

Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020.

No. 38 of 2020

Adele McKenna, Maeve Ní Liatháin, Rebecca Halpin

13th October 2020



Contents

Contents	1
Summary	2
Summary of principal provisions of the Bill	2
Background and Context.....	4
Commission of Investigation (Mother and Baby Homes and certain related matters)	4
Principal provisions of the Bill	7
Definitions of words used in the Bill.....	7
Deposit of certain records of Commission with the Child and Family Agency	8
Restriction on processing of certain records.....	9
Application of section 45 of the <i>Commissions of Investigation Act 2004</i>	9
Deposit of evidence and documents in accordance with section 43 of the <i>Commissions of Investigation Act 2004</i>	10
Amendment of <i>Judicial Council Act 2019</i>	11
Expenses	11
Short title.....	12

This L&RS Bill Digest may be cited as:

Oireachtas Library & Research Service, 2020, *L&RS Bill Digest: Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Bill 2020*.

Legal Disclaimer

No liability is accepted to any person arising out of any reliance on the contents of this paper. Nothing herein constitutes professional advice of any kind. This document contains a general summary of developments and is not complete or definitive. It has been prepared for distribution to Members to aid them in their parliamentary duties. Some papers, such as Bill Digests are prepared at very short notice. They are produced in the time available between the publication of a Bill and its scheduling for second stage debate. Authors are available to discuss the contents of these papers with Members and their staff but not with members of the general public.

Summary

The [Commission of Investigation \(Mother and Baby Homes and certain related Matters\) Records, and another Matter, Bill 2020](#) provides for the transfer of records and databases of the Commission of Investigation (Mother and Baby Homes and certain related matters) to the Child and Family Agency, following the dissolution of the Commission.

The databases and the evidence and reports will not be redacted but will be subject to the procedures set out in the [Commissions of Investigation Act 2004](#), and in this Bill in relation to access and data protection. The 2004 Act sets out the procedures to be followed during a commission of investigation including those in relation to the giving of evidence to a Commission, the preservation of documents, data protection, the application of the [Freedom of Information Acts](#) and the availability of records for inspection by public under [National Archives Act 1986](#).

The Bill also includes an unrelated provision dealing with the preparation and adoption of guidelines on personal injuries by the Judicial Council.

Summary of principal provisions of the Bill

The following table provides a summary of the main provisions of the Bill:

Table 1: Summary of principal provisions of the Bill

Section	Heading	Effect
1	Definitions This section sets out the definitions used in the Bill	<p>“Act of 2004” means the <i>Commissions of Investigation Act 2004</i>;</p> <p>“Agency” means the Child and Family Agency;</p> <p>“Commission” means the commission of investigation established by the Order of 2015;</p> <p>“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;</p> <p>“Order of 2015” means the Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015 (S.I. No. 57 of 2015);</p> <p>“Minister” means the Minister for Children and Youth Affairs;</p> <p>“related record” means—</p>

		<p>(a) any evidence within the meaning of the Act of 2004 received by the Commission,</p> <p>(b) any document created by or for the Commission within the meaning of section 43 of that Act, or</p> <p>(c) a copy of any such evidence or document, from which information was obtained for the purpose of creating the database.</p>
2	Deposit of certain records of Commission with Child and Family Agency	The Commission must deposit the database and all related records with the Child and Family Agency (the Agency) as soon as possible after enactment. Previously the Minister rather than Agency was due to be the recipient of these specific records.
3	Restriction on processing of certain records	<p>This places limits on the processing of the database and records received by the Agency from the Commission. The Agency can not process records or information provided to the Commission by someone other than the Agency, except where authorised or required by or under the Data Protection Regulation, the <i>Data Protection Acts 1988 to 2018</i> or any other enactment (other than this Act) or for legitimate purposes related to maintenance.</p> <p>Nothing in the Bill or the Act of 2004 will prevent the processing of information which originated from any record given by the Agency to the Commission.</p>
4	Application of section 45 of the <i>Commissions of Investigation Act 2004</i>	In the event of a tribunal of inquiry into the mother and baby homes being established, then the Commissions' evidence and documents are to be available to the tribunal.
5	Deposit of evidence and documents in accordance with section 43 of the <i>Commissions of Investigation Act 2004</i>	Following the dissolution of Commission, the obligation to deposit records with the Minister is an obligation to deposit such evidence and documents without redaction therefrom.
6	Amendment of <i>Judicial Council Act 2019</i>	This section is not related to the rest of the Bill. Section 6 amends the <i>Judicial Council Act 2019</i> , to oblige the Personal Injuries Guidelines Committee of the Judicial Council to draft guidelines by the 9 th December 2020, and for the Board of the Council to adopt the personal injuries guidelines by the 31 st July 2021, at the latest.
7	Expenses	Section 7 is a standard provision enabling expenses incurred in the administration of the Act (other than section 6) to be paid by the Minister out of moneys provided by the Oireachtas.

8.	Short title	This Act may be cited as the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Act 2020.
----	-------------	---

Source text: L&RS

Background and Context

This section offers a short synopsis of the work carried out by the Commission of Investigation (Mother and Baby Homes and certain related matters).

Commission of Investigation (Mother and Baby Homes and certain related matters)

Under the [Commissions of Investigation Act 2004](#) (the 2004 Act) the Government can establish a commission to investigate¹ any matter considered by the Government to be of significant public concern, and to make any reports required under the *Commissions of Investigation Act 2004* in relation to its investigation.

Following controversy relating to burial practices at Bon Secours Mother and Baby Home in Tuam, Co. Galway, a Commission of Investigation (Mother and Baby Homes and certain related matters) was established in February 2015 under the [Commission of Investigation Act 2004](#) and [S.I. 57/2015](#).²³ The Commission is made up of three commissioners; Professor Mary E. Daly, Dr William Duncan and Judge Yvonne Murphy, who is also chair of the Commission.

The Commission's investigation spans the timeframe 1922-1998, concerning 14 Mother and Baby Homes and a representative sample of four County Homes. The Commission has examined records for over 70,000 mothers and a greater number of children. Exact figures have yet to be determined.⁴

¹ Other commissions have investigated Garda behaviour: Commission of Investigation (Certain Matters relative to An Garda Síochána and other persons) Order 2014 ([S.I. No. 192 of 2014](#)), Commission of Investigation (Certain Matters relative to the Cavan/Monaghan Division of the Garda Síochána) Order 2015 ([S.I. No. 38 of 2015](#)), the banking sector and banks :Commission of Investigation (Irish Bank Resolution Corporation) Order 2015 ([S.I. No. 253 of 2015](#)), Commission of Investigation (Banking Sector) Order 2010 ([S.I. No. 454 of 2010](#)), deaths in custody and the abuse of vulnerable people.

² <https://www.irishtimes.com/news/ireland/irish-news/mother-and-baby-home-inquiry-hundreds-of-burial-plots-unknown-1.3863904>

³ Statutory Instrument No. 57 of 2015
<http://www.irishstatutebook.ie/eli/2015/si/57/made/en/print?q=S.I.+57/2015>

⁴ PQ 30702/19 Dáil Eireann <https://www.oireachtas.ie/en/debates/question/2019-07-11/838/?highlight%5B0%5D=mother&highlight%5B1%5D=baby&highlight%5B2%5D=investigation&highlight%5B3%5D=commission&highlight%5B4%5D=investigation&highlight%5B5%5D=mother&highlight%5B6%5D=baby>

List of Institutions under Investigation by the Commission

(1) Mother and Baby Homes⁵

- 1) Ard Mhuire, Dunboyne, Co Meath;
- 2) Belmont (Flatlets), Belmont Ave, Dublin 4;
- 3) Bessboro House, Blackrock, Cork;
- 4) Bethany Home, originally Blackhall Place, Dublin 7 and from 1934 Orwell Road, Rathgar, Dublin 6;
- 5) Bon Secours Mother and Baby Home, Tuam, Co Galway;
- 6) Denny House, Eglinton Rd, Dublin 4, originally Magdalen Home, 8 Lower Leeson St, Dublin 2;
- 7) Kilrush, Cooraclare Rd, Co Clare;
- 8) Manor House, Castlepollard, Co Westmeath;
- 9) Ms. Carr's (Flatlets), 16 Northbrook Rd, Dublin 6;
- 10) Regina Coeli Hostel, North Brunswick Street, Dublin 7;
- 11) Sean Ross Abbey, Roscrea, Co Tipperary;
- 12) St. Gerard's, originally 39, Mountjoy Square, Dublin 1;
- 13) St. Patrick's, Navan Road, Dublin 7, originally Pelletstown; and subsequent transfer to Eglinton House, Eglinton Rd, Dublin 4;
- 14) The Castle, Newtowncunningham, Co Donegal.

(2) County Homes

- 1) St Kevin's Institution (Dublin Union)
- 2) Stranorlar County Home, Co Donegal (St Joseph's)
- 3) Cork City County Home (St Finbarr's)
- 4) Thomastown County Home, Co Kilkenny (St Columba's)

⁵ According to the Mother and Baby Home Commission of Investigation website (www.mbhcoi.ie) historical and official sources refer to certain institutions by a variety of names, and in some cases Homes moved premises during their period of operation.

The Commission's Terms of Reference

The Commission's Terms of Reference include:

- Identifying the entry and exit pathways for mothers and children;
- Examining living conditions, mortality rates, post-mortem practices, burial arrangements and participation in vaccine trials;
- Practices in relation to placements for fostering and adoption, both in Ireland and abroad.

The Commission was tasked with delivering an academic social history report, providing a factual account of what happened to vulnerable women and children who entered these institutions during the period 1922-1998.

The Commission was also tasked with establishing a Confidential Committee for former residents and employees of the Homes who could have their statements heard in as informal a setting as possible. During the course of its work the Commission has interviewed or gathered sworn affidavits from over 550 people who were either resident in the homes or employed by them. This includes registry of birth details, adoption details and in some cases personal or health information.

The Commission has also received over 100,000 pages of documentation from various Government departments, local authorities or institutions. **It is the preservation and transfer of these records from the Commission of Investigation (Mother and Baby Homes and certain related matters) to the Minister for Children or the Child and Family Agency (Túsla) upon its dissolution, which the Bill seeks to address.**

The Minister for Children, Equality, Disability, Integration and Youth, [Roderic O'Gorman](#) has stated that:

“The Commission is shortly due to complete its comprehensive five-year investigation into the treatment of vulnerable woman and children who passed through these institutions over more than three quarters of a century.

“When the Commission deposits its records, along with its final report into these matters, with me by the 30 October, this new legislation will ensure that the archive of records and databases compiled by the Commission will be appropriately protected. There is an absolute urgency to safeguarding the Commission's database in the immediate term, and I welcome the support of my Government colleagues in this matter.”

Conclusion of the Commissions Work

The Commission was initially due to deliver its final reports to the Minister for Children on 17th February 2019. The fifth interim report on burial practices was published by the Minister for Children on the 17th April 2019. However, due to several circumstances, including the sheer

volume of information gathered and collated, the Commission requested an extension of one year (17th February 2020) for delivery of its sixth interim report. This report was submitted to the then Minister for Children, Katherine Zappone, on 14th February 2020, along with a request for an extension to 26th June 2020 for receipt of the final report, which was granted. The Commission's seventh interim report was published in June 2020, with a further request for an extension to 30th October 2020. On this occasion the impact of COVID-19 restrictions were cited as the cause for delay. The final report is due at the end of October, at which time the Commission will be dissolved.

Implications of this Bill

A [briefing document for the incoming Minister](#) stated that in terms of financial implications, the Commission had confirmed that it expects the total costs to remain within the initial costs estimate of €21.5m allotted.⁶ However, it is anticipated that additional costs may arise in responding to the findings in the Commission's final report.

The Ministerial briefing goes on to suggest that in addition to addressing any recommendations arising from the report, complex issues arising from the transfer and future use of the records gathered by the Commission are anticipated. This includes, but is not limited to, potential amendments to the Adoption (Information and Tracing) Bill 2016, in order to accommodate records gathered by the Commission.

Principal provisions of the Bill

The following sections look at the principal provisions of the Bill, as summarised in Table 1 above, in more detail.

Definitions of words used in the Bill

Section 1 of the Bill sets out definitions of words used in the Bill.

“Act of 2004” means the Commissions of Investigation Act 2004;

⁶ Ministerial brief (June 2020) <https://www.gov.ie/en/publication/33853-ministerial-brief-prepared-by-departmental-officials-june-2020/>

“Agency” means the Child and Family Agency;

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

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

“Minister” means the Minister for Children and Youth Affairs;⁷

“Database” means the databases of former residents of the institutions developed by the Commission being examined by the Commission (as specified in the Schedule to its terms of reference).

“Related record” means—

- (a) any evidence within the meaning of the Act of 2004 received by the Commission, (evidence as defined in the Act includes any expression, orally, in writing or otherwise, of an opinion, belief or intention),
- (b) any document created by or for the Commission within the meaning of section 43 of that Act, or
- (c) a copy of any such evidence or document, from which information was obtained for the purpose of creating the database.

Deposit of certain records of Commission with the Child and Family Agency

Section 2 of the Bill provides that the Commission must deposit the database and all related records with the Child and Family Agency (the Agency) as soon as possible after enactment of the Bill. The Bill substitutes the Agency for the Minister as the recipient of these specific records. Subsection (2) states that the obligation under subsection (1) requires the database to be deposited without redaction.

⁷ Now the Minister for Children, Equality, Disability, Integration and Youth

Restriction on processing of certain records

Section 3 of the Bill provides that the Agency may not process records or information provided to the Commission by someone other than the Agency, except where authorised or required by or under the [Data Protection Regulation](#),⁸ the *Data Protection Acts 1988 to 2018*⁹ or any other enactment (other than this Act) or for legitimate purposes. A “Legitimate purpose” means for the purpose of maintaining any part of the database, any related record or any information to which section 3(1) applies. Any reference to “processing” is to be construed in accordance with the Data Protection Regulation.

In addition, the section expressly states that nothing in the Bill or the [Commissions of Investigation Act 2004](#), will prevent the processing of information that originated from any record given by the Agency to the Commission.

The Minister for Children, Equality, Disability, Integration and Youth, Roderic O’Gorman TD, has noted that: “This Bill will not, of itself, create any new rights or entitlements to access birth and early life information from within the evidence and records of the Commission of Investigation”,¹⁰ and that this will be addressed by future legislation.

Application of section 45 of the *Commissions of Investigation Act 2004*

[Section 45](#) of the *Commissions of Investigation Act 2004* deals with the possibility that the evidence received by, and documents created by, the Commission could be used in a [tribunal of inquiry](#) at some time in the future.

S.45 provides that:

“If a tribunal is established to inquire into a matter all or part of which was within a commission's terms of reference, all evidence received by and all documents created by or for the commission relating to the matter or that part of the matter shall, at the request of any member of the tribunal, be made available to it by—

- (a) **the specified Minister**, if the commission has been dissolved, or
- (b) the commission, if not already dissolved”

⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.

⁹ [Data Protection Act 1988](#); [Data Protection \(Amendment\) Act 2003](#); [Data Protection Act 2018](#).

¹⁰ [Minister O’Gorman to publish Commission of Investigation \(Mother and Baby Homes and Certain Related Matters\) Records Bill 2020](#), *MerrionStreet.ie*, 6 October 2020.

Section 4 of the Bill provides that the reference to a specified Minister in the 2004 Act now applies to the Child and Family Agency (the Agency) instead.

The remainder of section 45 is unchanged and continues to apply. It provides that:

“(2) Nothing in this section prevents a commission whose terms of reference are under section 44 (2) from retaining copies of any evidence or documents made available by it to a tribunal of inquiry.

(3) Evidence that is received by a commission in accordance with this Act or with its rules and procedures and that is made available to a tribunal under subsection (1) is deemed to have been received as evidence by the tribunal in accordance with the [Tribunals of Inquiries \(Evidence\) Acts 1921 to 2004](#)”

The [explanatory memorandum](#) to the Bill states that:

“This section ensures consistency with the Act of 2004 insofar as the evidence and records to be deposited with the Agency can be made available to a Tribunal of Inquiry in the event of the future establishment of such a body.”

Deposit of evidence and documents in accordance with section 43 of the Commissions of Investigation Act 2004

[Section 43](#) of the *Commissions of Investigation Act 2004* deals with the dissolution of commissions of inquiry, and the deposit of evidence and documents. It provides that the chairperson of the Commission¹¹ must deposit all evidence received by and all documents created by or for the Commission with the specified Minister.

Documents created by or for the Commission¹² includes:

- (a) **records of interviews** conducted by persons appointed under [section 8](#) of the 2004 Act by the chairperson¹³ of the commission:
- (b) **written reports** to the commission prepared by those persons, and

¹¹ Or if the Commission consists of only one member then the sole member of the Commission

¹² This definition applies to s.43(2) and s. 45 of the 2004 Act.

¹³ Or, if the commission consists of only one member, by the sole member.

(c) **statements** provided to the commission at the request of those persons in the performance of the function described in s.8(7)(e)¹⁴ of the 2004 Act.

Section 5 of the Bill provides that for the avoidance of doubt, the obligation under s.43(2) of the *Commissions of Investigation Act 2004* to deposit evidence received by, and documents created by or for the Commission with the specified Minister is an obligation to deposit such evidence and documents **without redaction**.¹⁵ The obligation in s.43 not to redact does not apply to the database and related records.

Amendment of *Judicial Council Act 2019*

This amendment is not related to the rest of the Bill or commissions of inquiry. It amends a function of the [Judicial Council](#). One of the committees of the Judicial Council is a Personal Injuries Guidelines Committee, tasked with drafting personal injuries guidelines. Under s.18.4 of the [Judicial Council Act 2019](#) this Committee must submit the first draft of personal injuries guidelines to the Board of the Judicial Council not later than 6 months after the date on which the Committee stands established.

Under [section 7 of](#) the *Judicial Council Act 2019* the draft guidelines were to be adopted by the Board of the Judicial Council as soon as practicable but no later than 12 months after their submission.

Section 6 of the Bill amends the timelines in sections 18 and 7 of the *Judicial Council Act 2019*. The guidelines must be drafted by the Injuries Guidelines Committee by the 9th December 2020, and adopted by the Board of the Judicial Council by the 31st July 2021, at the latest.

Expenses

Section 7 of the Bill provides that expenses incurred by the Minister for Children and Youth Affairs in administering the parts of the Bill that related to the Commission of Investigation for Mother and

¹⁴ Requesting persons to provide the commission with written statements concerning any matter relevant for the purposes of the investigation and examining statements provided in response to the requests,

¹⁵ There is no reference to the redaction of evidence or reports in the *Commissions of Investigation Act 2004* or in S.I. No. 57/2015 - *Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015*

Baby Homes will be paid by the Oireachtas, as sanctioned by the Minister for Public Expenditure and Reform.

Short title

This is a standard provision in legislation. Section 8 of the Bill provides that the Bill when enacted, can be cited as the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Act 2020.

Contact:

Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000 or 076 1001700

Twitter: @OireachtasNews

Library & Research Service

Tel: +353 (0)1 6184701

Email: library.and.research@oireachtas.ie

