of the period of time specified in the most recent order made under this subsection.
- (3) A Director shall be a corporation sole and—
- (a) notwithstanding any casual vacancy in the office from time to time, shall have perpetual succession and an official seal, and 20
- (b) the *Schedule* shall have effect in relation to the Director.
- (4) Subject to *subsection (5)*, *section 11(3)* and *section 20*, on or after the making of an order under *subsection (1)*, the relevant Minister shall, with the consent of the Minister for Public Expenditure and Reform, appoint a person to be a Director for such period not exceeding the initial period, and upon and subject to such terms and conditions (including terms and conditions in relation to remuneration, allowances and superannuation), as may be determined by the relevant Minister with the consent of the Minister for Public Expenditure and Reform. 25
- (5) A period of appointment under *subsection (4)* may, with the consent of the Director concerned, be extended and the period of extension shall not exceed the initial period or, if the period of operation of the Office stands extended or further extended by order under *subsection (2)*, that period as so extended or further extended. 30
- (6) Where a relevant Minister makes an order under *section 98(2)* in relation to an office—
- (a) the Office shall cease to be in operation on the day appointed as the dissolution day in that order, and 35
- (b) the appointment of a Director under *subsection (4)* or extension of such appointment under *subsection (5)* shall also cease on that day.

- (7) A Director shall perform the functions conferred on him or her by or under this Act and shall be assisted in the performance of those functions by members of staff of the Director.
- (8) A Director may designate in writing a member of staff of the Director to perform the functions of the Director in his or her absence or, where the position of Director is vacant, the relevant Minister may so designate in writing, and the member so designated shall, during the period of such absence or vacancy, perform those functions and a reference in this Act to a Director, in so far as it relates to those functions, shall be taken to include a reference to the member so designated during any such period.
- (9) A Director shall be responsible to the relevant Minister for the performance of his or her functions.
- (10) Where a Director resigns, is removed from office or ceases to hold office in accordance with *section 11*, the relevant Minister may, in the same manner and subject to the same conditions as the Director who occasioned the vacancy was appointed, appoint a person to be the Director to fill that vacancy.

Functions of Director

10. Subject to *section 7(6)*, the functions of a Director are:

- (a) to manage and control generally the staff, administration and business of the Office;
- (b) having obtained the necessary consents or court orders referred to in *paragraph (d)*, to—
 - (i) identify the expertise required to assist him or her in performing his or her functions, and engage, under *section 19*, the services of persons with that expertise,
 - (ii) arrange for the forensic excavation and recovery of human remains buried in, having regard to the matters set out in *section 8(1)*, a manifestly inappropriate manner on principal burial land,
 - (iii) arrange for the post-recovery analysis of human remains after forensic excavation and recovery of those remains,
 - (iv) arrange for the carrying out of remedial works to the land on completion of the recovery of human remains from the land, and
 - (v) arrange for the conducting of any necessary works related to *subparagraphs (ii) to (iv)*;
- (c) to make final arrangements for human remains recovered from principal burial land;
- (d) where necessary, to seek the consent of the owner and occupier, or apply to court for an order under *section 86*, to enable the Director to carry out such works on the principal burial land as are necessary for the performance of his or her other functions;

- (e) where necessary, to seek the consent of the owner and occupier of ancillary burial land to the performance by the Director of functions, equivalent to the functions he or she has in relation to the principal burial land, over that ancillary burial land;
- (f) where necessary, to seek the consent of the owner and occupier of ancillary land to the Director carrying out related activities on that land; 5
- (g) where the consent of an owner or occupier referred to in *paragraph (e)* or *(f)* is not given, to apply to court for an order under *section 88* or *90*, as the case may be;
- (h) having obtained the necessary consents or court orders— 10
 - (i) to perform functions, equivalent to the functions he or she has in relation to the principal burial land, in relation to the ancillary burial land, and
 - (ii) to carry out related activities on ancillary land;
- (i) where applicable, to agree compensation under *Part 5*;
- (j) to provide regular updates on the performance of his or her functions to persons who consider that they are related to persons thought to be buried in principal burial land and, where applicable, ancillary burial land; 15
- (k) to provide information, where he or she considers it appropriate to do so, relating to the performance of his or her functions to other stakeholders and to the public;
- (l) where the Government specify in an order under *section 7*, any of the following functions: 20
 - (i) arranging for forensic excavation and recovery of other human remains buried in principal burial land which are not buried in a manifestly inappropriate manner but which the Government consider should, in all the circumstances, also be recovered; 25
 - (ii) carrying out an Identification Programme in accordance with *Part 4*;
 - (iii) such other functions as the Government considers are reasonably required for the purposes of enabling the Director to perform—
 - (I) any of the functions referred to in *paragraphs (a)* to *(k)*, and
 - (II) the functions referred to in *subparagraph (i)* or *(ii)*, or both, where specified in the order. 30

Resignation, removal or disqualification of Director or person to be appointed Director

- 11.** (1) A Director may resign from office by giving notice in writing to the relevant Minister and the resignation shall take effect one month from the date on which the relevant Minister receives the notice. 35
- (2) A Director may be removed from office by the relevant Minister for stated reasons.
- (3) A person shall not be eligible for appointment as Director and shall cease to hold office as Director if he or she—
- (a) is sentenced by a court of competent jurisdiction to a term of imprisonment,

- (b) is convicted on indictment of an offence,
- (c) is convicted of an offence involving fraud or dishonesty,
- (d) has a declaration made against him or her under section 819 of the Act of 2014 or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
- (e) is subject to, or is deemed to be subject to, a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 whether by virtue of that Chapter or of any other provision of that Act.

5

Office of Director and staff of Director

12. (1) There shall be attached to a Director an office (in this Act referred to as the “Office”) which shall assist the Director in the performance of his or her functions. 10
- (2) The Office shall be under the management and control of the Director.
- (3) Subject to *subsections (5) and (6)*, a Director may, subject to the approval of the relevant Minister given with the consent of the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of staff of the Director for such period and on such terms and conditions (including terms and conditions relating to remuneration, allowances and superannuation) and at such grade as the Director may determine. 15
- (4) Subject to *subsections (5) and (6)*, a Director may, with the consent of the relevant Minister, the Minister for Public Expenditure and Reform and the public body concerned, second a member of staff of a public body with his or her consent to be a member of staff of the Director for the duration of the secondment. 20
- (5) A person shall not be appointed to be a member of staff under *subsection (3)* or seconded under *subsection (4)* for a period exceeding the initial period.
- (6) The period of appointment or secondment, as the case may be, may, with the consent of the member of staff concerned and, in the case of a member standing seconded, with the consent of the public body from which he or she stands seconded, be extended but the period of extension shall not exceed— 25
- (a) the initial period, or
 - (b) if the period of time for which the office is to continue in operation stands extended or further extended by order under *section 9(2)*, that period as so extended or further extended. 30
- (7) Where a relevant Minister makes an order under *section 98(2)*, an appointment or secondment, or extension of such appointment or secondment, as the case may be, under this section shall cease on the day appointed as the dissolution day in that order. 35
- (8) In this section, “initial period” has the same meaning as it has in *section 9*.

Advisory Board

13. (1) A relevant Minister shall, as soon as practicable after the making of a Government order under *section 7(1)*, establish a board (in this Act referred to as an “Advisory

- Board”) to provide advice and guidance to the Director concerned in the performance of his or her functions.
- (2) Subject to *subsection (3)*, a Director may, where he or she considers it appropriate to do so, seek the advice and guidance of an Advisory Board in the performance of his or her functions. 5
 - (3) A Director shall seek the advice and guidance of an Advisory Board prior to performing functions of the Director—
 - (a) specified in *paragraphs (b), (c), (j) and (k) of section 10*, and
 - (b) under *subparagraphs (i) and (ii), and (iii) (in so far as those functions relate to functions under paragraphs (b), (c), (j) and (k)), of paragraph (l) of section 10* to be performed by the Director in accordance with an order made under *section 7*. 10
 - (4) The members of an Advisory Board referred to in *paragraphs (a) and (b) of section 14(1)* may, at the request of a Director, form a sub-committee of the Board for the purposes of providing specific technical advice and guidance to the Director having regard to those members’ particular professional expertise in relation to the functions of the Director. 15
 - (5) Subject to *subsections (6) and (7)*, an Advisory Board shall hold such and so many meetings as may be necessary for the due performance of its functions.
 - (6) An Advisory Board shall, in each year, hold not less than one meeting in each 3 month period with a Director and the Director shall, at those meetings, provide the Board with an update on the performance of his or her functions. 20
 - (7) An Advisory Board shall, when requested to do so by a Director, meet with the Director for the purposes of performing its function under *subsection (3)*.
 - (8) A relevant Minister shall fix the date, time and place of the first meeting of an Advisory Board. 25
 - (9) At a meeting of an Advisory Board, the chairperson shall, if present, be chairperson of the meeting and if and so long as the chairperson is not present or if the office of chairperson is vacant, the members of the Board present shall choose one of their members to act as chairperson.
 - (10) Subject to *subsection (11)*, the quorum for a meeting of an Advisory Board shall be 4. 30
 - (11) Where an Advisory Board is comprised, in accordance with *section 14(4)*, of fewer than 6 members, the quorum for a meeting of the Board shall be determined by the relevant Minister.
 - (12) Subject to this Act, the chairperson of an Advisory Board shall regulate the procedures of the Board. 35
 - (13) Nothing in this section shall be construed as entitling a member of an Advisory Board to receive, as compelling a Director to give to the Board or as allowing a Board to discuss, information—
 - (a) contained in a notification referred to in *section 42 or 44* or given by the person making the notification for the purposes of establishing his or her entitlement to make that notification, 40

- (b) given by a person for the purposes of establishing whether or not he or she may, in accordance with *section 48*, participate in an Identification Programme,
- (c) given by a relevant person for the purposes of his or her participation in an Identification Programme, or
- (d) which reveals the results of a DNA profile comparison by reference to an identifiable relevant person or an identifiable applicable person. 5

Membership of Advisory Board

14. (1) Subject to *subsection (4)*, an Advisory Board shall consist of 6 members, appointed in accordance with *section 15*, being—
- (a) a chairperson, 10
 - (b) 2 members having scientific expertise,
 - (c) a member being a person who is a member of staff of the local authority in which the principal burial land concerned is situate,
 - (d) a member being a person who considers that he or she is a family member of a deceased person believed to be buried in the principal burial land concerned, and 15
 - (e) a member being a former resident of the institution concerned.
- (2) Where there is no person referred to in *subsection (1)(d)* for appointment or suitable for appointment under *section 15* but there is more than one former resident referred to in *subsection (1)(e)* who is suitable for appointment under that section, the relevant Minister shall appoint a second former resident to be a member for the purposes of *subsection (1)(d)*. 20
- (3) Where there is no former resident referred to in *subsection (1)(e)* for appointment or suitable for appointment under *section 15* but there is more than one person referred to in *subsection (1)(d)* who is suitable for appointment under that section, the relevant Minister shall appoint a second person referred to in *subsection (1)(d)* to be a member for the purposes of *subsection (1)(e)*. 25
- (4) Subject to *subsection (5)*, a relevant Minister may determine that an Advisory Board shall consist of fewer than 6 members where he or she is of the view there are good reasons for so determining in particular having due regard to matters such as—
- (a) the functions of the Director, 30
 - (b) the size of the principal burial land concerned and the complexity of the relevant works to be conducted on that land,
 - (c) the nature of the institution concerned,
 - (d) the absence of any living persons who consider that they are a family member of deceased persons believed to be buried in the principal burial land concerned, 35
 - (e) the absence of any living former residents of the institution concerned,
 - (f) the fact that there is no person referred to in *subsection (1)(d)* who is willing to be, and is suitable for appointment as, a member, and

- (g) the fact that there is no former resident referred to in *subsection (1)(e)* who is willing to be, and is suitable for appointment as, a member.
- (5) Where a relevant Minister makes a determination under *subsection (4)*, there shall, at a minimum, be—
 - (a) a chairperson, and 5
 - (b) where there is a person or former resident referred to in *paragraph (d)* or *(e)* of *subsection (1)* still living, a member or members referred to in each of those paragraphs or, where applicable in accordance with *subsections (2)* and *(3)*, two members from among such persons or former residents, where the Minister considers the person or persons are suitable for appointment under *section 15*. 10

Appointment of members of Advisory Board

- 15. Subject to *subsections (2)* and *(3)* of *section 14*, a relevant Minister shall appoint as a member of the Advisory Board referred to in *subsection (1)* of that section—
 - (a) in the case of the chairperson, a person who is in the opinion of the relevant Minister suitably qualified being either a person who was a coroner in the State or a person having demonstrated expertise in coronial matters whether in the State or outside the State, 15
 - (b) in the case of the 2 members referred to in *paragraph (b)* of that subsection, persons who are in the opinion of the relevant Minister suitably qualified having scientific expertise relevant to the functions of the Director, 20
 - (c) in the case of a member referred to in *paragraph (c)* of that subsection, a person who is nominated by the Minister for Housing, Local Government and Heritage, and
 - (d) in the case of each member referred to in *paragraph (d)* and *(e)* of that subsection, a person who is in the opinion of the relevant Minister suitable for appointment. 25

Terms and conditions of membership of Advisory Board

- 16. (1) Each member of an Advisory Board shall act on a part-time basis subject to such terms and conditions (other than the payment of remuneration and allowances for expenses) as the relevant Minister may, with the consent of the Minister for Public Expenditure and Reform, determine. 30
- (2) Each member of an Advisory Board shall be paid by the Director, out of moneys provided to him or her, such remuneration (if any) and allowances for expenses (if any) as the relevant Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time determine. 35
- (3) Subject to *subsection (4)* and *section 17*—
 - (a) a member of an Advisory Board shall hold office for such period, not exceeding the initial period (within the meaning of *section 9*), as the relevant Minister shall specify, and

- (b) where the member's term of office expires with the passage of time, his or her appointment may be extended from time to time by the relevant Minister—
 - (i) for such period as the relevant Minister shall specify, subject to the condition that a period of extension shall not exceed the initial period or, if the period of operation of the Office stands extended or further extended by order under *section 9(2)*, that period as so extended or further extended, and 5
 - (ii) in the case of a member appointed under *section 15(c)*, without a further nomination by the Minister for Housing, Local Government and Heritage.
- (4) Where a relevant Minister makes an order under *section 98(2)*, a member of an Advisory Board shall cease to hold office on the day appointed as the dissolution day 10 in that order.

Member ceasing to be member of Advisory Board

17. (1) A member of an Advisory Board may resign from the Board by notice in writing to the relevant Minister and the resignation shall take effect on the date on which the relevant Minister receives the notice, or, if a date is specified in the notice and the relevant Minister agrees that the resignation shall take effect from the date specified, that date. 15
- (2) A relevant Minister may at any time remove a member of an Advisory Board from office if, in the opinion of the Minister—
- (a) the member has become incapable through ill-health of performing the functions of the office, 20
 - (b) the member has committed stated misbehaviour, or
 - (c) the member's removal appears to the Minister to be necessary for the effective performance by the Board of its functions.
- (3) Where a member of an Advisory Board dies, resigns, is removed from office or otherwise ceases to hold office— 25
- (a) the casual vacancy arising shall be filled by a person appointed in the same manner as the member of the Board who occasioned the vacancy was appointed, and
 - (b) the person appointed to fill the casual vacancy shall hold office for that period of the term of office of the member who occasioned that vacancy that remains unexpired at the date of that person's appointment, and may, in accordance with *section 16(3)(b)*, have his or her appointment extended. 30

Ineligibility to become member of Advisory Board and disqualification to act as member

18. A person shall not be eligible for appointment, and shall cease to hold office, as a member of an Advisory Board if he or she— 35
- (a) is convicted on indictment of an offence,
 - (b) is convicted of an offence involving fraud or dishonesty,

- (c) has a declaration made against him or her under section 819 of the Act of 2014 or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
- (d) is subject to, or is deemed to be subject to, a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 whether by virtue of that Chapter or of any other provision of that Act.

Power to appoint consultants and advisers and enter into contracts

- 19.** (1) A Director may, subject to the approval of the relevant Minister and the Minister for Public Expenditure and Reform, as he or she considers necessary to assist him or her in the performance of his or her functions— 10
- (a) subject to *section 20(4)* and, where applicable, *section 35(1)*, enter into contracts or arrangements with any person, and
 - (b) subject to *section 20(3)*, appoint consultants or advisers.
- (2) Subject to *section 20(2)*, a Director may, out of the resources at his or her disposal, pay such fees (if any) and allowances for expenses (if any) incurred by a person, consultant or adviser referred to in *subsection (1)* as the Director may, with the consent of the relevant Minister, determine. 15
- (3) The appointment of a person as a consultant or adviser shall be for such period and, subject to *subsection (2)*, subject to such terms and conditions as the Director concerned considers appropriate. 20

Membership of either House of Oireachtas, European Parliament or local authority

- 20.** (1) *Subsection (2)* shall have effect where a Director, a member of staff of a Director, a member of an Advisory Board, a person with whom a contract or an arrangement has been entered into under *section 19* or a consultant or adviser appointed under that section is— 25
- (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
 - (c) regarded pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to that Parliament, 30
 - (d) is elected or co-opted as a member of a local authority.
- (2) Where this subsection has effect in accordance with *subsection (1)*—
- (a) in the case of a Director, member of staff (other than a member referred to in *paragraph (c)*), a member of an Advisory Board or a consultant or adviser appointed under *section 19*, the person concerned shall cease to be Director, a member of staff, a member of an Advisory Board or a person so appointed, as the case may be, 35
 - (b) in the case of a person with whom a contract or an arrangement has been entered into under *section 19*, the contract or arrangement concerned shall terminate, and

- (c) in the case of a member of staff referred to in *section 12(4)*, the person concerned shall cease to be seconded to be a member of staff of the Director,
- and the person referred to in *paragraph (a), (b) or (c)*, as the case may be, shall not be paid by, or entitled to receive any remuneration or allowances in respect of the period commencing on the nomination, election or co-option, or when he or she is regarded as having been elected, as the case may be. 5
- (3) A person who, for the time being, is entitled under the Standing Orders of either House of the Oireachtas to sit therein, is a member of the European Parliament or is entitled under the standing orders of a local authority to sit as a member thereof, shall— 10
- (a) be disqualified to act as a Director,
- (b) not be appointed as, or seconded to be, a member of staff of a Director under *section 12*,
- (c) not be appointed as a member of an Advisory Board, and
- (d) be ineligible for appointment as a consultant or adviser under *section 19(1)(b)*. 15
- (4) A Director shall not enter into a contract or arrangement under *section 19(1)(a)* with a person who, for the time being, is entitled under the Standing Orders of either House of the Oireachtas to sit therein, is a member of the European Parliament or is entitled under the standing orders of a local authority to sit as a member thereof.
- (5) In this section, “Act of 1997” means the European Parliament Elections Act 1997. 20

Grants to Director

21. There may, subject to such conditions (if any) as a relevant Minister thinks proper, be paid to a Director, in each financial year out of moneys provided by the Oireachtas, a grant or grants of such amount or amounts as the relevant Minister may, with the consent of the Minister for Public Expenditure and Reform and after consultation with the Director in relation to his or her programme of work for that year, fix. 25

Accounts

22. (1) A Director shall keep, or cause to be kept, in such form as may be approved of by the relevant Minister, with the consent of the Minister for Public Expenditure and Reform, all proper and usual accounts (in this section referred to as “annual accounts”) of all money received or expended by him or her and, in particular, shall keep in such form as may be approved by the relevant Minister all such special accounts (if any) as the relevant Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time direct. 30
- (2) Annual accounts shall be submitted by a Director, not later than 1 April in the year immediately following the financial year to which they relate or on such earlier date as the relevant Minister may from time to time specify, to the Comptroller and Auditor General for audit. 35
- (3) A Director shall, as soon as practicable after the audit referred to in *subsection (2)*, present to the relevant Minister a copy of— 40

- (a) the annual accounts,
 - (b) such other special accounts (if any) kept in accordance with this section, and
 - (c) the report of the Comptroller and Auditor General on the accounts.
- (4) A relevant Minister shall cause copies of the accounts and report presented to him or her under *subsection (3)* to be laid before each House of the Oireachtas as soon as practicable after such presentation. 5

Annual report

23. (1) Subject to *subsections (3) and (4)*, not later than 30 June in each year, a Director shall prepare and adopt an annual report in relation to the performance of the functions of the Director during the immediately preceding calendar year. 10
- (2) Notwithstanding *subsection (1)*, if, but for this subsection, the first report under this section would relate to a period of less than 6 months, the report shall relate to that period and to the year immediately following that period and shall be made as soon as may be, but not later than 6 months after the end of that year.
- (3) A draft of an annual report prepared under *subsection (1)* shall be submitted by the Director to the Advisory Board for its consideration and the Board may submit observations in writing to the Director on the draft report within such period of time as is specified by the Director when submitting the draft to the Board. 15
- (4) A Director shall consider any observations submitted to him or her by an Advisory Board in accordance with *subsection (3)* before adopting the annual report. 20
- (5) Subject to *subsection (6)*, without prejudice to the generality of *subsection (1)*, an annual report shall include—
- (a) a statement of the activities undertaken by the Director,
 - (b) the name of each person the Director has—
 - (i) entered into a contract or arrangement with under *section 19*, and 25
 - (ii) appointed as a consultant or adviser under that section,
 and
 - (c) such other information—
 - (i) as the Director considers appropriate to include, or
 - (ii) as the relevant Minister directs should be included, which may include 30 financial statements.
- (6) An annual report shall not contain confidential information (within the meaning of *section 30(5)*).
- (7) A Director shall, not later than 21 days after adopting the annual report, submit a copy of that report to the relevant Minister. 35
- (8) A relevant Minister shall ensure that copies of the annual report are laid before each House of the Oireachtas as soon as may be after the relevant Minister receives the report.

- (9) A Director shall, as soon as practicable after copies of the annual report are laid before the Houses of the Oireachtas, ensure that the report is published—
- (a) on a website maintained by the Government, the relevant Minister or the Director, and
 - (b) if requested by the relevant Minister, in such other manner as he or she may specify. 5

Accountability of Director to Public Accounts Committee

24. (1) A Director shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on— 10
- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account that the Director is required by this Act to prepare and which is subject to audit by the Comptroller and Auditor General, 15
 - (b) the economy and efficiency of the Director in the use of his or her resources,
 - (c) the systems, procedures and practices employed by the Director for the purpose of evaluating the effectiveness of his or her operations and the Office, and
 - (d) any matter affecting the Director referred to—
 - (i) in any special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or 20
 - (ii) in any other report of the Comptroller and Auditor General (insofar as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.
- (2) In giving evidence under this section, a Director shall not question or express an opinion on the merits of— 25
- (a) any policy of the Government or of a Minister of the Government, or
 - (b) the objectives of such a policy.

Accountability of Director to other Oireachtas committees

25. (1) Subject to *subsection (2)*, a Director shall, at the request in writing of a committee, attend before the committee to give account for the general administration of the Director. 30
- (2) A Director is not required to give account before a committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State. 35
- (3) Where a Director is of the opinion that a matter in respect of which he or she is requested to give an account before a committee is a matter to which *subsection (2)* applies—

- (a) he or she shall inform the committee of the opinion and the reasons for it, and
 - (b) unless the information is conveyed to the committee at a time when the Director is before it, the information shall be conveyed in writing.
- (4) Where a Director has informed a committee of his or her opinion in accordance with *subsection (3)* and the committee does not withdraw the request referred to in *subsection (1)* insofar as it relates to a matter the subject of that opinion— 5
- (a) the Director may, not later than 21 days after being informed by the committee of its decision not to withdraw the request, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (2)* applies, or 10
 - (b) the chairperson of the committee, on behalf of the committee, may make such an application,
- and the High Court shall determine the matter.
- (5) Pending determination of an application under *subsection (4)*, a Director shall not attend before the committee to give account for the matter that is the subject of the application. 15
- (6) If the High Court determines that the matter concerned is one to which *subsection (2)* applies, the committee shall withdraw the request referred to in *subsection (1)*, but if the High Court determines that *subsection (2)* does not apply, the Director concerned shall attend before the committee to give account for the matter. 20
- (7) In the performance of his or her duties under this section, a Director shall not question or express an opinion on the merits of—
- (a) any policy of the Government or of a Minister of the Government, or
 - (b) the objectives of such a policy.
- (8) In this section, “committee” means a committee appointed by either House of the Oireachtas, a committee appointed jointly by both Houses of the Oireachtas or a subcommittee of either such committee, other than— 25
- (a) the Committee on Members’ Interests of Dáil Éireann,
 - (b) the Committee on Members’ Interests of Seanad Éireann, and
 - (c) the Committee referred to in *section 24*. 30

Amendment of Schedule 13 to Taxes Consolidation Act 1997

- 26.** Schedule 13 to the Taxes Consolidation Act 1997 is amended by the insertion of the following paragraph after paragraph 205:

“206. A Director of Authorised Intervention under the *Institutional Burials Act 2022*.”.

35

Information sharing and data protection

Information and documents to be made available to Director

27. (1) A Director may, for the purposes of assisting him or her in performing his or her functions under this Act, by notice in writing request an information source to provide him or her with such information and documents, including information and documents containing personal data and special categories of personal data, as are specified in the notice and as are in the possession, control, power or procurement of the information source. 5
- (2) A notice under *subsection (1)* shall— 10
- (a) identify the purpose for which the information and documents are required and for how long they will be retained,
 - (b) confirm that a copy only of the documents should be provided and specify the format in which those copies, and any information requested, is to be provided to the Director, 15
 - (c) confirm the safeguards in place in relation to the storage of the information and documents provided, and
 - (d) specify the time period within which the information and documents are to be provided by the information source to the Director.
- (3) An information source shall comply with a notice under *subsection (1)* within the time period specified in the notice or within such further time period as may be agreed in writing between the Director and the information source. 20
- (4) A relevant Minister may, where he or she considers a person may have information or documents which are referred to in *subsection (1)*, by order designate the person as an information source to whom this section shall apply. 25
- (5) In this section—
- “controller” has the same meaning as it has in Article 4 of the Data Protection Regulation;
- “information source” means—
- (a) a Department of State, 30
 - (b) a public body who has or had a relevant role in relation to the institution,
 - (c) a person who is the holder, controller or processor, of information or documents relating to an institution,
 - (d) the Office of the Comptroller and Auditor General,
 - (e) the Office of the Ombudsman, 35
 - (f) a local authority,

- (g) a religious organisation or community including but not limited to a diocese or parish of the Roman Catholic Church and a diocese or parish of the Church of Ireland,
 - (h) a body (other than a company) established by or under statute, or
 - (i) a company established pursuant to a power conferred by or under an enactment, and financed wholly or partly by—
 - (i) moneys provided, or loans made or guaranteed, by a Minister of the Government,
 - (ii) the issue of shares held by or on behalf of a Minister of the Government, or
 - (iii) a company, a majority of the shares in which are held by or on behalf of a Minister of the Government,
 - or
 - (j) a person designated by order under *subsection (4)*;
- “processor” has the same meaning as it has in Article 4 of the Data Protection Regulation.

Application to District Court to compel production of information or documents

- 28.** (1) A Director may, on notice to an information source, apply to the District Court for an order under *subsection (2)* where it appears to the Director that the information source has failed or is failing to comply or fully comply with a notice under *section 27* within the time period specified in the notice or, if applicable, within such further time period as has been agreed in writing under *subsection (3)* of that section.
- (2) The District Court may, on hearing an application under *subsection (1)*, where it is satisfied that the information source concerned has failed or is failing to comply or fully comply with the notice concerned, make an order—
- (a) requiring the information source, within such time period as is specified in the order, to comply or fully comply, as the case may be, with the notice, or
 - (b) amending the information or documents specified in the notice and requiring the information source, within such time period as is specified in the order, to comply with the notice as so amended.
- (3) In this section, “information source” has the same meaning as it has in *section 27*.

Request for information contained in database and related records of Commission of Investigation into Mother and Baby Homes

- 29.** (1) A Director may, where necessary and proportionate for the performance by the Director of his or her functions under this Act, request the Child and Family Agency to disclose information, including personal data and special categories of personal data, contained in the database and related records.
- (2) The Child and Family Agency shall comply with a request from a Director under *subsection (1)*.

(3) The Director may, for the purposes of performing his or her functions under this Act, process personal data and special categories of personal data disclosed to him or her pursuant to a request under *subsection (1)*.

(4) In this section—

“Commission” means the commission of investigation established by the Order of 2015; 5

“database” means the databases of residents of the institutions (specified in the Appendix to the terms of reference of the Commission set out in the Schedule to the Order of 2015) created by the Commission;

“Order of 2015” means the Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015 (S.I. No. 57 of 2015); 10

“related record” means—

(a) any evidence within the meaning of the Act of 2004 received by the Commission,

(b) any document created by or for the Commission within the meaning of section 43 of the Act of 2004, or 15

(c) a copy of any such evidence or document,

from which information was obtained for the purpose of creating the database.

Prohibition on disclosure of confidential information

30. (1) Subject to *subsections (3) and (4)*—

(a) a specified person shall not, at any time, unless he or she is required or permitted by law or duly authorised in writing by a Director, disclose confidential information obtained by the person while performing his or her functions under this Act or pursuant to an appointment made, or a contract or arrangement entered into, under *section 19*, 20

(b) a person who is or was a member of staff of FSI shall not, at any time, unless he or she is required or permitted by law or duly authorised in writing by the Director of FSI, disclose confidential information obtained by the person while performing his or her functions as a member of staff of FSI under this Act, 25

(c) a person who is or was a member of the Oversight Committee shall not, at any time, unless he or she is required or permitted by law or duly authorised in writing to do so by the Oversight Committee, disclose confidential information obtained by the person while performing his or her functions as a member of that Committee under this Act, and 30

(d) a person who provides or provided services, or is or was engaged as a consultant or adviser to the Oversight Committee, in accordance with *section 69* in relation to functions of that Committee under this Act, shall not, at any time, unless he or she is required or permitted by law, or duly authorised in writing to do so by the Oversight Committee, disclose confidential information obtained by the person while providing such services or being so engaged. 35

- (2) A person who intentionally or recklessly contravenes *subsection (1)* is guilty of an offence.
- (3) Nothing in *subsection (1)* shall prevent the disclosure of information by a specified person in the course of the performance of his or her functions—
- (a) under this Act, or 5
 - (b) pursuant to an appointment made, or a contract or arrangement entered into, under *section 19*.
- (4) Nothing in *subsection (1)* shall prevent the disclosure of information by a person referred to in *paragraph (b) or (c)* of that subsection in the course of the performance of his or her functions under this Act. 10
- (5) In this section—
- “confidential information” includes information—
- (a) that is expressed by the Director to be confidential either as regards particular information or as regards information of a particular class or description,
 - (b) contained in a notification referred to in *section 42 or 44* or given by the person making the notification for the purposes of establishing his or her entitlement to make that notification, 15
 - (c) given by a person for the purposes of establishing whether or not he or she may, in accordance with *section 48*, participate in an Identification Programme,
 - (d) given by a relevant person for the purposes of his or her participation in an Identification Programme, or 20
 - (e) which reveals the results of a DNA profile comparison by reference to an identifiable relevant person or an identifiable applicable person;
- “specified person” means—
- (a) a member of staff of a Director, 25
 - (b) a member of an Advisory Board,
 - (c) a consultant or adviser appointed under *section 19*, a person with whom a Director has entered into a contract or arrangement under that section or a member of staff of such consultant, adviser or person,
 - (d) an adjudicator, or 30
 - (e) a person who has acted in a capacity referred to in any of *paragraphs (a) to (d)*.

Processing of personal data and special categories of personal data

- 31.** Subject to this Act and such regulations (if any) which may be made under *section 32*, a person may process personal data and special categories of personal data, in accordance with the Data Protection Regulation and the Act of 2018, for the purposes of the performance of the functions of the Government, the Director, an Advisory Board, FSI, a Minister of the Government, the Oversight Committee or an adjudicator, as the case may be, under this Act. 35

Regulations for purposes of data protection

- 32.** The Minister may for the purposes of this Act, prescribe by regulations:
- (a) suitable and specific measures, including measures set out in section 36(1) of the Act of 2018, for the processing of personal data and special categories of personal data; 5
 - (b) where the processing involves data relating to the health of a data subject, additional measures to be taken to safeguard the processing of that data;
 - (c) the period of time during which personal data or special categories of personal data may be processed.

PART 3

10

FORENSIC EXCAVATION AND RECOVERY AND POST-RECOVERY ANALYSIS OF HUMAN REMAINS AND SUSPENSION OF RELEVANT WORKS

Proceeding with relevant works and related activities: access to land

- 33.** A Director may proceed with relevant works on principal burial land and, if applicable, on ancillary burial land, and with related activities on ancillary land in accordance with *section 83*. 15

No exhumation under Local Government (Sanitary Services) Act 1948 while relevant works underway

- 34.** No licence for the exhumation of human remains located in principal burial land or ancillary burial land may be granted under section 46 of the Local Government (Sanitary Services) Act 1948 in respect of that land during the period commencing on the date of the making of a Government order under *section 7(1)* and ending when relevant works are completed. 20

Forensic excavation and recovery and post-recovery analysis of human remains

- 35.** (1) A Director shall ensure that a contract or arrangement made under *section 19* for the forensic excavation and recovery of human remains and post-recovery analysis is made with an appropriately qualified person and shall require the person perform the activity concerned in accordance with— 25
- (a) international standards and best practice applicable to such activity, and
 - (b) where that person is a member of a class of professionals engaged in that activity, any regulatory requirements governing the profession and having regard to any standards and relevant guidelines applicable to the activity of the profession concerned. 30
- (2) A Director shall arrange for the forensic excavation and recovery of human remains and, on completion of that recovery, he or she shall arrange for the carrying out of a process (in this Act referred to as “post-recovery analysis”) consisting of— 35

- (a) where the remains of more than one person are co-mingled, the sorting of the remains into individual sets of remains as far as possible,
- (b) that part of forensic testing involving the examination and analysis of, and the carrying out of biochemical or other scientific tests and techniques on, the remains to establish— 5
 - (i) the condition of the remains,
 - (ii) if possible, a biological profile (including the sex, age at death and any other identifying characteristics) of the person to whom the remains relate,
 - (iii) if possible, the circumstances and cause of death, and
 - (iv) any other information that can be extracted relating to the remains 10
 - concerned,
 - and
- (c) subject to *subsection (3)*, the preparation of a general report documenting— 15
 - (i) the circumstances of the discovery of the human remains in the land concerned,
 - (ii) the forensic excavation and recovery of those human remains,
 - (iii) the outcome of the activities referred to in *paragraph (b)*, and
 - (iv) whether a notification was made under *subsection (2)* of *section 36* to a member of An Garda Síochána and the coroner referred to in that subsection and, if so, whether the evidence related to *subsection (1)(a)* or *(b)* of that 20
 - section.
- (3) Nothing in the report referred to in *subsection (2)(c)* shall contain details that are likely to lead to the identification of individual human remains.
- (4) A Director shall, as soon as practicable after the completion of a report prepared under *subsection (2)(c)*, cause the report to be published on a website maintained by 25
 - the Government, the relevant Minister concerned or the Director.

Obligation to notify An Garda Síochána and coroner of certain evidence

- 36.** (1) This section applies where, during the course of carrying out the activities referred to in *section 35(2)(b)*, evidence emerges that human remains—
- (a) were buried in the principal burial land or ancillary burial land, as the case may 30
 - be, following death in violent or unnatural circumstances, or
 - (b) are not those of a person or persons who died while resident at the institution concerned.
- (2) A Director shall, without delay, notify a member of An Garda Síochána and the coroner within whose district the human remains are located, where evidence referred 35
 - to in *subsection (1)* emerges.
- (3) On being notified under *subsection (2)*, the coroner concerned may either—

- (a) confirm to the Director that he or she can proceed with relevant works on the principal burial land or ancillary burial land, or both, as the case may be, subject to such conditions or directions, or both, as may be specified by the coroner, or
 - (b) where he or she considers it necessary for the purposes of making a determination as to the cause of death, direct the Director concerned to suspend relevant works on the principal burial land or ancillary burial land, or both, as the case may be. 5
- (4) A Director shall comply with conditions or directions, or both, as the case may be, specified by a coroner under *subsection (3)*.

Principal burial land or ancillary burial land as crime scene

37. (1) Where, following a determination by a coroner of the cause of death referred to in *section 36*, a direction is issued under section 5 of the Act of 2006 designating the principal burial land or ancillary burial land on which the human remains were discovered a crime scene, the member of An Garda Síochána who issues that direction shall, at the same time, direct the Director in writing to suspend the relevant works on that land for the period specified in the direction. 10 15
- (2) Where a direction is issued under section 5 of the Act of 2006, that section shall apply subject to the following modifications—
- (a) the reference in subsection (7) of that section to 24 hours shall be construed as a reference to 7 days,
 - (b) the reference in subsection (9) of that section to 48 hours shall be construed as a reference to 14 days, 20
 - (c) the reference in subsection (12)(a) of that section to the occupier of the place shall be construed as a reference to the Director,
 - (d) subsection (12)(b) of that section shall not apply,
 - (e) a reference in subsection (14) of that section to the purpose of protecting the interests of the occupier or owner of the place which is the subject of the order shall be construed as a reference to the purpose of protecting the interests of the Director in performing his or her functions in relation to the land which is the subject of the order, 25
 - (f) a reference in subsection (18) of that section to the owner or occupier of the place shall be construed as a reference to the Director, and 30
 - (g) any other necessary modifications.
- (3) In this section, “Act of 2006” means the Criminal Justice Act 2006.

Obligation to provide certain information where criminal investigation being conducted

38. (1) Subject to *subsection (2)*, without prejudice to any other enactment or rule of law, where a criminal investigation is being conducted in relation to human remains recovered from principal burial land or ancillary burial land, a specified person shall, when requested to do so by a member of An Garda Síochána not below the rank of inspector, provide— 35

- (a) any information in his or her possession which may assist in such an investigation including information relating to the circumstances of discovery of the remains, the forensic excavation and recovery of the remains and the activities referred to in *section 35(2)(a)* and *(b)*, and
- (b) where available, a copy of the report prepared under *section 35(2)(c)*. 5
- (2) Nothing in *subsection (1)* shall be construed as authorising the disclosure of information—
 - (a) contained in a notification referred to in *section 42* or *44* or given by the person making the notification for the purposes of establishing his or her entitlement to make that notification, 10
 - (b) given by a person for the purposes of establishing whether or not he or she may, in accordance with *section 48*, participate in an Identification Programme,
 - (c) given by a relevant person for the purposes of his or her participation in an Identification Programme, or
 - (d) which reveals the results of a DNA profile comparison by reference to an identifiable relevant person or an identifiable applicable person. 15
- (3) In this section, “specified person” means—
 - (a) the Director or a member of his or her staff,
 - (b) a consultant or adviser appointed under *section 19*, a person with whom a Director has entered into a contract or arrangement under that section or a member of staff of such consultant, adviser or person, or 20
 - (c) the Director, or a member of staff of, FSI.

Resumption of relevant works after suspension under *section 36* or *37*

- 39.** A Director may resume relevant works on principal burial land or ancillary burial land, or both, as the case may be, after a suspension of such works under *section 36* or *37*— 25
- (a) where he or she has been given a direction by a coroner under *section 36(3)(b)*, upon being notified by the coroner that he or she may do so, or
 - (b) where applicable, following the expiration of a period of suspension specified in a direction given pursuant to *section 37(1)*.

PART 4 30

IDENTIFICATION OF HUMAN REMAINS AND RELATED PROVISIONS IN RESPECT OF SAMPLES AND DNA PROFILES

CHAPTER 1

Preliminary and General (Part 4)

Interpretation (*Part 4*)

- 40.** In this Part— 35

“authorised person” has the meaning assigned to it by *section 41*;

“capacity” has the same meaning as it has in the Assisted Decision-Making (Capacity) Act 2015;

“non-intimate sample” means a sample of saliva taken, or to be taken, from a person;

“related information” means the information referred to in *subparagraph (i) or (ii) of section 63(1)(b)*;

“stated wishes” means—

- (a) in respect of a spouse or a civil partner referred to in *section 42(1)(d)*, the wishes of the spouse or civil partner referred to in that provision and entered in the register, 10
- (b) in respect of an eligible family member who does not become a relevant person, the wishes of that family member referred to in *section 42(1)(b)(iii)* and entered in the register,
- (c) in respect of a relevant person, the wishes of the relevant person stated to a Director pursuant to information furnished under *section 48(3)(d)*, and 15
- (d) in respect of an applicable person, the wishes (if any) of the applicable person, stated at the time of giving a sample referred to in *section 51*, as to the final arrangements for recovered human remains in respect of which a familial link is established should he or she die or become incapacitated before such arrangements are made. 20

Authorised person

- 41.** A Director may authorise a suitably qualified person (in this Part referred to as an “authorised person”) to take samples from human remains or from relevant persons, or from persons for the purposes of elimination under this Part.

CHAPTER 2

25

Identification Programme

Promotion measures and information campaign: Identification Programme

- 42.** (1) A Director shall, in accordance with *subsection (2)*, take such measures, including by holding a public information campaign, as he or she considers appropriate to promote awareness among members of the public, and in particular, members of the public who may have a connection with the institution to which an Identification Programme relates, of the following: 30
- (a) the fact that the Programme is to be undertaken and the purpose of the Programme;
 - (b) that an eligible family member may, within such period of time as shall be specified by the Director in the measure concerned, notify the Director of— 35
 - (i) his or her interest in participating in the Programme,

- (ii) in accordance with *section 43*, his or her objection to the participation of another eligible family member in the Programme, or
 - (iii) his or her interest in being the person to whom any identified recovered human remains are returned in accordance with *section 57* and his or her wishes as to the final arrangements for those remains should he or she die or become incapacitated before such arrangements are made; 5
- (c) that where an eligible family member notifies the Director of his or her interest in participating in the Programme in accordance with *paragraph (b)(i)*, he or she may also, at the same time, furnish a letter of non-objection to his or her participation from another eligible family member or members who would otherwise, in accordance with *section 43* or *44*, be entitled to object to his or her participation; 10
- (d) that a person who is a spouse or civil partner of a person whom the spouse or civil partner believes, on reasonable grounds, is buried in the principal burial land or ancillary burial land concerned, may, within such period of time as shall be specified by the Director in the measure concerned, notify the Director of his or her interest in being the person to whom any identified recovered human remains are returned in accordance with *section 57* and his or her wishes as to the final arrangements for those remains should he or she die or become incapacitated before such arrangements are made; 15 20
- (e) how a notification referred to in *paragraph (b)* or *(d)* can be made;
- (f) the evidence, prescribed under *section 80*, to be provided to enable the Director to satisfy himself or herself that a person is an eligible family member or a person referred to in *paragraph (d)* in respect of a deceased person.
- (2) A Director shall undertake the measures referred to in *subsection (1)*— 25
 - (a) where an order made under *subsection (1)* of *section 7* specifies that, in accordance with *paragraph (b)* of that subsection, the functions of a Director includes carrying out an Identification Programme, as soon as practicable after his or her appointment under *section 12*, and
 - (b) where an order subsequently made under *section 7(6)* specifies that the functions of a Director includes carrying out an Identification Programme, as soon as practicable after the making of the order. 30

Objection to participation by eligible family member in Identification Programme

- 43.** (1) An eligible family member is entitled to object to the participation in an Identification Programme of another eligible family member in accordance with *subsections (2)* and *(3)*, and to have such objection considered by a Director for the purposes of *section 48(2)(b)*, where he or she— 35
- (a) notifies the Director of his or her objection within the period of time specified by the Director under *section 42*, and
 - (b) at the same time as notifying the Director of his or her objection, states the grounds for such objection. 40

- (2) An eligible family member who is a child or parent of a deceased person may object to the participation of another eligible family member who is a child of the deceased person.
- (3) An eligible family member who is a child, parent, sibling or half-sibling of a deceased person may object to the participation of another eligible family member who is a sibling, half-sibling, grandparent, grandchild, aunt, uncle, niece or nephew (whether of the whole blood or the half-blood), grandniece or grandnephew of the deceased person.

Objection by parent, child or sibling to participation by another eligible family member in Identification Programme

44. (1) In addition to what is provided for in *section 43*, an eligible family member—

- (a) who is a parent or child of a deceased person is entitled to object, in accordance with *subsection (2)*, to the participation in an Identification Programme of another eligible family member, other than a parent, of the deceased person, and
 - (b) who is a sibling of a deceased person is entitled to object, in accordance with *subsection (2)*, to the participation in an Identification Programme of another eligible family member, other than a parent or child, of the deceased person.
- (2) An objection referred to in *subsection (1)* may be made, and shall be considered by a Director for the purposes of *section 48(2)(b)*, where—
- (a) at any time prior to a determination under that section in respect of the participation referred to in *subsection (1)*, an eligible family member entitled to object under that subsection notifies the Director, in accordance with regulations made under *section 80*, of the objection and the grounds for such objection, or
 - (b) *subsection (4)* applies, an eligible family member entitled to object under *subsection (1)* notifies the Director of the objection and the grounds for such objection when contact is made or within such period thereafter as may be specified by the Director which period shall be prior to the making of a determination under *section 48* in respect of such participation.
- (3) *Subsection (4)* applies where a Director—
- (a) receives a notification referred to in *section 42(1)(b)(i)* from an eligible family member, other than a parent, of a deceased person, and
 - (b) either—
 - (i) does not receive either—
 - (I) a notification referred to in that section from another eligible family member who is a parent, child or sibling of the same deceased person, or
 - (II) a letter of non-objection referred to in *section 42(1)(c)* from that other eligible family member referred to in *clause (I)*,
 - or
 - (ii) receives both a notification of objection referred to in *section 42(1)(b)(ii)* to that person's participation from another eligible family member who is a

parent, child or sibling of the same deceased person and a letter of non-objection referred to in *section 42(1)(c)* from that same eligible family member in respect of the same person in respect of whom he or she has made the notification of objection.

- (4) A Director shall— 5
- (a) where the circumstances referred to in *subsection (3)(b)(i)* apply in respect of another eligible family member referred to in *clause (1)* of that provision, make reasonable efforts, in accordance with such procedures as are prescribed under *section 80*, to contact that other eligible family member and ascertain whether he or she wishes to object to the participation in an Identification Programme of the eligible person referred to in *subsection (3)(a)* and have such objection considered by the Director for the purposes of *section 48(2)(b)*, and 10
 - (b) where the circumstances referred to in *subsection (3)(b)(ii)* apply, make reasonable efforts to contact the other eligible family member who made both a notification of objection and furnished a letter of non-objection, to ascertain which is to take precedence. 15
- (5) Where a Director is unable to contact an eligible family member referred to in *subsection (4)(b)*, a notification of objection made by that member shall be entered in the register in accordance with *section 45* or, if already entered in the register, remain in the register and the letter of non-objection shall be disregarded unless the letter post-dates that notification, in which case the letter shall take precedence and the notification of objection of the member shall not be entered in the register or shall be removed from the register, as the case may be. 20
- (6) A Director shall make the reasonable efforts referred to in *subsection (4)* prior to making a determination under *section 48* in respect of the eligible person referred to in *subsection (3)(a)* who has made an application under that section. 25
- (7) A Director may use evidence provided pursuant to the requirement referred to in *section 42(1)(f)* for the purpose of making contact in accordance with *subsection (4)*.

Register of notifications

45. (1) Subject to *subsection (2)*, a Director shall, in accordance with *subsection (2)(a)* or *(b)*, as applicable, of *section 42* establish and maintain a register (in this Act referred to as a “register”) of notifications— 30
- (a) referred to in *subsection (1)(b)* of that section and made by eligible family members within the period of time specified by the Director,
 - (b) referred to in *subsection (1)(d)* of that section and made by persons referred to in that provision within the period of time specified by the Director, and 35
 - (c) made in accordance with *section 44*.
- (2) A notification referred to in *subsection (1)* shall not be entered in the register unless the Director is satisfied—
- (a) that the person making the notification is an eligible family member or person referred to in *section 42(1)(d)*, as the case may be, and 40

- (b) in the case of a notification of an objection, the eligible family member concerned is entitled to make the notification in accordance with *section 43* or *44*, as the case may be.
- (3) A register shall record, in respect of each eligible family member or person referred to in *section 42(1)(d)*, as the case may be, who has made a notification which is to be entered in the register, the following information:
 - (a) the name, contact details and the genetic relationship the person believes he or she has with the deceased person believed to be buried in the principal burial land or ancillary burial land concerned; and
 - (b) details of each notification referred to in *section 42(1)(b)* or *44* made by an eligible person and of a notification made by a person referred to in *section 42(1)(d)*.
- (4) A Director may, at his or her discretion, notwithstanding that a notification has not been made under *section 42(1)* within the period of time specified by the Director under that section, accept a notification (other than a notification referred to in *section 43*) referred to in *subsection (1)* after the period so specified and enter it on the register in accordance with this section.
- (5) A person may, at any time, withdraw a notification made by him or her under *section 42* or *44* and where an entry has been made in the register in respect of that notification, it shall be deleted as soon as practicable after receipt of the instructions to so withdraw.

Identification Programme: purpose and composition

- 46.** (1) Subject to the conditions laid down in this Part, the purpose of an Identification Programme is—
- (a) to establish whether there is a familial link between relevant persons or applicable persons and unidentified human remains recovered from principal burial land or ancillary burial land, as the case may be, and
 - (b) where a familial link is established, to identify the person whose remains have been recovered.
- (2) For the purposes referred to in *subsection (1)*, an Identification Programme shall, in accordance with this Part, comprise—
- (a) on completion of that part of post-recovery analysis referred to in *paragraphs (a) and (b) of section 35(2)*, the taking of samples by an authorised person from human remains under *subsection (3)*,
 - (b) the making of a decision by the Director, in accordance with *subsection (6)*, as to whether or not the Programme should continue,
 - (c) where a decision is made to continue with the Programme—
 - (i) identifying who can participate in the Programme,
 - (ii) the taking of samples by authorised persons from human remains (where not already taken under *subsection (3)*) and from certain living persons, the storing, recording and forensic testing of those samples and the storage of the

- DNA profiles generated from that testing and related information on the Databases and searching the Databases for purposes permitted by *section 65*, and
- (iii) DNA profile comparison and notification of the outcome of that process to relevant persons or their nominees, or to the nominees of applicable persons, as the case may be, 5
- and
- (d) the destruction of samples and the deletion of DNA profiles and related information from the Databases in accordance with *Chapter 8*.
- (3) Subject to *subsection (4)*, the Director shall arrange— 10
- (a) on completion of that part of post-recovery analysis referred to in *paragraphs (a) and (b) of section 35(2)*, for the taking of samples by an authorised person from human remains recovered from principal burial land and, if applicable, ancillary burial land, and if necessary, the re-taking of samples from those remains in accordance with *section 62*, 15
- (b) for the storage and recording of samples so taken or re-taken, and
- (c) for the delivery of those samples to FSI.
- (4) Where human remains of more than one person have been recovered, a Director may, in arranging for the taking of samples under *subsection (3)*, direct that samples be taken only from a proportion of the human remains recovered. 20
- (5) FSI shall forensically test samples delivered to it under *subsection (3)* and determine whether—
- (a) the quality of the samples is sufficient, having regard to available scientific techniques, to generate DNA profiles,
- (b) DNA profiles generated by that testing are of a sufficient standard to enable DNA profile comparison, and 25
- (c) having regard to the samples tested, samples taken from certain parts of human remains are a better source of DNA than other parts of remains.
- (6) The Director shall, having consulted with the Advisory Board, make a decision to continue with an Identification Programme where he or she is satisfied— 30
- (a) that there are family members of deceased persons believed to be buried in the principal burial land and, if applicable, ancillary burial land, still alive who may wish to participate in the Programme, and
- (b) FSI has determined, in accordance with *subsection (5)*, that the quality of samples forensically tested by it is sufficient to generate DNA profiles and of a sufficient standard to enable DNA profile comparison. 35
- (7) The Director shall, without undue delay, notify the relevant Minister and the Director of FSI in writing of his or her decision under *subsection (6)*.

- (8) The Director shall, within one week of notifying the relevant Minister of his or her decision under *subsection (6)*, publish that decision and the reasons for it on a website maintained by the Government, the relevant Minister or the Director.
- (9) *Section 59(4)* shall apply where a decision has been made under *subsection (6)* to continue with an Identification Programme. 5
- (10) A Director shall from time to time, and at any time on the request of the relevant Minister, report to the relevant Minister on the progress of an Identification Programme.
- (11) A Director shall ensure that an Identification Programme is carried out in accordance with this Part. 10
- (12) Where a decision has been made under *subsection (6)* not to continue with an Identification Programme the Director shall, as soon as practicable after the taking of that decision—
 - (a) arrange for the destruction of samples taken under this section and samples referred to in *section 51* and the deletion of any DNA profiles generated by FSI 15 from those samples, and
 - (b) make final arrangements for the recovered human remains.

Review of operation of Identification Programme

- 47. (1) A Director may, from time to time on his or her own volition or at the request of a relevant Minister, review the ongoing operation of an Identification Programme and, having consulted the Advisory Board, may decide that that part of the Programme referred to in *subparagraphs (ii) and (iii) of section 46(2)(c)* should cease, having regard to any or all of the following matters: 20
 - (a) the DNA profiles generated by forensic testing of samples from human remains are not of a sufficient standard to enable DNA profile comparison; 25
 - (b) having regard to *paragraph (a)*, the continued forensic testing of samples from human remains has a disproportionate impact on those remains;
 - (c) the number of relevant persons who are participating in the Programme;
 - (d) the scientific limitations on forensic testing and DNA profile comparison depending on the genetic relationship between relevant persons and human remains recovered. 30
- (2) A Director shall, without undue delay, notify the relevant Minister and the Director of FSI in writing where the Director makes a decision under *subsection (1)*.
- (3) A Director shall, within one week of notifying the relevant Minister under *subsection (2)*, publish that decision and the reasons for it on a website maintained by the Government, the relevant Minister or the Director. 35

Participation in Identification Programme

48. (1) A person (in this section referred to as the “applicant”) may apply to a Director to participate in an Identification Programme in accordance with this section and the application shall be in such form and manner as may be specified by the Director.
- (2) An applicant may participate in an Identification Programme where the Director is satisfied that— 5
- (a) the applicant—
- (i) is an eligible family member,
- (ii) has provided such evidence as is prescribed under *section 80* as enables a Director to satisfy himself or herself that a person is an eligible family member, 10
- (iii) has received the information specified in *subsection (3)* concerning participation in the Programme, and
- (iv) having received that information, subject to *subsection (7)*, has confirmed his or her decision to participate in the Programme in such form as is prescribed under *section 80*, 15
- and
- (b) where applicable, notwithstanding that an objection has been entered in the register in relation to the participation by the applicant concerned, the applicant should participate, the Director having— 20
- (i) considered the grounds for the objection,
- (ii) had regard to the closeness of the genetic relationship the applicant believes he or she has with a deceased person believed to be buried in the land concerned, and
- (iii) had regard to the public interest in identifying human remains. 25
- (3) A Director shall provide an applicant with information confirming, if he or she participates in the Identification Programme:
- (a) that a sample will be required in accordance with *section 60* and the sample will be forensically tested and a DNA profile generated from that testing in respect of the person will be entered in the family members’ index for the purpose of establishing whether or not there is a familial link; 30
- (b) that he or she has the right to appoint up to 2 nominees and the purpose of such nomination;
- (c) how he or she will be notified as to whether or not there is a familial link;
- (d) that he or she may state his or her wishes in writing to the Director as to the final arrangements for recovered human remains— 35
- (i) in respect of which a familial link is established, and
- (ii) should he or she die or become incapacitated before such arrangements are made;

- (e) that he or she has the right to withdraw, by notice in writing to the Director, from participation in the Programme, at any time and the effect of such withdrawal, including by the operation of *section 74*;
 - (f) that where he or she has not withdrawn from the Programme, in accordance with *Chapter 8*—
 - (i) a sample taken from the person will be destroyed,
 - (ii) a DNA profile generated in respect of the person and entered in the family members' index will be deleted, and
 - (iii) any related information stored by FSI on the Personal Information (Historic Remains) Database, shall also be deleted.
- (4) A Director shall notify an applicant in writing of the Director's determination as to whether or not the person may, in accordance with *subsection (2)*, participate in an Identification Programme. 10
- (5) Where a Director notifies a person under *subsection (4)* that he or she may not participate in an Identification Programme, the Director shall by notice in writing— 15
- (a) set out the reasons for such determination, and
 - (b) inform the person that he or she may appeal against that determination under *section 81* within the period of time specified in that section.
- (6) A relevant person may at any time, by notice in writing to the Director concerned, withdraw from participation in an Identification Programme. 20
- (7) Where it comes to the attention of a Director that an applicant may not have capacity to give consent to participation in an Identification Programme, the Director may request that person to provide a certificate from a registered medical practitioner (within the meaning of the Medical Practitioners Act 2007) confirming that the person has the necessary capacity to give consent in the circumstances. 25

Nominee of relevant person

- 49.** (1) A relevant person may nominate not more than 2 people whom the relevant person wishes to be notified under *section 50(4)* of the outcome of a DNA profile comparison where—
- (a) before the outcome is notified to him or her, he or she dies or becomes incapacitated, and 30
 - (b) there is, in respect of the deceased person whose DNA profile was the subject of that comparison, no other relevant person.
- (2) Where a relevant person nominates more than one person who is willing to act as a nominee, the relevant person shall specify to the Director which of the persons nominated is to be the first nominee and which is to be the second nominee for the purposes of notification under *section 50(4)*. 35
- (3) A Director shall seek the consent, in the prescribed form, of a person nominated under *subsection (1)* and shall maintain a written record—

- (a) of each person who has consented, in the prescribed form, to be a nominee of a relevant person, and
 - (b) if applicable, whom the relevant person has specified to be his or her first and second nominee.
- (4) A nominee may, by notice in writing to the Director, withdraw his or her consent to act as a nominee and, on receipt of the notice, the Director shall delete the written record referred to in *subsection (3)* in so far as it relates to that nominee and any personal data it holds relating to the nominee. 5
- (5) On receipt of a notice under *subsection (4)*, the Director shall notify—
- (a) the nominee of the deletion of the written record and personal data referred to in that subsection, and 10
 - (b) the relevant person that the nominee has withdrawn his or her consent to act as nominee and invite the relevant person, if desired, to make another nomination.

Notification of whether or not familial link established

50. (1) A Director may, in respect of a relevant person, request FSI to carry out a DNA profile comparison. 15
- (2) FSI shall carry out a DNA profile comparison when requested to do so by the Director under *subsection (1)* and shall inform the Director of the results of that comparison.
- (3) Subject to *subsection (4)*, a Director shall, having considered the results of the DNA profile comparison received from FSI under *subsection (2)* and any other relevant information and documents, notify a relevant person in writing that— 20
- (a) a familial link has been established and the notification shall confirm that on the balance of probabilities, the genetic and non-genetic data available suggest that link, or
 - (b) that a familial link has not been established and the notification shall confirm— 25
 - (i) that, on the balance of probabilities, the genetic and non-genetic data available do not suggest that link,
 - (ii) the limitations (if any) of the Identification Programme in establishing familial links having regard to—
 - (I) the extent of the excavation and recovery of remains at the land concerned, 30
 - (II) the quality of the samples taken from the human remains recovered from the land concerned and the standard of DNA profiles that could be generated, for the purpose of DNA profile comparison, from forensic testing of those samples, 35
 - (III) the number of relevant persons who are participants in the Programme, and
 - (IV) the scientific limitations on forensic testing and DNA profile comparison depending on the genetic relationship between relevant persons and human remains recovered, 40

and

(iii) that he or she may appeal the finding in *subparagraph (i)* in accordance with *section 81*.

(4) A Director shall, where the circumstances referred to in *paragraphs (a) and (b)* of *section 49(1)* arise, issue a notice under *subsection (3)*— 5

(a) to the first nominee of a relevant person, or

(b) where the Director has been notified or becomes aware of the death, loss of capacity or withdrawal of consent of the person who was the first nominee, to the second nominee (if any) unless the Director has been notified or becomes aware of the death, loss of capacity or withdrawal of consent of the person who was the second nominee. 10

(5) In this section and in *section 54*, “relevant information and documents” includes—

(a) birth, baptismal and death certificates and records relating to a person who resided in the institution concerned,

(b) records relating to the institution concerned including admission and discharge records, and 15

(c) information obtained through post-recovery analysis.

CHAPTER 3

Participation in Identification Programme of certain persons who give samples pursuant to administrative arrangements and who are not relevant persons 20

Use of samples given pursuant to administrative arrangements in certain circumstances

51. (1) This section applies to a sample of a person where—

(a) the sample is given voluntarily pursuant to administrative arrangements made by a relevant Minister—

(i) to ascertain whether the person is likely to be related, within a degree of relationship asserted by him or her, to another person whose remains are believed by the person giving the sample to be located in land associated with an institution, and 25

(ii) either before or after the coming into operation of this section,

(b) an Identification Programme is being conducted in relation to human remains recovered from the land, and 30

(c) that person dies or becomes incapacitated at any time after giving the sample and at the time of such death or incapacity either he or she has not made an application under *subsection (1)* of *section 48* or, where he or she has made an application, the Director has not made a determination under that section as to whether or not he or she may participate in the Programme. 35

(2) A sample referred to in *subsection (1)* may be used where—

- (a) the sample is used to generate a DNA profile of the person who gave the sample for the purposes of a DNA profile comparison to assist in establishing whether or not there is a familial link for the purpose of identifying the human remains recovered from the land, and
- (b) the person, at the time of giving the sample, consented to its use for the purposes set out in *paragraph (a)* in the event of his or her death or incapacity. 5

Generation of DNA profile from sample referred to in *section 51*

- 52.** (1) A sample of a person (in this Act referred to as an “applicable person”) which is being used in accordance with *section 51(2)*, may only be forensically tested, and the DNA profile of the person generated from that testing included in the family members’ index, for the purposes referred to in that provision. 10
- (2) A Director shall make the necessary arrangements to ensure a sample referred to in *subsection (1)* is delivered to FSI.
- (3) FSI shall forensically test a sample delivered to it under *subsection (2)* and enter the DNA profile of the applicable person, generated from that testing, in the family members’ index. 15

Nominee of applicable person

- 53.** (1) A Director shall, where an applicable person has at the time of giving a sample referred to in *section 51* nominated one or 2 people whom the applicable person wishes to be notified of the outcome of a DNA profile comparison, maintain a written record of— 20
- (a) each person who has consented to be a nominee of the applicable person, and
 - (b) if applicable, who the applicable person has specified to be his or her first and second nominee.
- (2) A nominee may, by notice in writing to the Director, withdraw his or her consent to act as a nominee and, on receipt of the notice, the Director shall delete the written record referred to in *subsection (1)* in so far as it relates to that nominee and any personal data the Director holds relating to the nominee. 25
- (3) On receipt of a notice under *subsection (2)*, the Director shall notify the nominee of the deletion of the written record and personal data referred to in that subsection. 30

Notification to nominee of applicable person as to whether or not familial link established

- 54.** (1) A Director may, in respect of an applicable person, request FSI to carry out a DNA profile comparison.
- (2) FSI shall carry out a DNA profile comparison when requested to do so by the Director under *subsection (1)* and shall inform the Director of the results of that comparison. 35
- (3) Where there is a nominee of an applicable person, a Director shall, having considered the results of the DNA profile comparison received from FSI under *subsection (2)* and any other relevant information and documents, issue a notice under *paragraph (a)* or

(b) of <i>section 50(3)</i> in respect of the applicable person in accordance with <i>subsection (4)</i> .	
(4) Subject to <i>subsection (5)</i> , a Director shall issue the notice referred to in <i>subsection (3)</i> —	
(a) to the first nominee, or	5
(b) where the Director has been notified or becomes aware of the death, loss of capacity or withdrawal of consent of the person who was the first nominee, to the second nominee (if any) unless the Director has been notified or becomes aware of the death, loss of capacity or withdrawal of consent of the person who was the second nominee.	10
(5) A notice referred to in <i>subsection (3)</i> shall only be issued to a nominee of an applicable person where there is, in respect of the deceased person from whose human remains a DNA profile was the subject of a DNA profile comparison (with the DNA profile of the applicable person), no relevant person.	
Use of sample referred to in <i>section 51</i> where person providing sample participates in Identification Programme	15
55. Where a person who gave a sample referred to in <i>subsection (1)</i> of <i>section 51</i> does not die or become incapacitated as referred to in <i>paragraph (c)</i> of that subsection and he or she, having made an application to participate in the Identification Programme under <i>subsection (1)</i> of <i>section 48</i> , is notified by a Director under that section that he or she may participate in the Programme, the sample shall be treated as a sample taken under <i>section 60</i> and the provisions of this Act shall apply accordingly.	20
Destruction of sample referred to in <i>section 51</i> in certain circumstances	
56. A sample referred to in <i>subsection (1)</i> of <i>section 51</i> shall be destroyed as soon as practicable after any of the following occurs—	25
(a) the Government refuses to make an order under <i>section 7(1)</i> in relation to the land referred to in that subsection,	
(b) a Director fails to obtain the necessary consents or court orders referred to in <i>paragraph (d)</i> of <i>section 10</i> in relation to that land,	
(c) a decision is made under <i>section 46(6)</i> not to continue with the Identification Programme in relation to human remains recovered from that land, or	30
(d) where the person who gave a sample does not die or become incapacitated as referred to in <i>paragraph (c)</i> of that subsection and he or she, having made an application to participate in the Identification Programme under <i>section 48(1)</i> , is notified by the Director under that section of his or her determination that the person may not participate in the Programme—	35
(i) at the expiration of the time period allowed for an appeal under <i>section 81</i> against that determination, or	
(ii) where an appeal has been made under <i>section 81</i> against the determination and that determination is confirmed on appeal, on that confirmation.	40

*Final arrangements***Final arrangements for recovered human remains**

57. (1) A Director shall make final arrangements for human remains recovered from principal burial land and, where applicable, ancillary burial land, in accordance with this Act— 5
- (a) where the Director is given the function of carrying out an Identification Programme in an order made under *section 7* and, subject to *paragraph (c)*, in accordance with a decision made under *section 46(6)* the Programme has continued—
 - (i) in the case of remains in respect of which a familial link has been established, as soon as practicable after the link has been established, or 10
 - (ii) where it has not been possible to establish a familial link, as soon as practicable after it becomes known that it is not possible to establish the link,
 - (b) where the Director is given the function and a decision is made under *section 46(6)* not to continue with an Identification Programme, as soon as practicable after the making of that decision, 15
 - (c) where the Director is given the function and subsequently a decision is made under *section 47(1)*, as soon as practicable after the remainder of the Identification Programme is completed, and
 - (d) where the Director is not given that function, as soon as practicable after the completion of post-recovery analysis. 20
- (2) Where *subsection (1)(a)(i)* applies, a Director shall—
- (a) at the request of the highest ranking family member who is alive and not incapacitated, either return the human remains to him or her or arrange for the re-interment of the remains at a place selected by that highest ranking family member, 25
 - (b) where there is no family member alive or not incapacitated, make final arrangements for the human remains in accordance with the stated wishes of the highest ranking family member who stated such wishes,
 - (c) in respect of an applicable person where there is, in respect of the deceased person from whose human remains a DNA profile was the subject of a DNA profile comparison (with the DNA profile of the applicable person), no other family member, in accordance with the stated wishes of the applicable person, or 30
 - (d) where *paragraph (b)* or *(c)* applies but there are no stated wishes as referred to in those paragraphs, make such final arrangements by providing for the re-interment of the remains, including by selecting the place for, and manner of, such re-interment, as he or she considers most appropriate having regard to— 35
 - (i) the dignity of the deceased,
 - (ii) any known religious practices of the deceased, and
 - (iii) the condition of the remains. 40

- (3) Subject to *subsection (4)*, where *paragraph (a)(ii), (b), (c) or (d) of subsection (1)* applies, a Director shall make such final arrangements for the human remains concerned as the Director considers appropriate having regard to—
- (a) the wishes (if any) of persons who consider themselves, with reasonable cause, to be family members of persons believed to have been buried at the principal burial land concerned or any ancillary burial land, 5
 - (b) the dignity of the deceased, and
 - (c) the condition of the remains.
- (4) Where *subsection (1)(a)(ii)* applies, final arrangements for the human remains concerned shall not include cremation. 10
- (5) In this section, “family member” means—
- (a) a person who is a spouse or civil partner in respect of whom a notification referred to in *section 42(1)(d)* has been entered in a register,
 - (b) an eligible family member in respect of whom a notification referred to in *section 42(1)(b)(iii)* has been entered in a register and who is not a relevant person, and 15
 - (c) a relevant person.
- (6) In this section, “highest ranking family member” shall be construed as meaning a family member taken in the following order: spouse, civil partner, parent, child, sibling, half-sibling, grandparent, grandchild, aunt and uncle, niece and nephew (whether of the whole blood or the half-blood), grandniece and grandnephew. 20

CHAPTER 5

Samples, generating DNA profiles and DNA profile comparison

Generation of more than one DNA profile from a sample

- 58.** Where a sample is taken from human remains, a relevant person, an applicable person or from a person for elimination purposes under this Act, more than one DNA profile may be generated from the sample for the purposes of providing information comprising a particular set of identification characteristics of the DNA. 25

Taking of sample from human remains and generating DNA profile

- 59.** (1) The Director shall, where he or she has made a decision under *subsection (6) of section 46* to continue with an Identification Programme arrange— 30
- (a) where a sample has not already been taken from human remains under *subsection (3) of that section*, for the taking of a sample from the human remains by an authorised person, and
 - (b) for samples so taken to be delivered to FSI.
- (2) FSI shall forensically test samples delivered to it under *subsection (1)* and, in respect of each sample of human remains tested, enter the DNA profile generated from that testing in the unidentified human remains index. 35

- (3) A second or further sample may be taken from human remains under this section where the circumstances in *section 62* apply.
- (4) Where the Director has made a decision under *subsection (6)* of *section 46* to continue with an Identification Programme—
 - (a) a sample taken under that section may be regarded as a sample taken from the human remains under this section, and
 - (b) the forensic testing carried out in accordance with that section shall be taken to be forensic testing carried out under this section.

Taking of sample from relevant person and generating DNA profile

- 60.** (1) A sample given by a relevant person under this section may only be forensically tested, and the DNA profile of the person generated from that testing included in the family members' index, for the purpose of a DNA profile comparison under this Act. 10
- (2) An authorised person shall, before taking a sample from a relevant person under this section, inform him or her—
- (a) that the sample is to be taken under this section and only with his or her consent, and 15
 - (b) where a sample has already been taken from the person under this section and a second or further sample is required, the reason, in accordance with *section 62*, that a second or further sample is sought and that such sample can only be taken from him or her with his or her consent. 20
- (3) A sample shall be taken by an authorised person in the form of a non-intimate sample.
- (4) A sample may be taken from a relevant person by an authorised person at the office of the Director, at any other place nominated by the Director or, with the agreement of the authorised person, at a place designated by the relevant person concerned.
- (5) The Director shall make the necessary arrangements for samples taken under this section to be delivered to FSI. 25
- (6) FSI shall forensically test samples delivered to it under *subsection (5)* and, in respect of each sample taken from a relevant person, enter the DNA profile generated from that testing in the family members' index.
- (7) Where a relevant person does not consent to the taking of a sample or of a second or further sample under this section, the person shall be informed that, in accordance with *section 74(2)*, he or she is taken to have withdrawn his or her consent to participate in the Identification Programme. 30

Taking of sample for elimination purposes and generating DNA profile

- 61.** (1) A Director or the Director of FSI, as the case may be, may request a sample under this section only where he or she considers the taking of the sample and the generation of a DNA profile from the sample is reasonably necessary for the purpose of ascertaining whether or not contamination of a sample referred to in *section 52* or taken under *section 59* or *60* occurred. 35

- (2) A member of staff of a Director and a consultant, advisor or other person referred to in *section 19(1)* shall, when requested to do so by a Director, provide a sample to an authorised person for the purpose of generating a DNA profile of the person to be entered into the elimination index of the DNA (Historic Remains) Database.
- (3) A sample may be taken under this section by an authorised person for the purpose of generating a DNA profile to be entered into the elimination index of the DNA (Historic Remains) Database from a member of staff of FSI or from a person who took a sample referred to in *section 52* where the member of staff or person concerned consents in writing to having that sample taken. 5
- (4) A sample shall be taken by an authorised person in the form of a non-intimate sample. 10
- (5) An authorised person shall, before taking a sample from a person under this section—
- (a) inform him or her—
 - (i) that the sample is to be taken under this section,
 - (ii) where a sample has already been taken from the person under this section and a second or further sample is required, of the reason, in accordance with *section 62*, that a second or further sample is sought, 15
 - (iii) that the sample will be forensically tested and any DNA profile generated from that testing in respect of the person will be entered in the elimination index and the purpose of such an entry,
 - (iv) that, subject to any regulations made under *section 79*, a sample taken from the person will be destroyed, any DNA profile generated from the sample and any related information will be deleted in accordance with *Chapter 8*, 20
 - and
 - (b) give the person such other information (if any) relating to the giving of the sample as may be prescribed under *section 80*. 25
- (6) A Director shall make the necessary arrangements for samples taken under this section to be delivered to FSI.
- (7) FSI shall forensically test samples delivered to it under *subsection (6)* and, in respect of each sample taken from a person, enter the DNA profile generated from that testing in the elimination index. 30
- (8) In this section and in *section 62*, “contamination”, means, in relation to a sample—
- (a) the inadvertent incorporation into the sample of the DNA of a person during—
 - (i) his or her attendance at principal burial land or ancillary burial land, participation in the forensic excavation and recovery of human remains from that land or during post-recovery analysis, 35
 - (ii) the taking of a sample,
 - (iii) the transportation or storage of a sample, or
 - (iv) the forensic testing of a sample,
 - and

- (b) in the case of a sample taken from human remains, includes the incorporation into the sample of a sample of other biological material owing to the environmental conditions in which the human remains were recovered.

Re-taking of sample

62. (1) A second or further sample may be taken from human remains under *section 46* or *59* 5
or from a person under *section 60* or *61* where a sample has already been taken from
the human remains or person and—
- (a) the sample taken proves to be insufficient,
 - (b) the sample taken was inadequately labelled, or
 - (c) there is another good reason the Director, on the advice of the Director of FSI, 10
considers it necessary that a second or further sample be taken from the person or
human remains, as the case may be.
- (2) In this section—
- “inadequately labelled”, in relation to a sample, means incorrectly labelled or labelled
in such a manner that it is not possible to identify with certainty the person from 15
whom, or the human remains from which, the sample was taken;
- “insufficient” means, in relation to a sample, subject to *subsection (3)*, insufficient in
quantity or quality for the purpose of generating a DNA profile.
- (3) A reference to a sample proving insufficient includes a reference to where the sample
has become unavailable or insufficient for the purposes of generating a DNA profile 20
as a consequence of—
- (a) the loss, destruction or contamination of the whole or any part of the sample,
 - (b) any damage to the whole or a part of the sample, or
 - (c) the use of the whole or a part of the sample which produced no results or results
which have to be regarded, in the circumstances, as unreliable. 25

CHAPTER 6

Databases: DNA (Historic Remains) Database and Personal Information (Historic Remains) Database

Establishment of DNA (Historic Remains) Database and Personal Information (Historic Remains) Database

30

63. (1) FSI shall, as soon as practicable after receipt of a notification under *section 46(7)*, that
an Identification Programme is continuing, establish, maintain and operate the
following 2 databases (in this Act referred to as the “Databases”) in respect of the
principal burial land concerned and any related ancillary burial land—
- (a) a DNA (Historic Remains) Database containing the following indexes of DNA 35
profiles—
 - (i) an unidentified human remains index, containing the DNA profiles of
persons generated from samples taken, or treated as having been taken, under

- section 59*, from human remains recovered from the land concerned and entered in that index,
- (ii) a family members' index, containing the DNA profiles of persons generated from samples provided, or treated as having been provided, by relevant persons under *section 60*, or generated from samples, referred to in *section 51*, provided by applicable persons, and 5
 - (iii) an elimination index, containing the DNA profiles of persons generated from samples provided under *section 61*,
- and
- (b) a Personal Information (Historic Remains) Database containing— 10
 - (i) the information that may be used to identify a person from whose sample a DNA profile is generated and entered in the family members' index and the elimination index,
 - (ii) the information that may be used to describe a person from whose sample a DNA profile is generated and entered in the unidentified human remains index, and 15
 - (iii) such other information as the Director of FSI considers necessary having regard to his or her function under *section 64(1)(g)*.
 - (2) Where more than one DNA profile is generated from a sample (as referred to in *section 58*) FSI shall store each DNA profile generated from the sample of a person or taken from human remains with the DNA profile generated from the sample of another person or from human remains which generates information comprising the same particular set of identification characteristics of another person in a separate section within the DNA (Historic Remains) Database. 20
 - (3) The Databases may only be used for the purposes of— 25
 - (a) DNA profile comparison,
 - (b) conducting permitted searching under *section 65*,
 - (c) providing information that is required by a Director,
 - (d) the facilitation of the performance by the Oversight Committee of its functions under *Chapter 7* in relation to the management and operation of the Databases, 30
 - (e) the compilation of statistics and related analysis of an Identification Programme, or
 - (f) any other related purpose that may be specified from time to time by the Director of FSI.

Functions of Director of FSI

35

- 64.** (1) The Director of FSI shall perform, or cause to be performed, the following functions under this Act:
- (a) the forensic testing of samples taken under this Act;

- (b) the entry of DNA profiles generated from forensic testing in the appropriate index of a DNA (Historic Remains) Database and entry of related information in a Personal Information (Historic Remains) Database;
 - (c) permitted searching of the Databases in accordance with *section 65*;
 - (d) DNA profile comparison and furnishing the results of such comparison to a Director; 5
 - (e) providing information that is required by a Director for the performance of his or her functions including statistics and related analysis of an Identification Programme;
 - (f) in accordance with this Part, the destruction of samples, the deletion of DNA profiles from the DNA (Historic Remains) Database and the deletion of any related information in a Personal Information (Historic Remains) Database; 10
 - (g) recording information required for the proper operation of the Databases including but not limited to—
 - (i) information relating to the taking of samples, 15
 - (ii) when samples are submitted to FSI,
 - (iii) when DNA profiles are generated from samples, and
 - (iv) requests for destruction of samples or return of samples to a Director and the deletion of a DNA profile and related information;
 - (h) maintain the security of the DNA profiles and information in the Databases; 20
 - (i) as considered appropriate, the development of the Databases taking account of any new technology;
 - (j) the storage of samples sent to FSI under this Part.
- (2) Subject to *subsection (3)*, the Director of FSI may make such arrangements, including contractual arrangements, as he or she considers appropriate with such other laboratories (whether within or outside the State) for the performance of the function referred to in *subsection (1)(a)* or the performance of that function in any particular case or class of cases. 25
- (3) Arrangements under *subsection (2)* shall be subject to compliance with the requirements of this Act and such terms and conditions as may be agreed. 30

Permitted searching of Databases

65. (1) The Databases may only be searched—

- (a) by the Director of FSI or a member of the staff of FSI, and
 - (b) in accordance with this section.
- (2) Where more than one DNA profile has been generated from a sample in accordance with *section 58*, and having regard to *section 63(2)*, a reference in this section to comparing a DNA profile with another DNA profile shall be construed as a reference to comparing DNA profiles in the same section within the DNA (Historic Remains) 35

- Database which provide information comprising the same set of identification characteristics of the DNA.
- (3) A DNA profile entered in the family members' index of the DNA (Historic Remains) Database may—
 - (a) for the purpose of a DNA profile comparison, be compared with— 5
 - (i) another DNA profile entered in that index, or
 - (ii) a DNA profile entered in the unidentified human remains index of that Database,
 - or
 - (b) for the purposes of elimination, be compared with the elimination index of that Database. 10
 - (4) A DNA profile entered in the unidentified human remains index of the DNA (Historic Remains) Database may—
 - (a) for the purpose of a DNA profile comparison, be compared with— 15
 - (i) another DNA profile entered in that index, or
 - (ii) a DNA profile entered in the family members' index of that Database,
 - or
 - (b) for the purposes of elimination, be compared with a DNA profile entered in the elimination index of that Database.
 - (5) A DNA profile entered in the elimination index of the DNA (Historic Remains) Database may— 20
 - (a) for the purposes of elimination, be compared with a DNA profile entered in—
 - (i) the unidentified human remains index of that Database,
 - (ii) the family members' index of that Database,
 - and 25
 - (b) for the purposes of identifying any duplication of entries, be compared with another DNA profile entered in the elimination index.
 - (6) The Databases may be searched for the purposes of—
 - (a) performing the functions of the Director of FSI, and
 - (b) checking the operation of those Databases. 30

CHAPTER 7

Oversight Committee and review of operation of Databases

Request that DNA Database System Oversight Committee perform functions under Act

66. (1) Where the functions of a Director specified in an order under *section 7* include carrying out an Identification Programme and the relevant Minister has received a 35

- notification under *section 46(7)* that the Programme is continuing, the relevant Minister shall, with the prior consent of the Minister for Justice, and after the Minister for Justice has consulted with the DNA Database System Oversight Committee (in this Act referred to as the “Oversight Committee”), direct the Oversight Committee in writing to oversee the management and operation of the Databases for the purposes of maintaining the integrity and security of the Databases and the Oversight Committee shall, for those purposes, satisfy itself that the provisions of this Act in relation to the Databases are being complied with. 5
- (2) Where the Oversight Committee is, pursuant to a direction under *subsection (1)*, overseeing the management and operation of the Databases it shall meet and be known as the Historic Remains Databases Oversight Committee. 10
- (3) Subject to this Chapter, the Oversight Committee shall be independent in the performance of its functions under this Act.
- (4) In performing functions under this Act—
- (a) the chairperson of the Oversight Committee other than a serving judge, and the ordinary members of the Committee other than the Director of FSI and the person nominated for appointment by the Data Protection Commission, shall be paid such remuneration (if any) as the relevant Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time determine, and 15
 - (b) the chairperson and ordinary members of the Oversight Committee shall be paid such allowances for expenses as the relevant Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time determine. 20

Functions of Oversight Committee

67. (1) Where directed to do so under *section 66*, the Oversight Committee shall oversee the management and operation of the Databases referred to in the direction for the purposes of maintaining the integrity and security of the Databases, and shall, for those purposes, satisfy itself that the provisions of this Act in relation to the Databases are being complied with. 25
- (2) Without prejudice to the generality of *subsection (1)*, the Oversight Committee shall oversee— 30
- (a) the arrangements employed by the Director of FSI in relation to the receipt, handling, transmission and storage of samples taken under this Act for the purpose of generating DNA profiles for entry in the DNA (Historic Remains) Database,
 - (b) the procedures employed by the Director of FSI in relation to the generation of DNA profiles from the samples taken under this Act, 35
 - (c) the quality control and quality assurance of procedures referred to in *paragraph (b)* to ensure that the procedures comply with international best practice,
 - (d) the measures employed by the Director of FSI to ensure that the Databases are not improperly accessed by any person, that the DNA profiles entered in the DNA (Historic Remains) Database and information entered in the Personal Information 40

- (Historic Remains) Database are used only for the purposes permitted by this Act and that the profiles and information are not improperly disclosed to any person,
- (e) the means by which the results of searches of the DNA (Historic Remains) Database are reported by the Director of FSI to the Director, and
 - (f) the practices and procedures employed by the Director of FSI to ensure that, in accordance with the requirements of this Act, samples taken under this Act for the purpose of generating DNA profiles are destroyed and the DNA profiles generated from those samples and related information are deleted.
- (3) The Oversight Committee may, in the performance of its functions under this Act, make such recommendations as it considers appropriate in relation to the management and operation of the Databases to the relevant Minister, the Minister for Justice and the Director.

Meetings and Procedures

68. (1) The Oversight Committee shall, while performing functions under this Act, hold such and so many meetings as may be necessary for the performance of those functions and may make such arrangements for the conduct of its meetings and business (including the establishment of subcommittees and fixing of a quorum for meetings) as it considers appropriate.
- (2) The Oversight Committee shall regulate its own procedure by rules or otherwise.
- (3) At a meeting of the Committee—
- (a) the chairperson of the Committee shall, if present, be the chairperson of the meeting, or
 - (b) if and for so long as the chairperson of the Committee is not present or if that office is vacant, the members of the Committee who are present shall choose one of their number to be chairperson of the meeting.

Administrative support and engagement of consultants or advisers

69. (1) The relevant Minister shall, with the consent of the Minister for Public Expenditure and Reform, provide the Oversight Committee with such funds, facilities and services (including secretarial services) as the relevant Minister, following consultation with the chairperson of the Committee, considers appropriate for the performance by the Committee of its functions under this Act.
- (2) The Oversight Committee may, with the approval of the relevant Minister, engage such consultants or advisers with scientific or technical expertise as the Committee considers necessary for the performance of its functions under this Act.

Cooperation with Oversight Committee

70. (1) The Director of FSI and the other members of the staff of FSI shall cooperate with the Oversight Committee in relation to the performance of its functions under this Act and shall, for that purpose, furnish to the Committee such information as the Committee may request and which, in the opinion of the Committee, is required for the performance of its functions.

- (2) The Oversight Committee may, whenever it considers it necessary for the performance of its functions under this Act, request a Director to meet with the Committee or to furnish information to the Committee.
- (3) A Director shall comply with a request made to him or her under *subsection (2)*.

Review and report by Oversight Committee

5

- 71.** (1) Subject to *subsection (2)*, the Oversight Committee may, and if so requested by the relevant Minister where he or she has consulted with the Minister for Justice, shall, review any matter relating to the management and operation of the Databases, prepare a report in writing on the review and, as soon as practicable after the report is prepared, furnish a copy of the report to the relevant Minister, the Minister for Justice and the Director. 10
- (2) A report under *subsection (1)* shall not contain confidential information (within the meaning of *section 30(5)*).
- (3) Subject to *subsections (4) and (5)*, the relevant Minister concerned shall, as soon as practicable after receiving a report under *subsection (1)*, cause a copy of the report— 15
- (a) to be laid before each House of the Oireachtas, and
 - (b) to be published in such manner as the relevant Minister considers appropriate.
- (4) The relevant Minister concerned may, when laying the report before each House of the Oireachtas and publishing the report under *subsection (2)*, omit any matter from the report where he or she is of opinion that the disclosure of that matter would be prejudicial to the security of the Databases. 20
- (5) If a matter is, in accordance with *subsection (4)*, omitted from a report laid and published under *subsection (3)*, a statement to that effect shall be attached to the report when it is so laid and published.

Final report of Oversight Committee

25

- 72.** (1) The Oversight Committee shall prepare a final report on the performance of its functions pursuant to a direction under *section 66(2)* within 6 months of the conclusion of the Identification Programme to which the direction relates and shall, as soon as practicable after the report is prepared, furnish a copy of the report to the relevant Minister, the Minister for Justice and the Director. 30
- (2) A final report prepared under *subsection (1)* shall not contain confidential information (within the meaning of *section 30(5)*).
- (3) The relevant Minister concerned shall, as soon as practicable after receiving a report under *subsection (1)*, cause a copy of it to be laid before each House of the Oireachtas and published in such manner as the Minister considers appropriate. 35

*Destruction of samples, deletion of DNA profiles and information held on Databases and
destruction of Databases*

Destruction of samples, deletion of DNA profiles and related information at request of Director

5

73. (1) Subject to *subsection (2)*, FSI shall, at the request of a Director, destroy a sample, delete a DNA profile or delete related information in accordance with this Chapter.

(2) *Subsection (1)* shall not operate to require FSI to delete related information that it needs to retain in order to demonstrate that it has complied with the requirements of this Part.

10

Destruction of samples, deletion of DNA profiles and related information: relevant person withdraws consent

74. (1) Where a relevant person withdraws from participation in an Identification Programme by notice in writing under *section 48(6)*, the Director shall, as soon as practicable after receipt of that notice—

15

(a) where a sample has been taken from, or treated as having been taken from, the person under *section 60* and—

(i) the sample has not been delivered to FSI, destroy the sample, or

(ii) the sample has been delivered to FSI, request that FSI—

(I) destroy the sample and, if a DNA profile of the person has been generated from the sample, delete that DNA profile from the family members' index, and

20

(II) delete any related information,

(b) return all records, held by the Director, which relate to the person to that person and if applicable, confirm in writing the steps taken under *paragraph (a)*, and

25

(c) inform each nominee of the person of the withdrawal and return any record, held by the Director, associated with the nominee to that nominee.

(2) Where a relevant person does not consent to the giving of a sample or a second or further sample under *section 60*, he or she shall be taken to have withdrawn his or her consent to participate in an Identification Programme and *paragraphs (a) to (c)* of *subsection (1)* shall apply in like manner as soon as practicable after such refusal as they apply to a withdrawal of consent under *section 48(6)*.

30

Destruction of samples taken from relevant persons, deletion of related DNA profiles and related information

75. (1) Subject to any regulations made under *section 79*, FSI shall—

35

(a) destroy a sample taken from a relevant person under *section 60* not later than the expiration of 3 months after the date on which the following first occurs—

- (i) there has been a notification to the relevant person or their nominee under *section 50(3)(a)* or *section 50(4)*, as the case may be, that a familial link has been established,
 - (ii) that part of the Identification Programme set out in *paragraphs (a) to (c)* of *section 46(2)* is completed in respect of principal burial land and ancillary burial land, or
 - (iii) the Director makes a decision, under *section 47(1)*, that the part of the Identification Programme referred to in *subparagraphs (ii)* and *(iii)* of *section 46(2)(c)* should cease,
- (b) delete a DNA profile generated from a sample taken from a relevant person under *section 60* not later than the expiration of 3 months after the date on which the following first occurs—
 - (i) that part of the Identification Programme set out in *paragraphs (a) to (c)* of *section 46(2)* is completed in respect of principal burial land and ancillary burial land, or
 - (ii) the Director makes a decision, under *section 47(1)*, that the part of the Identification Programme referred to in *subparagraphs (ii)* and *(iii)* of *section 46(2)(c)* should cease,
- and
- (c) as soon as practicable after that part of the Identification Programme set out in *paragraphs (a) to (c)* of *section 46(2)* is completed in respect of principal burial land and ancillary burial land, delete any related information.
- (2) FSI shall notify a Director when a sample is destroyed and a DNA profile and related information are deleted under *subsection (1)*.
- (3) On receipt of a notification under *subsection (2)*, a Director shall—
 - (a) return all records, held by the Director, which relate to the relevant person to that person and if applicable, confirm in writing the steps taken under *subsection (1)*, and
 - (b) inform each nominee of the person of the completion of his or her involvement in the Programme and return any record, held by the Director, associated with the nominee to that nominee.

Destruction of samples taken from applicable persons, deletion of related DNA profiles and related information

76. (1) Subject to any regulations made under *section 79*, FSI shall—

- (a) destroy a sample taken from an applicable person not later than the expiration of 3 months after the date on which the following first occurs—
 - (i) there has been a notification to the nominee of the applicable person under *section 54* that a familial link has been established,

- (ii) that part of the Identification Programme set out in *paragraphs (a) to (c)* of *section 46(2)* is completed in respect of principal burial land and ancillary burial land, or
 - (iii) the Director makes a decision, under *section 47(1)*, that the part of the Identification Programme referred to in *subparagraphs (ii) and (iii)* of *section 46(2)(c)* should cease, 5
- (b) delete a DNA profile generated from a sample taken from an applicable person not later than the expiration of 3 months after the date on which the following first occurs—
 - (i) that part of the Identification Programme set out in *paragraphs (a) to (c)* of *section 46(2)* is completed in respect of principal burial land and ancillary burial land, or 10
 - (ii) the Director makes a decision, under *section 47(1)*, that the part of the Identification Programme referred to in *subparagraphs (ii) and (iii)* of *section 46(2)(c)* should cease, 15
- and
- (c) as soon as practicable after that part of the Identification Programme set out in *paragraphs (a) to (c)* of *section 46(2)* is completed in respect of principal burial land and ancillary burial land, delete any related information.
- (2) FSI shall notify a Director when a sample is destroyed and a DNA profile and related information are deleted under *subsection (1)*. 20
- (3) On receipt of a notification under *subsection (2)*, a Director shall—
 - (a) delete all records, held by the Director, which relate to the applicable person, and
 - (b) inform each nominee of the applicable person of the completion of his or her involvement in the Programme and return any record, held by the Director, 25

Destruction of samples taken for elimination purposes and deletion of related DNA profiles and related information

77. Subject to any regulations made under *section 79*, FSI shall—

- (a) destroy a sample taken from a person for elimination purposes under *section 61* and delete a DNA profile generated from that sample not later than the expiration of 3 months after the date on which the following first occurs— 30
 - (i) it is confirmed that the person did not or could not have contaminated another sample,
 - (ii) that part of the Identification Programme set out in *paragraphs (a) to (c)* of *section 46(2)* is completed in respect of principal burial land and ancillary burial land, 35
 - (iii) the Director makes a decision, under *section 47(1)*, that the part of the Identification Programme referred to in *subparagraphs (ii) and (iii)* of *section 46(2)(c)* should cease, or 40

- (iv) in the case of a person whose consent was required under *section 61(3)* to the giving of a sample, where the person so requests in writing,
and
- (b) as soon as practicable after the sample is destroyed and DNA profile is deleted, subject to *section 73*, delete any related information.

5

Return of samples taken from human remains to Director and deletion of related DNA profiles

- 78.** (1) A sample taken from recovered human remains under *section 59* shall, if not destroyed in the course of generating a DNA profile from it, be returned by FSI to the Director as soon as practicable after the earlier of the following occurs— 10
- (a) FSI have generated (having regard to *section 58*), from the sample concerned, all the DNA profiles it requires from the sample, or
 - (b) the Director makes a decision, under *section 47(1)*, that the part of the Identification Programme referred to in *subparagraphs (ii) and (iii) of section 46(2)(c)* should cease. 15
- (2) A DNA profile generated from a sample referred to in *subsection (1)* shall be deleted as soon as practicable after the date on which the following first occurs—
- (a) the Director makes a decision, under *section 47(1)*, that the part of the Identification Programme referred to in *subparagraphs (ii) and (iii) of section 46(2)(c)* should cease, or 20
 - (b) that part of the Identification Programme referred to in *section 46(2)(c)(iii)* is completed.
- (3) A sample returned to a Director under *subsection (1)* shall be the subject of the same final arrangements as recovered human remains.

CHAPTER 9

25

Regulations and Appeals

Regulations for purposes of continuing DNA profile comparison after Identification Programme completed

- 79.** (1) A relevant Minister may, having consulted with FSI and an Advisory Board, at any time before an Identification Programme is completed or the Office of Director is dissolved in accordance with *section 98*, whichever first occurs, make regulations for the purposes of enabling the relevant Minister, where there are developments in forensic testing, to facilitate further forensic testing of samples to establish whether or not there is a familial link after the Programme is completed. 30
- (2) Without prejudice to the generality of *subsection (1)*, regulations under that subsection may make provision for— 35
- (a) subject to obtaining the consent of the relevant persons concerned and providing for the withdrawal of consent at any time, the retention of samples taken from such persons under *section 60*,

- (b) the form of consent, referred to in *paragraph (a)*, to be obtained from relevant persons and the manner in which consent may be withdrawn,
- (c) the retention of samples taken for elimination purposes under *section 61*,
- (d) the retention of samples taken from applicable persons,
- (e) the retention of information, referred to in *subparagraphs (i) and (ii) of section 63(1)(b)*, contained in the Personal Information (Historic Remains) Database, 5
- (f) the transfer of samples so retained and information referred to in *paragraph (e)* from FSI to another person for the purposes of storage,
- (g) the forensic testing of samples, and where possible, a comparison of the DNA profile of a relevant person or an applicable person, as the case may be, and the DNA profile of a person generated from human remains for the purposes of ascertaining the likelihood, that can be indicated statistically, that there is a familial link, 10
- (h) the appointment of a decision-maker for the purposes of making a determination and notifying— 15
 - (i) a relevant person, on the same basis as set out in *section 50(3)* in relation to a Director, that there is or is not a familial link, or
 - (ii) a nominee of the relevant person, on the same basis as set out in *section 50(4)* in relation to a Director, that there is or is not a familial link,
- (i) the withdrawal by a nominee of the relevant person of his or her consent to act as a nominee, 20
- (j) the exhumation of human remains, re-interred in accordance with *section 57*, where necessary for the purposes of obtaining a further sample for the purposes of *paragraph (g)*,
- (k) the destruction of samples taken from relevant persons and applicable persons and for elimination purposes, the deletion of DNA profiles generated from samples taken from human remains, relevant persons, applicable persons and for elimination purposes and the destruction of information referred to in *paragraph (e)*, 25
- (l) final arrangements for the samples taken from human remains, and 30
- (m) the performance of oversight functions, equivalent to those to be performed by the Oversight Committee under *section 67(2)(a) to (f)*, by a suitably qualified person where the performance of such oversight functions is necessary having regard to any regulations made under this section to facilitate further forensic testing. 35

Regulations: general (*Part 4*)

- 80.** (1) The Minister may, having consulted with FSI and the Data Protection Commission, make regulations under this section to facilitate an Identification Programme.
- (2) Without prejudice to the generality of *subsection (1)*, regulations under this section shall prescribe: 40

- (a) the evidence (documentary or otherwise) that a person is to provide for the purposes of establishing himself or herself as an eligible family member;
- (b) the requirements for a notification of objection referred to in *section 44(2)(a)*;
- (c) the procedures for the purposes of *section 44(4)*;
- (d) the form to be completed by an eligible person for the purpose of confirming his or her decision to participate in an Identification Programme; 5
- (e) the form of consent to the taking of a sample from a person under *section 60*;
- (f) the form of consent to be signed by a person who agrees to be a nominee of a relevant person which form shall include the following information—
 - (i) the purpose of such nomination, 10
 - (ii) the personal data, including the contact details, of a nominee that will be stored by a Director for that purpose,
 - (iii) in the event that the circumstances set out in *section 49(1)* arise in respect of a relevant person, the notification that will be furnished to the nominee under *section 50*, 15
 - (iv) the right of a nominee to withdraw his or her consent to act as a nominee at any time before the relevant person, in respect of whom he or she is a nominee, dies or becomes incapacitated, and
 - (v) such other information (if any) as is considered appropriate.
- (3) Without prejudice to the generality of *subsection (1)*, regulations under this section may prescribe additional information to be given under *section 61(5)(b)* before a sample is taken under that section. 20

Appeals

- 81.** (1) Subject to *subsection (2)*, a person (in this section referred to as an “appellant”) may, by notice in writing to the Director, appeal against— 25
- (a) a determination under *section 48* that the person is not eligible to participate in an Identification Programme, or
 - (b) a finding, notified to the person under *section 50(3)(b)*, that on the balance of probabilities, the genetic and non-genetic data available are not sufficient to suggest a familial link. 30
- (2) An appeal under *subsection (1)* shall be made within 8 weeks from the date the determination or finding, as the case may be, is notified to the person and shall specify the basis for the appeal and indicate whether the appellant wishes an oral hearing of the appeal.
- (3) A Director shall notify the relevant Minister in writing of the receipt of the appeal within 14 days of such receipt and the relevant Minister shall, within 4 weeks of receipt of that notification— 35
- (a) appoint an independent suitably qualified person (in this Act referred to as an “adjudicator”) to determine the appeal, and

- (b) direct the Director to provide to that adjudicator all material relating to the determination or finding which is the subject of appeal.
- (4) An adjudicator shall hold an oral hearing where an appellant indicates that he or she wishes the adjudicator to hold an oral hearing.
- (5) The adjudicator, having considered all material provided relating to a determination or finding which is under appeal and any evidence provided by the appellant and the Director whether in the course of an oral hearing (if any) or otherwise, may—
 - (a) confirm the determination or finding, as the case may be, or
 - (b) overturn the determination or finding and substitute his or her own determination or finding.
- (6) An adjudicator shall make his or her decision under *subsection (5)* within 12 weeks of being appointed and shall, as soon as practicable thereafter—
 - (a) inform the appellant and the Director of his or her decision and the reasons for it, and
 - (b) where the decision relates to an appeal under *subsection (1)(b)* and the appellant dies or becomes incapacitated before that decision is made, inform a nominee of the appellant in accordance with *paragraphs (a) and (b) of section 50(4)* of that decision and the reasons for it.
- (7) Where an adjudicator makes a decision under *subsection (5)* to overturn a determination under *section 48* that an appellant is not eligible to participate in an Identification Programme, the Director shall, as soon as practicable after being informed under *subsection (6)* of that decision, notify that appellant in writing that he or she may participate in the Programme.

PART 5

ACCESS TO LAND TO CARRY OUT WORKS AND ACTIVITIES, COMPENSATION FOR USE OF LAND AND REMEDIAL WORKS ON LAND 25

Definition (*Part 5*)

82. In this Part, “statement of compensation” has the meaning assigned to it by *section 91*.

Access to land, carrying out of works and activities on land and compensation: general

- 83.** (1) Subject to *subsection (2)* and *section 84*, a Director may proceed with relevant works on principal burial land, relevant works on ancillary burial land and related activities on ancillary land— 30
- (a) in any case where the owner of the land concerned is also the occupier of that land, where—
 - (i) the owner consents to those works or activities in accordance with *section 85, 87 or 89*, as the case may be, or 35

- (ii) a court order is made in respect of the owner under *section 86, 88 or 90*, as the case may be, and—
 - (I) no appeal has been made against the order by the owner, at any time after the expiration of the period of time allowed for an appeal, or
 - (II) an appeal has been made by the owner against the order within the period of time allowed for the appeal and the order is confirmed, at any time after the order is confirmed on appeal,

and
 - (b) in any case where the owner and occupier of the land concerned is not the same person—
 - (i) where both the owner and occupier consent in accordance with *section 85, 87 or 89*, as the case may be,
 - (ii) where the owner or occupier of the land consents and the other does not and a court order is made in respect of the non-consenting party under *section 86, 88 or 90*, as the case may be—
 - (I) where no appeal has been made against the order, at any time after the expiration of the period of time allowed for an appeal, or
 - (II) where an appeal has been made within the period of time allowed for the appeal, at any time after the order is confirmed on appeal,

or

 - (iii) where both the owner and occupier of the land do not consent and a court order is made in respect of both under *section 86, 88 or 90*, as the case may be—
 - (I) where no appeal has been made against the order by either the owner or occupier, at any time after the expiration of the period of time allowed for an appeal,
 - (II) where an appeal has been made against the order within the period of time allowed for the appeal by either the owner or occupier and the order is confirmed, at any time after the order is confirmed on appeal, or
 - (III) where an appeal has been made against the order within the period of time allowed for the appeal by both the owner and occupier and both orders are confirmed, at any time after the confirmation on appeal of the last order so confirmed.
- (2) A Director may not proceed with relevant works or related activities in accordance with *subsection (1)* unless a statement of compensation has issued to the owner and occupier of the land concerned in accordance with *section 84(3), 85(1), 87(1) or 89(1)*, as the case may be.
 - (3) A Director may proceed with relevant works or related activities in accordance with *subsection (1)* where a statement of compensation has issued to the owner and occupier of the land concerned notwithstanding that compensation has not been agreed under *section 91* or is the subject of an appeal under *section 94*.

- (4) Where the identity of principal burial land is amended by a Government Order under *section 7(6)(d)*, this section applies in like manner to that part of the land concerned which was not the subject of a previous Government Order under that section as it applies to the principal burial land which was the subject of such previous Order.

Public body and consent to relevant works and related activities

5

- 84.** (1) A public body which is the owner or occupier of principal burial land or ancillary burial land shall be deemed to have consented as owner or occupier, as the case may be, to the carrying out of relevant works on the land concerned.
- (2) A public body which is the owner or occupier of ancillary land shall be deemed to have consented as owner or occupier, as the case may be, to the carrying out of related activities on that land. 10
- (3) A Director shall—
- (a) where relevant works are to be carried out on principal burial land or ancillary burial land that is owned or occupied by a public body, by notice in writing inform the public body of his or her intention to carry out relevant works on the land, 15
- (b) where related activities are to be carried out on ancillary land that is owned or occupied by a public body, by notice in writing inform the public body of his or her intention to carry out related activities on the land,
- (c) specify in a notice under *paragraph (a)* or *(b)*, the estimated duration of the relevant works or related activities, as the case may be, on the land concerned, 20
- (d) where the public body is both the owner and occupier of the land to which a notice under *paragraph (a)* or *(b)* relates, state in the notice the date on which it is intended that the relevant works or related activities, as the case may be, shall commence on the land concerned, 25
- (e) where the public body is not the owner and occupier of the land to which a notice under *paragraph (a)* or *(b)* relates, state in the notice that the Director may proceed with the relevant works or related activities, as the case may be, on the land concerned, in accordance with *section 83(1)(b)(i)* or *(ii)*, and
- (f) attach a statement of compensation to a notice under *paragraph (a)* or *(b)*. 30
- (4) A notice under *paragraph (a)* or *(b)* of *subsection (3)* shall have appended to it such maps and plans, on such scale, as are sufficient to enable the clear identification of the principal burial land, ancillary burial land or ancillary land, as the case may be, to which the notice relates.
- (5) Where *subsection (3)(d)* applies, a Director may proceed with the relevant works or related activities, as the case may be, on the land which is the subject of the notice, at any time after the date referred to in that provision. 35

Notice of intention to carry out relevant works on principal burial land

- 85.** (1) A Director shall—

- (a) by notice in writing to the owner and occupier of principal burial land seek the consent of the owner and occupier to the carrying out of relevant works on the land,
 - (b) specify in the notice the period of time within which the consent referred to in *paragraph (a)* shall be provided, and
 - (c) attach a statement of compensation to that notice.
- (2) A notice under *subsection (1)* shall have appended to it such maps and plans, on such scale, as are sufficient to enable the clear identification of the principal burial land.
- (3) Where the owner and occupier of principal burial land consent, within the period of time specified in a notice under *subsection (1)*, to the carrying out of relevant works, a Director shall by notice in writing inform the owner and occupier of the date on which the works shall commence.
- (4) Where the owner of principal burial land does not, within the period of time specified in a notice under *subsection (1)*, consent to the carrying out of relevant works on the land or, having consented, withdraws that consent, a Director may issue a notice under *subsection (5)* to that owner where the Director is satisfied—
 - (a) that the owner was the owner of that land at the time the manifestly inappropriate burials on the land were carried out,
 - (b) that the owner acquired that land on or after the 10th day of December 2019, or
 - (c) the carrying out of works on the land is proportionate in all the circumstances.
- (5) Where *subsection (4)* applies, a Director shall, by notice in writing, advise the owner that if he or she does not, within 28 days from the date of service of the notice, consent to the carrying out of relevant works on the principal burial land, the Director may make an application to court under *section 86* for an order authorising the Director to carry out such works on that land.
- (6) Where the owner on whom a notice is served under *subsection (5)*, within the period of 28 days referred to in that subsection, gives his or her consent to the carrying out of the relevant works on the land, either unconditionally or with conditions acceptable to the Director, the Director may proceed with the relevant works at any time after the consent is given including at such other time as may be agreed between the Director and the owner.
- (7) Where the occupier of principal burial land does not, within the period of time specified in a notice under *subsection (1)*, consent to the carrying out of relevant works on the land or, having consented, withdraws that consent, a Director may issue a notice under *subsection (8)* to that occupier where the Director is satisfied—
 - (a) the occupier was the occupier of the land at the time the manifestly inappropriate burials were carried out,
 - (b) the occupier, on or after the 10th day of December 2019, entered into a legally binding agreement (howsoever described) entitling him or her to occupy the land, or
 - (c) the carrying out of works on the land is proportionate in all the circumstances.

- (8) A Director shall, by notice in writing, advise the occupier that if he or she does not, within 28 days from the date of service of the notice, consent to the carrying out of the works, the Director may make an application to court under *section 86* for an order authorising the Director to carry out relevant works on the land.
- (9) Where the occupier on whom a notice is served under *subsection (8)* gives, within the period of 28 days referred to in that subsection, his or her consent to the carrying out of the relevant works on the land either unconditionally or with conditions acceptable to the Director, the Director may proceed with the relevant works at any time after the consent is given including at such other time as may be agreed between the Director, the owner and the occupier.

Application to court for order authorising relevant works on principal burial land

86. (1) Where *subsection (5)* or *(8)* of *section 85* applies, a Director may, where the owner or the occupier of principal burial land, or both, as the case may be, do not consent within the period of 28 days referred to in the subsection concerned, apply to the relevant court at the expiration of that period for an order authorising the Director to carry out relevant works on that land.
- (2) On application to it under *subsection (1)*, the relevant court may make an order authorising the Director to carry out relevant works on the principal burial land concerned where it is satisfied that—
- (a) the owner or occupier, as the case may be, was the owner or occupier of the land at the time the manifestly inappropriate burials were carried out on that land,
- (b) the owner or occupier, as the case may be, entered into a legally binding agreement (howsoever described) to acquire the land (in the case of an owner) or to occupy the land (in the case of an occupier), on or after the 10th day of December 2019, or
- (c) the carrying out of relevant works on the land is proportionate in all the circumstances.
- (3) An appeal shall lie on a point of law only—
- (a) where the relevant court is the Circuit Court, from a decision of the High Court on appeal, and
- (b) where the relevant court is the High Court, from a decision of the High Court.
- (4) An application by a Director under this section or an appeal in respect of a decision of a relevant court under this section may, at the request of the owner or occupier, as the case may be, be heard otherwise than in public.
- (5) In this section, “relevant court” means—
- (a) where the market value of the principal burial land concerned is less than €3 million, the Circuit Court, or
- (b) where the market value of the principal burial land concerned is €3 million or greater, the High Court unless both parties agree to the Circuit Court having jurisdiction to hear the application.

Notice of intention to carry out relevant works on ancillary burial land

87. (1) A Director shall—

- (a) by notice in writing to the owner and occupier of ancillary burial land seek the consent of the owner and occupier to the carrying out of relevant works on the land, 5
 - (b) specify in the notice the period of time within which the consent referred to in *paragraph (a)* shall be provided, and
 - (c) attach a statement of compensation to that notice.
- (2) A notice under *subsection (1)* shall have appended to it such maps and plans, on such scale, as are sufficient to enable the clear identification of the ancillary burial land. 10
- (3) Where the owner and occupier of ancillary burial land consent, within the period of time specified in a notice under *subsection (1)*, to the carrying out of relevant works, a Director shall by notice in writing inform the owner and occupier of the date on which the works shall commence.
- (4) Where the owner of ancillary burial land does not, within the time period specified in a notice under *subsection (1)*, consent to the carrying out of relevant works on ancillary burial land or, having consented, withdraws that consent, a Director may, by notice in writing, advise the owner that if he or she does not, within 28 days from the date of service of the notice, consent to the carrying out of the relevant works, the Director may make an application to court under *section 88* for an order authorising the Director to carry out relevant works on the land for the duration of the period specified in the court order. 15 20
- (5) Where the owner on whom a notice is served under *subsection (4)* gives his or her consent, within the period of 28 days referred to in that subsection, to the carrying out of the relevant works on the land, either unconditionally or with conditions acceptable to the Director, the Director may proceed with the works at any time after the consent is given including at such time thereafter as may be agreed between the Director and the owner. 25
- (6) Where the occupier of ancillary burial land does not, within the period of time specified in a notice under *subsection (1)*, consent to the carrying out of relevant works on the land or, having consented, withdraws that consent, a Director may by notice in writing advise the occupier that if he or she does not, within 28 days from the date of service of the notice, consent to the carrying out of the relevant works, the Director may make an application to court under *section 88* for an order authorising the Director to carry out relevant works on the land for the duration of the period specified in the court order. 30 35
- (7) Where the occupier on whom a notice is served under *subsection (6)* gives his or her consent to the carrying out of the relevant works on the land, either unconditionally or with conditions acceptable to the Director, within the period of 28 days referred to in that subsection, the Director may proceed with the works at such time as may be agreed between the Director, the owner and the occupier. 40

Application to court for order authorising relevant works on ancillary burial land

- 88.** (1) Where *subsection (4) or (6) of section 87* applies, a Director may, where the owner or occupier of ancillary burial land, or both, as the case may be, do not consent within the period of 28 days referred to in the subsection concerned, apply to the District Court for an order authorising the Director to carry out relevant works on the land. 5
- (2) On application to it under *subsection (1)*, the District Court may make an order authorising the Director to carry out relevant works in respect of ancillary burial land for such period as it specifies in the order where it is satisfied that—
- (a) the land to which the application relates is ancillary burial land, and
- (b) the carrying out of relevant works on the land is proportionate in all the circumstances. 10
- (3) An appeal shall lie on a point of law from a decision of the Circuit Court on appeal.
- (4) An application by a Director under this section, an appeal in respect of the decision of the District Court or an appeal on a point of law under *subsection (3)* may, at the request of the owner or occupier, as the case may be, be heard otherwise than in public. 15

Notice of intention to carry out related activities on ancillary land

- 89.** (1) A Director shall—
- (a) by notice in writing to the owner and occupier of ancillary land seek the consent of the owner and occupier to the carrying out of related activities on the land, 20
- (b) specify in the notice the period of time within which the consent referred to in *paragraph (a)* shall be provided, and
- (c) attach a statement of compensation to that notice.
- (2) A notice under *subsection (1)* shall have appended to it such maps and plans, on such scale, as are sufficient to enable the clear identification of the ancillary land. 25
- (3) Where the owner and occupier of ancillary land consent, within the period of time specified in a notice under *subsection (1)*, to the Director carrying out related activities on the land, the Director shall, by notice in writing, inform the owner and occupier of the date on which the related activities shall commence.
- (4) Where the owner of ancillary land does not, within the period of time specified in a notice under *subsection (1)*, consent to the Director carrying out related activities on the land or, having consented, withdraws that consent, a Director may, by notice in writing, advise the owner that if he or she does not consent within 28 days from the date of service of the notice, the Director may make an application to court under *section 90* for an order authorising the Director to carry out related activities on the land for the duration of the period specified in the court order. 30 35
- (5) Where the owner consents, within the period of 28 days referred to in *subsection (4)*, either unconditionally or with conditions acceptable to the Director, the Director may proceed to carry out related activities on that land at any time after the consent is given or at such time as may be agreed between the Director and the owner. 40

- (6) Where the occupier of ancillary land does not, within the period of time specified in a notice under *subsection (1)*, consent to the Director carrying out related activities on the land or, having consented, withdraws that consent, a Director may, by notice in writing, advise the occupier that if he or she does not consent within 28 days from the date of service of the notice, the Director may make an application to court under *section 90* for an order authorising the Director to carry out the related activities on the land for the duration of the period specified in the court order. 5
- (7) Where the occupier on whom a notice is served under *subsection (6)*, within the period of 28 days referred to in that subsection, gives his or her consent either unconditionally or with conditions acceptable to the Director, the Director may proceed to carry out the related activities on the land at such time as may be agreed between the Director, the owner and the occupier. 10

Application to court for order authorising related activities on ancillary land

90. (1) Where *subsection (4)* or *(6)* of *section 89* applies, a Director may, where the owner or occupier of ancillary land, or both, as the case may be, do not consent within the period of 28 days referred to in the subsection concerned, apply to the relevant court for an order authorising the Director to carry out related activities on the land. 15
- (2) On application to it under *subsection (1)*, the relevant court may make an order authorising the Director to carry out related activities on the ancillary land for such period as it specifies in the order where it is satisfied that— 20
- (a) there are no other reasonably practical means by which the relevant works may proceed on principal burial land or ancillary burial land,
 - (b) having regard to the duration and extent of the proposed related activities and the effect of such activities on the use and enjoyment of the ancillary land, the proposed interference with the land represents the minimum intrusion that is reasonably possible and is proportionate, and 25
 - (c) mitigations will be put in place to address any health and safety concerns that may arise from the proposed related activities.
- (3) In making an order under *subsection (2)*, the relevant court may—
- (a) specify the works on the land concerned that may be carried out for the purposes of facilitating relevant works on the principal burial land or ancillary burial land, and 30
 - (b) require the Director to put such mitigations in place as the court considers appropriate to address any health and safety concerns that arise from the proposed related activities on the land. 35
- (4) An appeal shall lie on a point of law only—
- (a) where the relevant court is the District Court, from a decision of the Circuit Court on appeal,
 - (b) where the relevant court is the Circuit Court, from a decision of the High Court on appeal, and 40
 - (c) where the relevant court is the High Court, from a decision of the High Court.

- (5) An application by a Director under this section or an appeal in respect of the decision of a relevant court may, at the request of the owner or occupier, as the case may be, be heard otherwise than in public.
- (6) In this section, “relevant court” means—
 - (a) where the duration of the related activities and any remedial works under *section 95* is likely to take, in total, less than 2 weeks, the District Court, and 5
 - (b) in all other cases—
 - (i) where the market value of the ancillary land concerned is less than €3 million, the Circuit Court, or
 - (ii) where the market value of the ancillary land concerned is €3 million or greater, the High Court unless both parties agree to the Circuit Court having jurisdiction to hear the application. 10

Statement of compensation

91. (1) A statement (in this Part referred to as a “statement of compensation”) shall be in writing and— 15
- (a) where the relevant works or related activities are to be carried out on the principal burial land, ancillary burial land or ancillary land concerned, as the case may be, for a period estimated to be less than 4 weeks, shall—
 - (i) include an offer of compensation calculated in accordance with *section 93* and state that the compensation may be accepted within a period of 28 days— 20
 - (I) where the statement issues to a public body under *section 84*, from the date of service of the notice, or
 - (II) in all other cases, from the later of—
 - (A) the date on which consent is given under *section 85, 87 or 89*, as the case may be, to the carrying out of the works or activities concerned, 25
 - (B) where consent is not given and a court order is made under *section 86, 88 or 90*, as the case may be, authorising the works or activities concerned, the date on which the period of time allowed for an appeal against the order expires where no appeal has been made, or 30
 - (C) where such a court order is made and an appeal has been made, the date on which the order has been confirmed on appeal,
 - (ii) state the basis on which the amount of compensation offered was calculated,
 - (iii) state the manner in which the compensation shall be payable,
 - (iv) advise the owner or occupier, as the case may be, that if he or she refuses the offer within the 28 day period referred to in *subparagraph (i)*, he or she may, within the time allowed by *section 94*, make an application to the Circuit Court under that section for a variation of the amount of the compensation, and 35

- (v) advise him or her that if he or she fails to reply to the offer within that 28 day period, the offer will become binding,
- or
- (b) where the relevant works or related activities are to be carried out on the principal burial land, ancillary burial land or ancillary land, as the case may be, for a period estimated to be 4 weeks or longer, shall—
 - (i) invite the owner or occupier, as the case may be, of the land concerned to engage with the Director to assess the appropriate level of compensation payable in accordance with *section 93*,
 - (ii) state the basis on which compensation will be calculated under that section, and
 - (iii) advise the owner or occupier, as the case may be, that if he or she refuses the invitation or fails to reply to the invitation within 14 days from the date of the statement, the Director shall issue an offer of compensation in accordance with *subsection (2)*.
- (2) Where *subsection (1)(b)* applies, the Director shall, by notice in writing, make an offer of compensation calculated in accordance with *section 93*—
 - (a) where the owner or occupier, as the case may be, accepts the invitation to engage within the 14 day period referred to in *subparagraph (iii)* of that provision, having considered the outcome of that engagement, or
 - (b) where the owner or occupier, as the case may be, refuses or fails to reply to that invitation within that 14 day period, at any time after the expiration of that period.
- (3) An offer of compensation under *subsection (2)* shall contain the information referred to in *subparagraphs (i) to (v)* of *subsection (1)(a)* subject to the modification that the reference in those subparagraphs to a period of 28 days shall be construed as a reference to a period of 28 days from the date of the offer.
- (4) An offer of compensation under this section shall be binding and compensation shall be payable in accordance with *section 93* where the person to whom the offer was made—
 - (a) accepts or fails to respond to the offer within the 28 day period referred to in *subsection (1)(a)* or, if applicable, *subsection (3)*, or
 - (b) refuses the offer and does not make an application to the Circuit Court under *section 94* within the time allowed under that section.

Application for compensation by person other than owner or occupier of land

92. (1) A person, other than an owner or occupier, who has an interest in or right over principal burial land, ancillary burial land or ancillary land may, within the time specified under *subsection (2)*, make an application to the Director for compensation where the interest or right will be materially adversely affected by the relevant works or related activities.

- (2) Subject to *subsection (5)*, the time referred to in *subsection (1)* is any time after the commencement of the relevant works or related activities concerned but not later than 6 months after the date of cessation of the works or activities.
- (3) A person who makes an application for compensation under *subsection (1)* shall at the same time as making the application provide evidence of—
 - (a) his or her interest in or right over the land concerned, and
 - (b) the material adverse effect alleged.
- (4) Where a Director is satisfied that the person referred to in *subsection (1)* has the interest or right asserted and the works or activities concerned have materially adversely affected the interest or right, the Director may, by notice in writing, make an offer of compensation to that person stating—
 - (a) the basis on which the amount of compensation offered was calculated,
 - (b) the manner in which, should the offer be accepted within 28 days from the date of the notice, the compensation shall be payable,
 - (c) that if he or she refuses the offer within that 28 day period, he or she may, within the time allowed by *section 94*, make an application to the Circuit Court under that section for a variation of the amount of compensation, and
 - (d) that if he or she fails to reply to the offer within that 28 day period, the offer shall become binding.
- (5) The Circuit Court may, upon application being made to it in that behalf, where it considers that the interests of justice so require, extend the period within which a claim for compensation may be brought under *subsection (1)*.
- (6) An offer of compensation shall be binding and the compensation shall be payable in accordance with *section 93* where—
 - (a) a person accepts, or does not reply to, an offer of compensation made under *subsection (4)* within the 28 day period referred to in that subsection, or
 - (b) a person refuses an offer of compensation under that subsection and does not make an application to the Circuit Court under *section 94* within the time allowed by that section.

Calculation and payment of compensation

- 93.** (1) Subject to *subsection (2)*, compensation payable to a person under this Part shall be calculated by a suitably qualified surveyor or other suitably qualified person appointed by a Director—
- (a) by reference to the period during which it is estimated the relevant works or related activities, as the case may be, will be carried out,
 - (b) having regard to the extent of the relevant works or related activities, as the case may be, on the land concerned,
 - (c) where a trade or business is carried out on the land, taking into account—

- (i) any disturbance to that trade or business and the extent of such disturbance,
and
 - (ii) any loss or costs incurred as a result of the relevant works or related activities,
- (d) having regard to the fair market rent for the land and any buildings on the land that could be obtained if the relevant works or related activities were not being conducted on the land, 5
- (e) having regard, in relation to the owner and occupier of the land concerned, to the extent of the interference, as a result of the relevant works or related activities on the land, with the person's peaceful enjoyment of the land, and 10
- (f) deducting, from any amount calculated in accordance with the preceding paragraphs as being payable, the value of any works which will be carried out on the land by the Director which will enhance the value of the land concerned for the person to whom the compensation is payable.
- (2) Compensation shall only be payable to a public body in respect of any loss or costs incurred as a result of the works or access over the land concerned. 15
- (3) A Director shall pay the amount of compensation payable to the owner, occupier, or other person, as the case may be, before the expiration of 30 days from—
 - (a) when the compensation becomes payable in accordance with *section 91(4)* or *section 92(6)*, or 20
 - (b) the date of the making of an order by the court under *section 94*.
- (4) Where compensation was calculated, in accordance with *subsection (1)*, by reference to an estimated period the relevant works or related activities would take and the works or activities continue after the expiration of that period, the Director shall make such further payment of compensation, calculated pro rata by reference to the compensation paid, to the person concerned at the end of each month or part of a month during which such works or activities continue. 25
- (5) Compensation payable under *subsections (3) and (4)* shall be recoverable from a Director as a simple contract debt in any court of competent jurisdiction.

Application to Circuit Court by person who refuses an offer of compensation

30

94. (1) A person who refuses an offer of compensation made under *section 91* or *92* within the period of time allowed for such refusal may, at any time during such period or within 7 days following the expiration of that period, make an application to the Circuit Court for a variation of the amount of compensation.

(2) An application under *subsection (1)* shall—

35

(a) be made on notice to the Director, and

(b) state the basis on which a variation is being sought to the amount of compensation offered.

(3) The Circuit Court shall—

(a) in determining an application made under *subsection (1)* consider—

40

- (i) the amount of the compensation offered and the basis on which that amount was calculated, and
 - (ii) the reasons given by the applicant for seeking a variation of the amount of compensation offered,
- and 5
- (b) where it considers that the compensation offered is appropriate, by order confirm the amount of compensation or where it considers that the compensation offered is not appropriate, by order vary the amount of compensation.
- (4) Compensation payable pursuant to an order made under *subsection (3)* shall be paid in accordance with *section 93(3)*. 10

Remedial works on principal burial land, ancillary burial land and ancillary land

95. (1) A Director shall, not later than 6 months following the completion of the forensic excavation and recovery on principal burial land or ancillary burial land or related activities on ancillary land, as the case may be, carry out any remedial work necessary to make good any damage caused to the land concerned. 15
- (2) Where a Director carries out remedial works referred to in *subsection (1)*, he or she shall notify the planning authority (within the meaning of the Act of 2000) in whose administrative area the land in question is situate of the completion of those works as soon as practicable after completion.

Exercise of jurisdiction by District Court and Circuit Court

20

96. (1) The jurisdiction of the District Court under this Part shall be exercised by a judge of the District Court for the time being assigned to the District Court district in which the land in question is situate.
- (2) The jurisdiction of the Circuit Court under this Part shall be exercised by a judge of the Circuit Court for the time being assigned to the circuit in which the land in question is situate. 25

Amendment of section 4 of Act of 2000

97. Section 4(1) of the Act of 2000 is amended by the insertion of the following paragraph after paragraph (aa):
- “(ab) development consisting of the carrying out of relevant works or related activities over principal burial land, ancillary burial land or ancillary land within the meaning of the *Institutional Burials Act 2022*;”.
- 30

PART 6

DISSOLUTION OF OFFICE OF DIRECTOR, TRANSFER OF FUNCTIONS, ASSETS AND LIABILITIES AND RECORDS

Dissolution day

98. (1) The dissolution day shall be—
- (a) the day following the last day on which the Office of a Director continues in operation in accordance with an order made under *section 9*, or 5
 - (b) such earlier day as a relevant Minister may, by order, appoint.
- (2) A relevant Minister may, by order, appoint a day to be the dissolution day for the purposes of *subsection (1)(b)*.
- (3) A relevant Minister shall, for the purpose of *section 105(5)*, notify the Director concerned in writing of the dissolution day at least 6 months in advance of that day. 10

Transfer of functions to relevant Minister

99. (1) On the dissolution day, all functions that immediately before that day were vested in a Director shall stand transferred to the relevant Minister.
- (2) A relevant Minister to whom functions are transferred under *subsection (1)* may— 15
- (a) appoint one (or more than one) independent expert who has, in the opinion of the relevant Minister, the relevant qualification, skills or experience to perform one or more than one function transferred to the relevant Minister under that subsection, and
 - (b) request the independent expert concerned to perform the function or functions. 20

Liability for loss occurring before dissolution day

100. (1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance, before the dissolution day, of a function of a Director transferred by *section 99* shall, on and after that day, lie against the relevant Minister and not against the Director. 25
- (2) Any legal proceedings pending immediately before the dissolution day to which a Director is a party, that relate to a function of the Director transferred by *section 99*, shall, on and after that day, be continued with the substitution in the proceedings of the relevant Minister for the Director.
- (3) Where, before the dissolution day, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, on and after the dissolution day, in so far as they are enforceable against the Director, be enforceable against the relevant Minister and not the Director. 30 35
- (4) Any claim made or proper to be made by the Director in respect of any loss or injury arising from the act or default of any person before the dissolution day shall, on and after that day, where the claim relates to a function of the Director transferred by

section 99, be regarded as having been made by or proper to be made by the relevant Minister and may be pursued and sued for by that relevant Minister as if the loss or injury had been suffered by that relevant Minister.

Transfer of land and other property to relevant Minister

- 101.** (1) All lands that, immediately before the dissolution day, were vested in a Director and all rights, powers and privileges relating to or connected with such lands shall, on that day, without any conveyance or assignment, stand vested in the relevant Minister for all the estate or interest therein that, immediately before that day, was vested in the Director, but subject to all trusts and equities affecting the lands continuing to subsist and being capable of being performed. 5 10
- (2) All property (other than land), including choses-in-action, that immediately before the dissolution day, was vested in a Director shall, on that day, stand vested in the relevant Minister without any assignment.
- (3) Every chose-in-action vested in the relevant Minister by virtue of *subsection (2)* may, on and after the dissolution day, be sued on, recovered or enforced by the relevant Minister in his or her name, and it shall not be necessary for the relevant Minister or the Director to give notice to any person bound by the chose-in-action of the vesting effected by that subsection. 15

Transfer of rights and liabilities and continuation of leases, licences and permissions granted by Director

- 102.** (1) All rights and liabilities of a Director arising by virtue of any contract or commitment (expressed or implied) entered into by it before the dissolution day shall, on that day, stand transferred to the relevant Minister. 20
- (2) Every right and liability transferred by *subsection (1)* to the relevant Minister may, on and after the dissolution day, be sued on, recovered or enforced by or against him or her in his or her own name, and it shall not be necessary for the relevant Minister or the Director to give notice to any person of the transfer of any such right or liability. 25
- (3) Every lease, licence, wayleave or permission granted by a Director in relation to land or other property vested in the relevant Minister and in force immediately before the dissolution day, shall continue in force on and after that day as if granted by the relevant Minister. 30

Preservation of contracts, agreements and arrangements entered into by Director

- 103.** Every contract, agreement or arrangement, entered into by a Director or any trustee or agent acting on its behalf and any other person, that is in force immediately before the dissolution day shall, on and after that day, continue in force and be construed and have effect as if the name of the relevant Minister were substituted for that of the Director, trustee or agent, as the case may be, and shall be enforceable by or against the relevant Minister. 35

Provisions consequent upon transfer of functions, assets and liabilities

- 104.** (1) Anything commenced and not completed before the dissolution day by or under the authority of a Director may, in so far as it relates to a function of the Director transferred to the relevant Minister under *section 99*, be carried on or completed on or after the dissolution day by the relevant Minister. 5
- (2) Every instrument made under an enactment and every document (including any certificate) granted or made by a Director shall, if and in so far as it was operative immediately before the dissolution day, have effect on and after that day as if it had been granted or made by the relevant Minister.
- (3) References to a Director in any enactment or in the constitution of any company and relating to a function transferred to the relevant Minister under *section 99* shall, on and after the dissolution day, be construed as a reference to the relevant Minister. 10
- (4) Any money, stocks, shares or securities transferred by *section 101* that, immediately before the dissolution day, were standing in the name of a Director shall, on or after that day, on the request of the relevant Minister, be transferred into his or her name. 15

Final accounts and final report of Director

- 105.** (1) A relevant Minister shall, as soon as practicable after the dissolution day but not later than 6 months thereafter, in respect of the period specified under *subsection (4)*, cause final accounts of the Director to be prepared.
- (2) A relevant Minister shall cause the final accounts of a Director to be submitted to the Comptroller and Auditor General for audit as soon as practicable after they are prepared under *subsection (1)*. 20
- (3) As soon as practicable after an audit is conducted under *subsection (2)*, a copy of the accounts as audited and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the relevant Minister who shall cause copies of those audited accounts and that report to be laid before each House of the Oireachtas. 25
- (4) For the purposes of *subsection (1)*, the relevant Minister may specify a period that is longer or shorter than a financial year of the Director.
- (5) Subject to *subsection (6)*, a Director shall prepare and submit to the relevant Minister, at least 12 weeks prior to the dissolution day, a final report of the Director and the report shall include— 30
- (a) a statement of the activities undertaken by the Director since the last annual report adopted under *section 23*, and
- (b) such other information—
- (i) as the Director considers appropriate to include, and 35
- (ii) as the relevant Minister directs should be included which may include financial statements.
- (6) A final report prepared under *subsection (5)* shall not contain confidential information (within the meaning of *section 30(5)*).

- (7) A relevant Minister shall, within 6 weeks of receipt of a report under *subsection (5)*, cause copies of that report to be laid before each House of the Oireachtas.

Review of operation of Office

- 106.** (1) A relevant Minister shall, following the submission to him or her of a final report under *section 105*, undertake a review of the implementation of this Act in so far as it relates to the Office of the Director concerned. 5
- (2) A review under *subsection (1)* shall be commenced within 12 months of the completion of the final report referred to in that subsection.
- (3) In conducting a review under *subsection (1)*, the relevant Minister shall consult with such persons, including relevant persons, as he or she considers appropriate. 10
- (4) A relevant Minister shall cause a report of a review conducted under this section to be prepared and shall publish the report on the internet.

Deposit of records of Director with relevant Minister

- 107.** All records in a Director's possession shall, on the dissolution day or as soon as possible after that day, be deposited with the relevant Minister and, in so far as the records comprise personal data and special categories of personal data, those records— 15
- (a) shall not be Departmental records (within the meaning of section 2(2) of the National Archives Act 1986), and
- (b) may be processed, for so long as is necessary and proportionate, by or on behalf of the relevant Minister for the purposes of— 20
- (i) the performance of functions—
- (I) transferred to that relevant Minister under *section 99*, and
- (II) where regulations have been made under *section 79*, under those regulations,
- and 25
- (ii) the carrying out or completion, in accordance with *section 104(1)*, of anything commenced and not completed as referred to in that provision.

SCHEDULE

Section 9

PROVISIONS APPLICABLE TO DIRECTORS OF AUTHORISED INTERVENTIONS

1. A Director shall have the power to sue and may be sued and shall, with the consent of the relevant Minister concerned and the Minister for Public Expenditure and Reform, have the power to acquire, hold and dispose of land, an interest in land or any other property. 5
2. The seal of a Director shall be authenticated by—
 - (a) the signature of the Director, or
 - (b) the signatures of 2 members of staff of the Director duly authorised by that Director. 10
3. Judicial notice shall be taken of the seal of a Director and any document purporting to be an instrument made by, and to be sealed with the seal of, a Director shall, unless the contrary is proved, be received in evidence and be deemed to be such instrument without further proof. 15
4. Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed by a Director or by any person duly authorised by the Director in that behalf.

BILLE

(mar a ritheadh ag Dáil Éireann)

dá ngairtear

Acht do dhéanamh socrú maidir leis an Rialtas do cheapadh corparáid aonair ó am go ham, ar a dtabharfar Stiúrtóir um Idirghabháil Údaraithe, d'fhonn talamh a thochailt is talamh a bhaineann le foras atá ar úinéireacht, á oibriú, á rialú nó á mhaoiniú ag comhlacht poiblí agus, ag féachaint don ghá atá ann dínit a thabhairt do dhaoine atá adhlactha sa talamh sin, taisí daonna a adhlacadh sa talamh sin ar mhodh is léir a bheith míchuí a aisghabháil; do dhéanamh socrú maidir le hanaílís iar-aisghabhála a dhéanamh ar thaisí daonna aisghafa; do dhéanamh socrú, más cuí, maidir le Clár Céannachta a bhunú; do dhéanamh socrú maidir le gaolta áirithe le daoine, a cheaptar a bheith adhlactha sa talamh lena mbaineann, a bheith rannpháirteach sa Chlár; do dhéanamh socrú maidir le hEolaíocht Fhóiréinseach Éireann do bhunú Bunachar Sonraí DNA (Taisí Stairiúla) agus Bunachar Sonraí gaolmhar ina mbeidh faisnéis phearsanta chun críocha an Chláir sin; do dhéanamh socrú maidir le socruithe deiridh do na taisí daonna ama n-aisghabháil sa talamh den sórt sin; chun na gcríoch sin, agus chun críoch gaolmhar, dá chumasú do Stiúrtóir, in imthosca áirithe, rochtain a fháil, agus oibreacha a dhéanamh, ar phríomhthalamh adhlactha agus ar thalamh adhlactha coimhdeach agus, más gá, ar thalamh atá coimhdeach le príomhthalamh adhlactha agus le talamh adhlactha coimhdeach agus do dhéanamh socrú maidir le cúiteamh a íoc, in imthosca áirithe, le daoine i leith cur isteach ar leas i dtalamh den sórt sin, nó ar cheart thar thalamh den sórt sin; do dhéanamh socrú maidir le hoibreacha leigheasta a dhéanamh ar thalamh trátha a bheidh obair ar an talamh lena mbaineann críochnaithe; do dhéanamh socrú maidir le Bord Comhairleach a bhunú chun comhairle agus treoir a sholáthar do Stiúrtóir le linn dó nó di a fheidhmeanna nó a feidhmeanna a chomhlíonadh; do dhéanamh socrú go bhféadfaidh Aire iomchuí rialacháin a dhéanamh, ag féachaint d'fhorbairtí ionchasacha san eolaíocht fhóiréinseach, chun tástáil fhóiréinseach ar shamplaí a chumasú, in imthosca áirithe, d'fhonn taisí daonna a chéannú tar éis Clár Céannachta a bheith críochnaithe; do dhéanamh socrú, ar Oifig Stiúrtóra a dhíseaoileadh, maidir le haon fheidhmeanna, cearta, dliteanais agus taifid a bheidh fágtha a aistriú chuig Aire iomchuí; do leasú an Achte Comhdhlúite Cánacha, 1997 agus an Achte um Pleanáil agus Forbairt, 2000; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

Ritheadh ag Dáil Éireann,

15 Meitheamh, 2022

BILL

(as passed by Dáil Éireann)

entitled

An Act to provide for the appointment from time to time by the Government of a corporation sole, to be called a Director of Authorised Intervention, for the purposes of excavating land associated with an institution owned, operated, controlled or funded by a public body and, having regard to the need to accord dignity to persons buried in that land, recovering human remains buried in that land in a manifestly inappropriate manner; to provide for post-recovery analysis of recovered human remains; to provide, where appropriate, for the establishment of an Identification Programme; to provide for the participation of certain relatives of persons thought to be buried in the land concerned in the Programme; to provide for the establishment, by Forensic Science Ireland, of a DNA (Historic Remains) Database and a related Database for personal information for the purposes of that Programme; to provide for final arrangements for the human remains recovered from such land; for those and related purposes to enable a Director in certain circumstances to access and carry out works over principal burial land and ancillary burial land and, where necessary, on land ancillary to principal burial land and ancillary burial land and to provide for the payment of compensation in certain circumstances to persons for interference with an interest in or right over such land; to provide for the carrying out of remedial works on land when work on the land concerned is completed; to provide for the establishment of an Advisory Board to provide advice and guidance to a Director in the performance of his or her functions; to provide that a relevant Minister may make regulations, having regard to potential developments in forensic science, to enable forensic testing of samples in certain circumstances for the purposes of identification of human remains after an Identification Programme is completed; to provide, on the dissolution of an Office of Director, for the transfer of any remaining functions, rights, liabilities and records to a relevant Minister; to amend the Taxes Consolidation Act 1997 and the Planning and Development Act 2000; and to provide for related matters.

Passed by Dáil Éireann,

15th June, 2022

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó

FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN, CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8, D08 XAO6.
Teil: 046 942 3100
r-phost: publications@opw.ie
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
MOUNTSHANNON ROAD, KILMAINHAM,
DUBLIN, D08 XAO6.
Tel: 046 942 3100
Email: publications@opw.ie
or through any bookseller.

€8.89

