

Mother and Baby Institutions Payment Scheme Bill 2022

Bill No. 97 of 2022

Dr Deirdre Halloran, Senior Parliamentary Researcher (Law)

Michelle Lynch, Senior Parliamentary Researcher (Law)

21 October 2022

Abstract

The principal purpose of the Mother and Baby Institutions Payment Scheme Bill 2022 is to establish a Scheme to be known as the Mother and Baby Institutions Payment Scheme. This Scheme will provide financial payments and a form of enhanced medical card to defined groups in acknowledgement of suffering experienced while resident in Mother and Baby and County Home Institutions.



Contents

Summary	4
Introduction	6
Table of provisions	7
Background.....	25
Responses to the Bill.....	27
Policy and legislative context	30
The State's Obligations under Domestic and International Law	30
The Right to an Effective Remedy	31
Guidance on Reparations	32
The Right to Access to Justice	33
Waiver of Legal Rights	33
Previous Irish Institutional Redress Schemes.....	33
High Court Declaration	34
Previous legislation related to the current Bill	37
Regulatory Impact Analysis (RIA).....	38
Pre-legislative scrutiny of the General Scheme of the Bill.....	40
L&RS traffic light analysis of PLS recommendations versus published Bill	40
Principal provisions of the Bill	58
Interpretation.....	58
Eligibility Criteria	60
Application to the Scheme.....	61
Further Application	62
General examination of application	62
Calculation of period of residence in relevant institution	63
Notification of Applicant regarding Determination	63
Review of Determination	64

This L&RS Bill Digest may be cited as:

Oireachtas Library & Research Service, 2022, *L&RS Bill Digest: Mother and Baby Institutions Payment Scheme Bill 2022. Bill No. 97 of 2022.*

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 a Bill Digest, 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.

© Houses of the Oireachtas 2022

Summary

- The purpose of the Bill is to establish the Mother and Baby Institutions Payment Scheme. This Scheme will provide financial payments and a form of enhanced medical card to defined groups in acknowledgement of the suffering experienced while resident in Mother and Baby and County Home Institutions.
- The [General Scheme](#) of the Bill was published on 16 November 2022. It was primarily based on recommendations from the Interdepartmental Group (IDG) on the development of the Mother and Baby Institutions Payment Scheme.
- On 12 July 2022, the Joint Committee on Children, Equality, Disability, Integration & Youth published its [report on the Pre-legislative Scrutiny of the Mother and Baby Institutions Payment Scheme Bill 2022](#) in which it makes a series of recommendations, including:
 - Removing the six-month residency requirement for children.
 - Expanding eligibility to anyone resident in one of the institutions, regardless of time spent therein.
 - Requiring the relevant religious congregations and organisations to contribute significant finances to fund the scheme.
 - Including eligibility for those boarded out to the scheme and
 - Removing the waiver from the scheme.
- The [Mother and Baby Homes Institutions Payment Scheme Bill 2022](#) (the "Bill") was published on 17 October 2022. The Minister stated that the scheme went beyond the proposals of the Commission and the IDG by including all women in the scheme who were residents in an institute at any point and all children who were residents in an institution for more than six months.¹ However, the recommendations of the Joint Committee to remove the six-month requirement for children; to include children who were boarded out, and to remove the waiver, were not followed.
- The Bill comprises of 48 sections and is divided into 4 Parts. It also includes three Schedules.
 - Part 1 provides for standard provisions, including interpretation and commencement.
 - Part 2 provides for the establishment, duration, and staff of the Scheme.
 - Part 3 provides for the application and conditions of the Scheme.
 - Part 4 provides for miscellaneous consequential provisions.

¹ [Dáil Eireann debate](#), Wednesday, 19 October 2022, Mother and Baby Institutions redress Scheme: Motion

- Schedule 1 sets out the institutions that are eligible under the Mother and Baby Homes Institutions Payment Scheme.
- Schedule 2 sets out the general payments dependent on period of residency.
- Schedule 3 sets out general and work-related payments dependent on period of residency.

Introduction

The [Mother and Baby Institutions Payment Scheme Bill](#) was published on 17 October 2022, and the [Explanatory Memorandum](#) states that the purpose of the Bill is:

“to establish a payment scheme, in recognition of the circumstances experienced by certain people while they were resident in Mother and Baby and County Home Institutions in the State. The Scheme will make payments to eligible applicants and will make available without charge, certain health services to eligible applicants, via the mechanism of an enhanced medical card.

The Bill also provides for the establishment of an Office to be known as the ‘Office of the Chief Deciding Officer of the Mother and Baby Institutions Payment Scheme’ within the Department of Children, Equality, Disability, Integration and Youth, to administer the Payment Scheme and sets out the functions that will be performed by the Chief Deciding Officer who will be independent of the Minister in respect of the performance of these functions.”

This Bill Digest contains:

- Table of Provisions
- Background to the Bill
- Policy and Legislative Context for the introduction of the Bill
- Review of the Regulatory Impact Analysis of the Bill
- Summary of the Pre-legislative scrutiny of the Bill with the L&RS traffic light analysis of the PLS recommendations versus the published bill and
- Summary of the Principal Provisions of the Bill.

Table of provisions

A summary of the Bill's provisions is included in Table 1 below. This does not provide a complete treatment of the Bill but is intended to provide Members with an overview of what each section encompasses.

Table 1 Table of provisions of the Mother and Baby Institutions Payment Scheme Bill 2022

Section	Title	Effect
Part 1 – Preliminary and General		
1	Short title and commencement	<p>Section 1 provides that the Act can be cited (once enacted) as the Mother and Baby Institutions Payment Scheme Act 2022.</p> <p>It also provides that all sections except sections 35 and 36 will come into operation by order of the Minister for Children, Equality, Disability, Integration and Youth either generally or by reference to particular provisions or purposes on such day(s) appointed by them.</p> <p>Sections 35 and 36 will come into operation by order of the Minister for Finance either generally or by reference to particular provisions or purposes on such day(s) appointed by them.</p>
2	Interpretation	<p>Section 2 provides for definitions and terms used in the Bill. Of particular note are the terms "relevant institution" and "relevant person", which are defined as follows:</p> <p>"relevant institution", subject to <i>section 43</i>, means an institution specified in <i>Schedule 1</i>;</p> <p>"relevant person" means a person who is either or both of the following:</p> <p>(a) a person who, while the person was a child, was resident in a relevant institution other than in circumstances referred to in <i>paragraph (b)</i>;</p> <p>(b) a person who, while the person was a child or while the person was an adult, or both, was resident in a relevant institution for reasons relating to the person's pregnancy, or the birth or care of the child born as a result of the pregnancy".</p> <p>It also provides that a person is considered to have been resident in a relevant institution where they were</p> <ul style="list-style-type: none"> • Born in or admitted as a resident to, and

Section	Title	Effect
		<ul style="list-style-type: none"> Spent not less than one night in the institution. <p>Further definitions and terms are set out in the Principal Provisions section of this Digest.</p>
3	Expenses	Section 3 provides that expenses incurred by the Minister for Children, Equality, Disability, Integration and Youth in administering payments under the Scheme, or the Minister for Health in providing for health services to be made available free of charge to eligible applicants, will be paid out of monies provided by the Oireachtas.
4	Laying of regulations	Section 4 provides that Regulations can be made containing incidental, supplementary, and consequential provisions that appear to be necessary or expedient. Each Regulation must be laid before each House of the Oireachtas and can be annulled by a resolution passed within 21 days of it being laid.
Part 2 – Mother and Baby Institutions Payment Scheme		
5	Establishment of Scheme	<p>Section 5 provides that the Mother and Baby Institutions Payment Scheme will be established on a day chosen by Ministerial order and in accordance with the Act and any regulations made under it.</p> <p>It sets out the purpose of establishing the Scheme as</p> <p>"the making of general payments, work-related payments and health support payments, and the making available without charge of certain health services, in accordance with this Act, to relevant persons."</p>
6	Duration of Scheme	Section 6 provides that the Scheme must close no later than five years after its establishment date. The Scheme may close at an earlier date by Ministerial order but the closing date must not be earlier than one year after the order is made. The Bill will continue to apply to applications received before the closing date of the Scheme.
7	Office of Chief Deciding Officer	Section 7 provides for the establishment of the Office of the Chief Deciding Officer of the Mother and Baby Institutions Payment Scheme within the Department of Children, Equality, Disability, Integration and Youth once this section comes into operation.
8	Chief Deciding Officer	Section 8 provides for the conditions of the appointment of a Chief Deciding Officer. The Chief Deciding Officer will be appointed from among the Minister's officers to

Section	Title	Effect
		<p>carry out the functions conferred by the Act and will hold office under terms and conditions determined by the Minister, with the approval of the Minister for Public Expenditure and Reform upon appointment. This section also sets out the criteria for ineligibility. The Minister has the power to remove the Chief Deciding Officer from office if they are of the opinion that they have become incapable through ill-health of performing their functions have committed stated misbehaviour.</p> <p>The Minister can also appoint as many officers as they determine to assist the Chief Deciding Officer in the performance of their functions.</p>
9	Functions of Chief Deciding Officer	<p>Section 9 provides for the functions of the Chief Deciding Officer as follows:</p> <ul style="list-style-type: none"> • examining applications; • determining the entitlement of applicants to payments, and their eligibility for the provision of health services without charge to them; • carrying out reviews of determinations; • assigning appeals to appeals officers; • notifying the Health Service Executive of an applicant's eligibility for the provision of health services without charge; • making all reasonable efforts, including a public information campaign, to promote awareness among the public and, in particular, relevant persons, of the Scheme; • performing any additional functions conferred on them by regulations. <p>It also provides that additional functions in relation to the administration of the Scheme may be conferred on the Chief Deciding Officer by the Minister through regulations.</p> <p>The Chief Deciding Officer must be independent in the performance of their functions under the Bill and his or her functions can be performed by staff members of the Office of the Chief Deciding Officer subject to the general superintendence and control of the Chief Deciding Officer.</p>
10	Deputy Chief Deciding Officer	<p>Section 10 provides that the Chief Deciding Officer will designate a member of staff of the Office of the Chief Deciding Office to be the Deputy Chief Deciding Officer.</p>

Section	Title	Effect
		<p>It provides that when the Chief Deciding Officer is absent or is, for any other reason, unable to perform their functions, or when the position of Chief Deciding Officer is vacant, then the Deputy Chief Deciding Officer must perform the functions of the Chief Deciding Officer.</p> <p>The Deputy Chief Deciding Office is also subject to the same conditions of employment as the Chief Deciding Officer as provided for in sections 8(2) – 8(4).</p>
11	Agreements relating to performance of certain functions of Chief Deciding Officer	<p>Section 11 provides that the Minister can enter into an agreement with a third party to carry out certain specified functions of the Chief Deciding Officer, under the general superintendence and control of the Chief Deciding Officer.</p> <p>This section will be set out in more detail in the Principal Provisions section.</p>
12	Annual report	<p>Section 12 provides that by June 30 each year, the Chief Deciding Officer must prepare and furnish to the Minister a written report ('annual report') on the performance of the functions of the Chief Deciding Officer during the preceding year.</p> <p>Where an initial annual report relates to less than six months, that report will instead relate to the functions of the Chief Deciding Officer during that six-month period and also the year immediately following that period. The report must be submitted to the Minister no later than six months after the end of that cumulative period.</p> <p>Copies of an annual report must be laid before each House of the Oireachtas.</p> <p>The Minister has the power to specify the information to be included and the form it should take in the annual report.</p> <p>The annual report must not identify by name any applicant or other person referred to in an application.</p>
Part 3 - Application for Payment or Provision of Services under Scheme		
13	Eligibility of relevant person for certain payments and provision of services	<p>Section 13 provides for the eligibility criteria for the payments and services available under the Scheme. These include the following payments and services:</p> <ul style="list-style-type: none"> • general payment, • work-related payment, • provision of health services without charge, • health support payment.

Section	Title	Effect
		This section will be set out in further detail in the Principal Provisions section.
14	Application for payment or provision of services under Scheme	<p>Section 14 provides that anyone who considers that they are a 'relevant person' (set down in section 2) can make an application to the Chief Deciding Officer for any or all of the payments, and the provision of the health services without charge.</p> <p>Applications will not be considered after the Scheme has closed.</p> <p>Only one application can be made in respect of an individual relevant person unless an additional institution is added to Schedule 1.</p> <p>An application must be in a prescribed form and must include certain information including contact details and personal data. Further details on this section are set out in the Principal Provisions section.</p>
15	Further application where relevant institution added to Schedule 1	<p>Section 15 provides that a further application may be made where a relevant institution has been added to Schedule 1. This applies in circumstances where a relevant person has made an application, and on or after the date of application, an institution is added to Schedule 1. The relevant person must be considered to have been a resident of the additional institution under either subsection of the definition of "relevant person".</p> <p>This section will be set out in further detail in the Principal Provisions section.</p>
16	Examination of application: general	<p>Section 16 provides for the general conditions for examination of an application. Broadly, this means that the Chief Deciding Officer must acknowledge receipt of an application within 28 days of receipt and proceed to examine and determine whether the applicant is entitled to each payment or eligibility for the provision without charge of health services they have applied for.</p> <p>Where an application does not include information referred to in section 14(5) or information that the Chief Deciding Officers considers to be reasonably required to examine the application, the Chief Deciding Officer can request the applicant to provide the information required within a reasonable period.</p> <p>When examining an application, the Chief Deciding Officer must establish certain information including the</p>

Section	Title	Effect
		<p>identity of the applicant and whether they are a 'relevant person' for the purposes of the Scheme.</p> <p>In undertaking the examination, the Chief Deciding Officer must have regard to certain considerations including information provided by the applicant and from other information sources.</p> <p>The Minister can issue guidelines to assist persons in establishing, for the purposes of this Part, whether an applicant is not ordinarily resident in the State.</p> <p>Further details on section 16 will be set out in the Principal Provisions section.</p>
17	Chief Deciding Officer may request information from information source	<p>Section 17 provides that the Chief Deciding Officer can request information relating to the applicant to be disclosed from an information source. This includes personal data and special categories of personal data. Such a request is only to the extent it is necessary and proportionate for establishing or verifying an applicant's residence in a relevant institution and time spent there, or verifying information provided in the application.</p> <p>A request must:</p> <ul style="list-style-type: none"> • state the purpose for which the information is required, • where the request relates to a document, specify that a copy of a document be provided, • confirm the safeguards in place regarding storage of the information and documents and the processing of personal data and special categories of personal data that is provided, and • specify the period within which the requested information is to be provided to the Chief Deciding Officer. <p>The request must be complied with within the time period specified in the request or within a further time period agreed in writing with the Chief Deciding Officer.</p> <p>The Chief Deciding Officer can share with the applicant a copy of information accessed where it is relevant to determinations made in relation to their application.</p>
18	Chief Deciding Officer may request information by affidavit	<p>Section 18 provides that the Chief Deciding Officer in determining the application can request the applicant to provide information by affidavit. The Chief Deciding Officer must be of the opinion that:</p>

Section	Title	Effect
		<p>“(a) the information referred to in <i>paragraphs (b) and (c) of section 16(6)</i> available to him or her is incomplete or otherwise insufficient for the purposes of his or her examination of the application, or</p> <p>(b) the information provided by the applicant for the purposes of his or her application that is relevant to the examination of the application is inconsistent with information referred to in <i>paragraphs (b) and (c) of section 16(6)</i>.”</p> <p>Such a request must only be done where it is “necessary to do so for the purposes of the examination of the application.”</p>
19	Calculation of period of residence in relevant institution	<p>Section 19 provides, for the purposes of section 16(4)(c), how the Chief Deciding Officer must calculate the period of residence in a relevant institution:</p> <p>“(a) the number of days of each period of residence by the applicant in a relevant institution, and</p> <p>(b) the aggregate number of days of each of the following:</p> <ul style="list-style-type: none"> (i) all periods of residence by the applicant in a relevant institution; (ii) all periods of residence by the applicant in a relevant institution in circumstances referred to in <i>paragraph (a) of the definition of “relevant person” in section 2(1)</i>; (iii) all periods of residence by the applicant in a relevant institution in circumstances referred to in <i>paragraph (b) of the definition of “relevant person” in section 2(1)</i>; (iv) all periods of residence by the applicant in a relevant institution specified in <i>Part 1 of Schedule 1</i> in circumstances referred to in <i>paragraph (b) of the definition of “relevant person” in section 2(1)</i>. <p>Section 19 provides that the date of entry to the institution and the date of discharge will be included in the calculation. A temporary absence from the institution will</p>

Section	Title	Effect
		<p>be included in the calculation if it was for a period of less than 180 days.</p> <p>A person will be considered to have been discharged from a relevant institution where they ceased (other than where temporarily absent from the relevant institution) to be a resident of the relevant institution.</p> <p>“Temporarily absent” is assessed on the basis of whether a person spent at least a day away from the institution and returned for at least one night before being discharged.</p> <p>The section provides definitions for the following terms - “admission date”, “discharge date”, “period of residence” and “temporary absence period” which are set out in full in the Principal Provisions section of the Digest.</p>
20	Determination of application	<p>Section 20 provides that once the Chief Deciding Officer has completed their examination of an application, on the basis of the matters established under section 16(4), determine the payments to which the applicant is entitled, and the provision of services for which the applicant is eligible, under section 13, if any.</p> <p>Where an application is for a health support payment and the Chief Deciding Officer, is not satisfied that the applicant is not ordinarily resident in the State but satisfied that the applicant is eligible for the health support payment, they may make a determination to that effect.</p>
21	Notification to applicant of determination	<p>Section 21 provides that the Chief Deciding Officer must as soon as possible after making their determination, notify the applicant of same.</p> <p>A notification must include:</p> <ul style="list-style-type: none"> (a) a statement of the determination concerned, which shall include the information specified in <i>subsection (3)</i>, (b) where the determination includes a determination referred to in <i>subsection (3)(b)</i>, an offer to the applicant of a payment to him or her of the amount concerned, and of the effect of <i>sections 26, 27 and 28</i>, (c) where the determination includes a determination referred to in <i>paragraph (d) or (g) of subsection (3)</i>, an offer to the applicant of the

Section	Title	Effect
		<p>provision without charge of health services to him or her,</p> <p>(d) where the determination includes a determination referred to in <i>subsection (3)(f)</i>, an offer to the applicant for the payment to him or her of a health support payment, and</p> <p>(e) a statement of the entitlement of the applicant under <i>section 22(1)</i> to seek a review.</p> <p>The particulars of the statement of determination are set out in subsection 3. These are detailed in the Principal Provisions section of the Digest.</p>
22	Review of determination	<p>Section 22 provides that an applicant can request a review within 60 days of receipt of a determination, in one or more of the following circumstances:</p> <ul style="list-style-type: none"> • where it is determined that the applicant is not a relevant person; • where it is determined that the applicant is not entitled to a payment; • where it is determined that the applicant is entitled to a payment of a specific amount; • where it is determined that the applicant is not eligible for the provision of health services without charge; • where it is determined that the applicant is not entitled to a health support payment. <p>A request for a review must be in the form and manner prescribed and must be accompanied by a statement of the reasons for the request and by such documents as prescribed.</p> <p>The Chief Deciding Officer must carry out a review once receipt of request for one is received. Once the review is complete, they can decide to affirm or vary the determination the subject of the review.</p> <p>According to subsection (4), the Chief Deciding Officer must carry out a review in accordance with any regulations under section 38, as well as setting out the submissions and information which will be considered in the review process. These are outlined in further detail in the Principal Provisions section of the Digest.</p> <p>The Chief Deciding Officer can require an applicant to provide any documentation or information including by</p>

Section	Title	Effect
		<p>affidavit to them, that may be relevant to the determination under review.</p> <p>The Chief Deciding Officer must within 20 days of making their decision give written notification to the applicant in. This notification must include certain information including but not limited to:</p> <ul style="list-style-type: none"> • statement of the decision including rationale • an offer of any relevant payment amount(s) • statement of the entitlement of an applicant to appeal the decision under section 24.
23	Appeals officer	<p>Section 23 provides that the Minister must appoint a panel of “appeals officers” to consider appeals received under section 24(1).</p> <p>An appeals officer must be independent in the performance of their functions.</p> <p>The section provides that an appeals officer-</p> <ul style="list-style-type: none"> • must be remunerated as determined by the Minister and with the consent of the Minister for Public Expenditure and • may have staff whose terms and conditions of service including remuneration must be determined by the Minister and with the consent of the Minister for Public Expenditure as considered reasonably necessary to enable the appeals officer to perform their functions. <p>The Minister has the power to revoke the appointment of an appeals officer for stated reasons.</p>
24	Appeals	<p>Section 24 provides for the making of an appeal where an applicant is dissatisfied with a decision of the Chief Deciding Officer in relation to the review of a determination. This section sets out the process to be followed in making an appeal.</p> <p>A request for an appeal will be in such form and made in such manner as may be prescribed in regulations and will be accompanied by a statement of the reasons for the request, and by such documents as may be prescribed.</p> <p>A request for an appeal can be made within 60 days of receiving the notification of a review determination and the Chief Deciding Officer must assign the appeal to an appeals officer without delay.</p>

Section	Title	Effect
		<p>The Appeals Officer must consider the appeal in accordance with any regulations under section 38 and can decide the matter which is the subject of the appeal as if it were being decided for the first time, as well as consider written or oral submissions.</p> <p>The Appeals Officer must determine the appeal as soon as practicable and within the period prescribed and also prepare a written report setting out the determination and reasoning for it. A copy of the report must be sent to the Chief Deciding Officer.</p> <p>The Appeals Officer can require the applicant to provide documentation/information including by affidavit and can request the Chief Deciding Officer to provide any information in relation to any matter that may be relevant to the determination of the appeal.</p> <p>The Appeals Officer can -</p> <ul style="list-style-type: none"> • affirm the decision the subject of the appeal; • vary the decision the subject of the appeal; • refer the decision back to the Chief Deciding Officer for re-examination, with such directions as the appeals officer considers appropriate. <p>Where the Appeals Officer affirms or varies the decision, the Chief Deciding Officer must notify the applicant within 20 days. The notification will include a statement of determination, a copy of the appeals officer's report and include an offer of any relevant payment amount(s) and a statement of the right of the applicant to appeal the determination to the High Court.</p> <p>Where the determination of the appeals officer is to refer the matter back to the Chief Deciding Officer, the Chief Deciding Officer must arrange for the matter to be re-examined and notify the applicant in writing of the determination no later than 20 days after the making of the determination.</p>
25	Appeal to High Court	<p>Section 25 provides for the making of an appeal to the High Court by the Chief Deciding Officer within 28 days of the date on which the report of the appeals officer is sent to them, or an applicant, within 28 days of the date on which a notification is sent to them, on a point of law. A decision of the High Court must, where appropriate, specify the period within which effect must be given to the decision, and it will be final and conclusive.</p>

Section	Title	Effect
26	Offer of general payment or work-related payment	<p>Section 26 provides that where an offer is made to an applicant, they have 6 months (or longer if prescribed) from the date that notification of the offer was sent to them, to accept or reject the offer.</p> <p>In this section and sections 27 and 28, “offer” means an offer in relation to a general or work-related payment.</p> <p>Where an applicant wishes to withdraw, review, or appeal a determination, the applicant can accept the previous offer that was issued to him or her within six months of the date of the withdrawal.</p> <p>Acceptance of an offer must be made by providing a written statement to the Chief Deciding Officer including that the applicant—</p> <ul style="list-style-type: none"> • accepts the offer, and • agrees to waive any right of action which the applicant may otherwise have had against a public body and to discontinue any other proceedings instituted by the applicant, against such public body, that arise out of the circumstances to which their application related. <p>Rejection of an offer is done by informing the Chief Deciding Officer in writing of the rejection.</p> <p>Where an applicant fails to inform the Chief Deciding Officer as to whether they accept or reject the offer within the prescribed time periods, the offer will be deemed to have been rejected.</p>
27	Acceptance of offer of general payment or work-related payment	<p>Section 27 provides that once an offer is accepted that the Chief Deciding Officer must as soon as practicable cause the payment to be made to the applicant or the personal representatives of a deceased applicant.</p> <p>An applicant or personal representatives of an applicant who receive a payment must not institute civil proceedings and must discontinue any other proceedings instituted by or on behalf of the applicant, against a public body, that arise out of the same, or substantially the same, circumstances as the circumstances to which the application concerned related.</p>
28	Statute of Limitations	<p>Section 28 provides that where a person has made an application to the Scheme and subsequently withdrew or rejected an offer made to them, then the period of time during which the application was being considered will</p>

Section	Title	Effect
		not be relied on for the purpose of the Statute of Limitations if the applicant decides to take a case to court instead of engaging further with the Scheme.
29	Offer of provision without charge of health services	<p>Section 29 provides that an applicant to whom an offer of the provision of health services without charge is made (i.e. the offer of an enhanced medical card), has six months within receiving the offer to accept or reject the offer.</p> <p>Where an applicant accepts the offer, the Chief Deciding Officer will, as soon as is practicable, notify the Health Service Executive of the applicant's eligibility for the provision without charge of the services specified in the section. The Health Service Executive will then make the services available without charge to the applicant concerned. The services include but are not limited to G.P. services, drugs and medicines and counselling service.</p>
30	Offer of health support payment	<p>Section 30 provides that an applicant to whom an offer of a health support payment is made, can accept, or reject that offer within six months of the date (or longer as prescribed) that the notification is sent to them.</p> <p>Where an applicant, accepts an offer, the Chief Deciding Officer will ensure that the health support payment is made to the applicant as soon as is practicable.</p>
31	Application on behalf of relevant person	<p>Section 31 provides that an application can be made on behalf of a relevant person where they lack capacity due to illness or disability.</p> <p>Such an application can be made by the Committee of the Person where a person is a Ward of Court and it has authorisation to do so.</p> <p>Such an application can also be made by a person appointed under an enduring power of attorney once the attorney is not prohibited/restricted from this action and the enduring power of attorney is registered and the registration has not been cancelled.</p> <p>It also defines "enduring power of attorney" and "registration".</p>
32	Application on behalf of deceased relevant person	<p>Section 32 provides for an application to be made on behalf of a deceased relevant person where the person died on or after 13 January 2021 (the date on which the State Apology was made) and prior to making an application under this Bill.</p>

Section	Title	Effect
		In such circumstances, the personal representative of the deceased relevant person can apply for a general payment or work-related payment for the benefit of the estate of the deceased relevant person.
33	Application process to continue where applicant dies	<p>Section 33 provides that where an applicant dies after making an application, but before the process is complete, his or her personal representative can proceed with the application, as if they were the applicant, once they notify the Chief Deciding Officer of their intention in writing. They must also provide their contact details, personal data and information relating to the person concerned, as required by the Chief Deciding Officer to perform his or her functions.</p> <p>Where the health support payment or the provision to the applicant of health services without charge was included in the original application, this will be deemed to have been withdrawn.</p>
34	Withdrawal of application, review or appeal	<p>Section 34 provides that an applicant can withdraw an application, review or an appeal by providing the Chief Deciding Officer with a notice in writing of such withdrawal.</p> <p>The withdrawal will take effect on and from the date on which notice of withdrawal is received by the Chief Deciding Officer.</p>
Part 4- Miscellaneous		
35	Amendment of Taxes Consolidation Act 1997	<p>Section 35 inserts a new section 205B into the Taxes Consolidation Act 1997 to provide that general payments and work-related payments made under the Scheme are exempt from income tax, capital gains tax and capital acquisitions tax.</p> <p>Future income or gains arising from the payments, such as investment income, or gains from the sale of assets purchased with the payment, are also exempt.</p>
36	Amendment of Capital Acquisitions Tax Consolidation Act 2003	<p>Section 36 amends section 82(1) of the <i>Capital Acquisitions Tax Consolidation Act 2003</i> by the substitution of “section 205A or 205B” for “section 205A” in paragraph (ba). This provides that payments made under the Scheme that are exempt from income tax are also exempt from capital acquisitions tax.</p>
37	Legal costs and expenses	<p>Section 37 provides for the provision of financial support to applicants to seek the assistance of a legal practitioner in two instances.</p>

Section	Title	Effect
		<ol style="list-style-type: none"> 1. for the purpose of providing an affidavit as part of their application to the Scheme, where relevant, 2. for the purpose of seeking independent legal advice when considering their decision to accept or reject an offer made under Part 3 of the Bill.
38	Regulations	<p>Section 38 provides that the Minister may make regulations prescribing any matter referred to in this Act as prescribed or to be prescribed.</p> <p>This section includes a list of matters for which the Minister can make regulations in relation to the operation of the Scheme. These include:</p> <ul style="list-style-type: none"> • the procedures for examining applications under sections 16 and 19; • the procedures for the conduct of reviews and appeals; • the amount of financial support that may be provided for legal advice and assistance under section 37.
39	Amendment of section 53C of Act of 1970	<p>Section 39 amends section 53C of the <i>Health Act 1970</i>. This amendment will ensure that those who have qualified for the provision of health services without charge under the Scheme will not be required to pay for acute in-patient services, should they require them.</p>
40	Amendment of Part 3 of Schedule 1 to Nursing Homes Support Scheme Act 2009	<p>Section 40 amends Part 3 of Schedule 1 to the <i>Nursing Homes Support Scheme Act 2009</i>. This provides that the general payment and work-related payment received under this Bill are disregarded for the purpose of a means assessment in relation to the Nursing Homes Support Scheme (Fair Deal Scheme).</p>
41	Prohibition on disclosure of information	<p>Section 41 provides for a prohibition on the disclosure, except in limited circumstances, of confidential information obtained by a person involved in the operation of the Scheme. For the purposes of this section, “confidential information” means information that refers to a relevant person or that could reasonably lead to the identification of a relevant person.</p> <p>This does not prevent the disclosure of confidential information to a relevant person to whom that information relates.</p> <p>A person who contravenes this section is guilty of an offence and liable on summary conviction, to a class A</p>

Section	Title	Effect
		fine or to imprisonment for a term not exceeding 6 months, or to both.
42	Review of operation of Scheme	<p>Section 42 provides for a review of the operation of the Scheme to be commenced as soon as possible after the second anniversary of the establishment day, and as soon as possible after the cessation date.</p> <p>This section sets out a list of matters which must be considered in a review including whether the Scheme is achieving or has achieved the purpose specified in section 5(2) as well as the application, assessment, and review processes under the Scheme, including the applicants' experience of these. It also allows for the inclusion of any other matter as may be specified by the Minister.</p>
43	Additional institution	<p>Section 43 provides that the Minister can insert, by regulation, any additional institution into Schedule 1 which was established for the purpose of providing maternity and infant care services and the placement of children for the purposes of adoption or care arrangements and in respect of which a public body had a regulatory or inspection function. Such an insertion requires the consent of the Minister for Public Expenditure and Reform.</p> <p>The section also includes definitions relevant to the section - "boarded out arrangement", "nursed out arrangement" and "care arrangement".</p>
44	Service of documents	<p>Section 44 provides for the manner in which a notice, certificate or other document which is authorised or required to be given to or served on a person as follows:</p> <ul style="list-style-type: none"> • delivering it in person; • leaving it at the address at which the person ordinarily resides; • sending it by post in a prepaid registered letter to the address at which the person ordinarily resides, or; • by electronic means where written consent has been given for it to be served in this manner.
45	Minister may prescribe person to be information source	<p>Section 45 provides that the Minister has the power, where he or she considers a person might have relevant information or documents for the purpose outlined in section 17(1), prescribe the person to be an information source.</p>

Section	Title	Effect
46	Processing of personal data and special categories of personal data	<p>Section 46 provides that the Chief Deciding Officer, an appeals officer, and an information source can process personal data, to the extent it is necessary and proportionate, for the purposes of performing their functions. This includes special categories of personal data.</p> <p>It also provides for the Minister to prescribe “suitable and specific measures” for the processing of personal data and special categories of personal data under this Bill. In this section, “suitable and specific measures” means measures to safeguard the fundamental rights and freedoms of data subjects in processing personal data of those data subjects.</p>
47	Use of database and records of Commission of Investigation into Mother and Baby Homes	<p>Section 47 provides that the Chief Deciding Officer can access and process personal data, to the extent it is necessary and proportionate for the performance of their functions, contained in the copy of the database and copy of the related records of the Commission of Investigation (Mother and Baby Homes and Certain Related Matters) that were deposited with the Minister under section 4(1) of the <i>Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Records, and Another Matter, Act 2020</i>.</p> <p>It also provides for the Chief Deciding Officer to share this data with an appeals officer to the extent necessary and proportionate for the performance by the appeals officer of their functions.</p> <p>The section also provides for the Child and Family Agency (Tusla) to be able to access and process personal data and special categories of personal data in the database and related records, for the purposes of performing its functions as an information source.</p>
48	Penalties	<p>Section 48 provides that an applicant will be guilty of an offence where they knowingly give information to the Chief Deciding Officer or to an appeals officer which is false or misleading. If convicted, the applicant will be liable to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.</p>
Schedule 1		<p>Schedule 1 lists all of the eligible institutions for the Mother and Baby Institutions Payment Scheme.</p>
Schedule 2		<p>Schedule 2 sets out the period of days and the corresponding amounts of the general payment, for a</p>

Section	Title	Effect
		person to whom part (a) of the definition of a “relevant person” applies.
Schedule 3		Schedule 3 sets out the period of days and the corresponding amounts of the general payment and work-related payment, for a person to whom part (b) of the definition of a “relevant person” applies.

Source: Derived from [Mother and Baby Institutions Payment Scheme Bill 2022](#) and [Explanatory Memorandum](#)

Background

The Irish Government established the Commission of Investigation into Mother and Baby Homes and certain related matters in February 2015 to provide a complete account of what happened to vulnerable women and children in Mother and Baby Homes from 1922 to 1998. The [Final Report of the Commission of Investigation into Mother and Baby Homes](#) was published on 12 January 2021. The Commission focused on two of the most critical issues raised by former residents of the homes under investigation:

- The lack of information & tracing systems; and
- Redress for the suffering caused.

The publication was accompanied by a Government commitment to implement [an Action Plan](#)² encompassing 22 specific measures and a [State apology](#), delivered by An Taoiseach on 13 January 2021. One of the key commitments made in the Action Plan, located under Theme 7 – Restorative Recognition, was the development of a Scheme to provide payments and other benefits to defined groups. This was "a way for the State to both recognise and acknowledge the harms suffered by the mothers and children who were resident in Mother and Baby and County Home Institutions."³

Accordingly, an Interdepartmental Group (IDG) was established and tasked with developing proposals for a Scheme comprising two broad dimensions:

- The provision of payments which take into account the Commission's recommendations on redress (but not solely limited to those recommendations), and
- The provision of a form of enhanced medical card to everyone resident in a Mother and Baby or County Home Institution for six months or more.

The IDG undertook consultation on the design of the Restorative Recognition Scheme. As a result, Oak Conflict Dynamics Ltd (OAK) was commissioned to consult with survivors and their representatives. The consultation took place between March and April 2021. The majority of stakeholders who participated in the OAK consultation process supported a universal, inclusive scheme. The OAK report is available to view in full [here](#).

In addition, the Irish Human Rights and Equality Commission (IHREC) were invited to provide their advice. Among its recommendations was that all women and children who were in Mother and Baby Homes, County Homes and other related institutions after 1974 should be eligible for reparations under the scheme, otherwise, the State would be risking breaching equality obligations. IHREC's Advisory Paper is available to view in full [here](#).

The final [report](#) of the IDG was submitted to the Minister in November 2021. The IDG proposed that the Scheme should be named the 'Mother and Baby Institutions Payment Scheme' considering the consultation process's feedback and the IHREC's recommendations.

² Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions

³ Government of Ireland, 'An Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions' (January 2022), p.53.

On 16 November 2021, Roderic O'Gorman, T.D., Minister for Children, Equality, Disability, Integration and Youth (DCEDIY), published the [Mother and Baby Institutions Payment Scheme](#). The ex-gratia scheme⁴ provided for the following:

- Pregnant women who were resident in a Mother and Baby or County Home Institution for any time, including those under 18, would be eligible for a payment, the amount increasing based on their length of stay.
- All persons who were resident as children in a Mother and Baby or County Home Institution for a period of six months or more would be eligible for a payment (and did not receive redress under the Residential Institutions Redress Scheme (RIRS)).
- Additional work-related payment for women who spent more than three months in certain institutions and undertook 'commercial' work.
- An enhanced medical card be made available to everybody who was resident in a Mother and Baby Institution for six months or more.

Qualification for the Scheme would be based on residency, and former residents would not have to show or produce evidence of any harm suffered during that time. However, the Scheme provided that before a person would be given a general or a work-related payment, the applicant must agree in writing to waive any right of action that they may otherwise have had against a public body and to discontinue any other proceedings instituted by the applicant, against such a public body.

The DCEDIY, in their 16 November, 2021 [Press Release](#) estimated that 34,000 survivors would qualify for a financial payment under the scheme, 19,000 of whom would also qualify for an enhanced medical card. This is, in some respects, broader than the Commission's recommendations. The Scheme expanded the payment from pregnant women who entered mother and baby homes or county home institutions before 1974 to include all women in the Scheme who were resident in an institution at any point.⁵ Further, the Commission recommended that only unaccompanied children in a mother and baby home or county home institution be eligible for a payment. In contrast, the Scheme includes all children who were resident in a mother and baby home or county home institution for more than six months. However, it has been criticised as still being too narrow, with thirty experts in childhood trauma finding the six-month cut-off for former child residents as fundamentally arbitrary and not evidence based, "to state that young people, who might have been in Mother and Baby Homes for a period of two to three months early in life were less impacted than those who spent longer, is simply not scientifically correct....Indeed, the opposite is true. The earlier the impact of trauma the more long lasting the effects."⁶ Some survivors and their representatives have expressed anger and disappointment at the decision to exclude survivors who, as babies or children, spent less than six months in these

⁴ Meaning that no legal liability is being admitted.

⁵ Dáil Eireann debate, Wednesday, 19 October 2022, [Mother and Baby Institutions redress Scheme: Motion](#) [Private Members]

⁶ Shauna Bowers, '[Clinicians Call for Change to Mother and Baby Homes Redress Scheme](#)', *Irish Times*, 22 November 2021.

institutions, calling the decision "discriminatory".⁷ The payment scheme has also been criticised for excluding children boarded out to foster families.⁸

On 29 March 2022, the [General Scheme of the Mother and Baby Institutions Payment Scheme Bill](#) was published. This draft legislation was referred to the Joint Oireachtas Committee on Children, Equality, Disability, Integration and Youth for pre-legislative scrutiny. In April, the Joint Oireachtas Committee undertook a public consultation process on the draft legislation. The Department engaged with the Joint Oireachtas Committee as part of the pre-legislative scrutiny process. The Committee published its [Report on pre-legislative scrutiny of the General Scheme of a Mother and Baby Institutions Payment Scheme Bill 2022](#) on 12 July 2022.

The Bill was published on 17 October 2022. The Minister has stated that the redress scheme goes beyond what the Commission and the IDG proposed. The Commission recommended that pregnant women who entered mother and baby homes or county home institutions before 1974 be eligible whereas the Bill includes all women in the scheme who were resident in an institution at any point.⁹ Further, the Commission recommended that only unaccompanied children in a mother and baby home or county home institution be eligible for a payment. In contrast, the Bill includes all children who were resident in a mother and baby home or county home institution for more than six months. It is estimated by the Minister that the scheme recommended by the Commission would have benefited 6,500 people, at a total cost of €400 million. The Bill is estimated to benefit 34,000 people, at a total cost of €800 million, with 19,000 former residents receiving enhanced medical cards.¹⁰ However, the Bill does not include the recommendations of the Joint Committee regarding removing the six-month requirement for children, including children who were boarded out and removing the waiver.

Responses to the Bill

On 19 October 2022, a [Private Members' Motion re Mother and Baby Institutions Redress Scheme](#) was brought by the Social Democrats that moved that Dáil Éireann acknowledge, inter alia:

- that all survivors of Mother and Baby Homes, County Homes, related institutions, unlawful or forced adoptions, and abuse in boarding out and adoptive placements deserve immediate and fair redress;
- the [OAK Report](#), to which nearly 550 survivors contributed via written submissions or calls;
- the findings of the [Annual Report of the Special Rapporteur on Child Protection 2021](#) on the report of the Commission of Investigation into Mother and Baby Homes;

⁷ Kitty Holland, "[Survivors of mother and baby homes say redress scheme 'discriminates against' some residents](#)" *Irish Times*, "16 November 2021."

⁸ James Gallen, 'Institutions and Ireland: Mother and Baby Homes and Transitional Justice' 2022 52(1) *Irish University Review* 103.

⁹ Dáil Éireann debate, Wednesday, 19 October 2022, [Mother and Baby Institutions redress Scheme: Motion \[Private Members\]](#).

¹⁰ Dáil Éireann debate, Wednesday, 19 October 2022, [Mother and Baby Institutions redress Scheme: Motion \[Private Members\]](#).

- the [United Nations \(UN\) Special Rapporteur's call](#), in November 2021, for compensation commensurate with the gravity of the offences, including the removal of any waiver which would prevent survivors from seeking further recompense and legal accountability in court;
- the [UN Human Rights Committee's call](#), in July 2022, for a full and effective remedy to all survivors, removing all barriers to access, including short timeframes to apply to the redress schemes;
- the [UN human rights experts' call](#), in September 2022, for redress for victims of racial discrimination and systemic racism in Irish childcare institutions and
- the recommendations contained in the [Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth Report on pre-legislative scrutiny of the General Scheme of a Mother and Baby Institutions Payment Scheme Bill 2022](#).
- the High Court declaration, from December 2021, that the Commission of Investigation into Mother and Baby Homes wrongly denied eight survivors their statutory right to comment on many draft findings;
- that religious orders and church bodies involved in Mother and Baby Homes, County Homes, and related institutions should contribute to the cost of the redress scheme; and
- that pharmaceutical companies who conducted trials with women and children in Mother and Baby Homes, County Homes, and related institutions should contribute to the cost of the redress scheme.

The motion was supported by Members from Sinn Féin, the Labour Party, People Before Profit-Solidarity and Independents. The Minister for Children, Equality, Disability, Integration and Youth responded by welcoming the Motion and acknowledged the indisputable wrongs that were visited on the women and children who spent time in mother and baby and county home institutions. The Minister went on to say that it was not possible to monetise the suffering in a payment scheme or provide one remedy by way of compensation to all and that the aim of the Government's Action Plan is to provide an enduring response to the priority needs of all concerned. This includes an apology; access to personal information; health supports; financial payments; memorialisation; records, archives and databases; education and research; and dignified burial. The Minister stated, "For children who spent very short periods of time in an institution during their infancy, the Government's action plan provides a response to their needs through the Birth Information and Tracing Act." Regarding the payments scheme, the Minister stated that it is improved by introducing more refined payment bands that will benefit applicants and by changing the calculation process to include periods of temporary absence of up to 180 days.¹¹

On 17 October 2022, IHREC called for significant changes to the Bill in a bid to ensure compliance with human rights and equality standards. In a press release, Chief Commissioner Sinéad Gibney said:

"While we welcome the Government's commitment to redress, significant work is required on the design of the Payment Scheme to ensure it adequately and appropriately reflects the needs and experiences of survivors. Ultimately, we need a systemic change in the

¹¹ Dáil Éireann debate, Wednesday, 19 October 2022, [Mother and Baby](#) Institutions redress Scheme: Motion [Private Members]

State's attitude and responsibility towards anyone who is a victim or survivor of State wrongdoing, overall adopting a more progressive and caring attitude toward those who were resident in these institutions.”¹²

¹² Press Release, [Mother and Baby Institutions Payment Scheme should have two-track approach to the payment of redress, Commission says - IHREC - Irish Human Rights and Equality Commission, 17 October 2022.](#)

Policy and legislative context

On 13 January 2021, the Taoiseach Michael Martin apologised on behalf of the Irish Government to those who spent time in a Mother and Baby Home or a County Home. In that apology, the Taoiseach states:

“The Irish State, as the main funding authority for the majority of these institutions, had the ultimate ability to exert control over these institutions, in addition to its duty of care to protect citizens with a robust regulatory and inspection regime. This authority was not exerted, and the State's duty of care was not upheld. The State failed you - the mothers and children in these homes.”¹³

On 16 November 2021, the government then published an [Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions](#) to implement the commitments made by Government in January 2021. The Action Plan states that it is guided by four values which “will inform the delivery of each action” – Human Rights, Participation, Accessibility and support, and Communication. The first of these values is human rights. The Action Plan states, “We recognise the State's obligations under domestic and international human rights law which underpin the actions set out in this Action Plan”.¹⁴ The development of a Mother and Baby Institutions Payment Scheme is a key element of the Plan and the following sections set out the relevant issues to be considered in establishing such a Scheme, using a human rights framework.

The State's Obligations under Domestic and International Law

A human rights-based approach to addressing historical abuse is, under domestic and international law, a legal requirement and includes providing effective **remedies** and **reparation** to victims of human rights violations.¹⁵ In addition, Public bodies in Ireland have a statutory duty to promote equality, eliminate discrimination, and protect the human rights of members, staff, and the persons to whom they provide services.¹⁶

In the context of advocating for a human-rights based approach to victims' rights, the European Union (EU) Fundamental Rights Agency has highlighted:

¹³ Dáil Eireann debate, Wednesday 13 Jan 2021, *Report of the Commission of Investigation into Mother and Baby Homes: Statements*

¹⁴ Government of Ireland, ‘An Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions’ (January 2022)19.

¹⁵ The right to a remedy is protected in various international human rights law treaties: [Universal Declaration of Human Rights](#) (“UDHR”), Art. 8; [International Covenant on Civil and Political Rights](#) (“ICCPR”), Art. 2; [Convention on the Elimination of Racial Discrimination](#) (“CERD”), Art. 6; [Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment](#) (“CAT”), Art. 14; [Convention on the Rights of the Child](#) (“CRC”), Art. 39; [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (ECHR) arts. 5(5), 13 and 41; [Charter of Fundamental Rights of the European Union](#) (CFREU) art. 47.

Other relevant international declarations include the [UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985](#); [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of IHL and Serious Violations of IHL](#) (2005)

¹⁶ Irish Human Rights and Equality Commission Act 2014, s 42.

"The move from a need-based rhetoric to human rights language changes profoundly the relationship between the victim and the state. The victim is no longer pleading for help on the basis of their vulnerability, pressing needs and deservingness but demanding that the state should take seriously what it owes to the individuals living on its territory and their human rights. The state is no longer in the comfortable and patronising position of a more or less generous Good Samaritan, but a duty-bearer indebted to the individuals living under its jurisdiction as rights-holders." ¹⁷

The Right to an Effective Remedy

The right to access an effective remedy imposes a duty upon states to respect, protect, and fulfil this right. ¹⁸ The aim of remedies is to put the affected party in the position they would have been in had the harm not occurred, and States are advised to consider means to reduce legal, practical, and other barriers that could lead to a denial of remedy. ¹⁹ In Ireland, certain building blocks of remedy, such as mechanisms of collective redress, are unavailable ²⁰. In addition, the [Statute of Limitations Act 1957](#) is considered a barrier to access to remedy by victims of institutional abuse. ²¹ It generally requires victims to bring cases within a period of six years from the abuse occurring ²². The significance of legal costs, combined with a lack of available legal aid or third party funding mechanisms, can also hinder access. ²³

International human rights law provides that

"The right to an effective remedy requires the State to:

- (a) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
- (b) Provide those who claim to be victims of a human rights law violation with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and
- (c) Provide effective remedies to victims, including reparation. According to international law, effective reparation should include compensation,

¹⁷ Fundamental Rights Agency, [Justice for victims of violent crime, Part I: Victims rights as standards of criminal justice, Luxembourg, Publication office of the EU](#), 2019.

¹⁸ see A/HRC/72/162 '[Report of the Working Group on the issue of human rights and transnational corp UN CESCR General comment No. 24](#)' (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights (July 2017) para 40 and (N 9).

¹⁹ European Commission, [Strengthening Victims' Rights: From compensation to reparation, Report of the Special Adviser, J. Milquet to the President of the European Commission](#), (March 2019)14

²⁰ Law Reform Commission 'Multi-Party Litigation' (LRC 76-2005). The 2005 report followed the 'Multi-Party Litigation (Class Actions) Consultation Paper' (LRC CP 25-2003).

²¹ Martin Canny, *Limitation of Actions* (Dublin, Round Hall 2010)166.

²² Statute of Limitations (1957), s. 11(2). There was an amendment to the Act for victims able to show that they were suffering from a significant "psychological injury" as a result of being sexually abused during childhood but this has not been extended to other historical abuse.

²³ Rachel Widdis, '[Review of Access to Remedy in Ireland](#)' [Report for the Department of Foreign Affairs](#) (2020).

recognition/satisfaction, restitution, guarantees of non-recurrence, and rehabilitation."²⁴

Guidance on Reparations

'Reparations' is an umbrella term for different forms of redress, including restitution, rehabilitation, compensation and symbolic measures such as apologies and memorials.²⁵ The [UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#) provides the following guidance on what constitutes reparation.

Compensation: Compensation is a specific form of reparation that "should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case."²⁶ It is a monetary award for loss resulting from the violation, as well as the costs for legal and other support services.²⁷

Recognition/Satisfaction: Recognition or Satisfaction is a non-financial form of reparation that, as noted above, includes "full and public verification of the facts, and formal acceptance of any State responsibility."²⁸ It may include a public apology, judicial and administrative sanctions against persons liable for the violations, and commemorations and tributes to the victims.²⁹

Rehabilitation: Rehabilitation includes medical, psychological, legal and social support services.³⁰ Guarantees of non-recurrence: Guarantees of non-recurrence or non-repetition include "the investigative obligation to take all reasonable steps to identify system failures and human errors."³¹ It may also involve providing human rights education to the public and state actors and the reform of relevant laws and administrative practices that may have contributed to the human rights violation.³²

²⁴ Irish Council for Civil Liberties, [ICCL Submission on the Birth Information and Tracing Bill, 2021](#), June 2021; European Commission, ['Strengthening Victims' Rights: From Compensation to Reparation'](#) March 2019.

²⁵ James Gallen, 'Institutions and Ireland: Mother and Baby Homes and Transitional Justice' 2022 52(1) Irish University Review, 103.

²⁶ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005, para. 20.

²⁷ UN General Assembly, [Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#), A/HRC/20/14, para. 51.

²⁸ Ibid para. 51.

²⁹ 5 UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005, para. 22.

³⁰ Ibid para. 21.

³¹ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/20/14, para. 51.

³² UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005, para. 23.

Restitution: Restitution constitutes measures to "restore the victim to the original situation" before the human rights violation occurred."³³ This may include the restoration of liberty and enjoyment of human rights.

The Right to Access to Justice

Access to justice is an "enabling right", allowing "those who perceive their rights as having been violated to enforce them and seek redress".³⁴ It has been defined both in terms of "making the law accessible to all", including through access to legal representation and a legal forum, and ensuring that "legal and judicial outcomes are just and equitable."³⁵ It is protected under Articles 6 (right to a fair trial) and 13 (right to an effective remedy) of the [European Convention on Human Rights](#) (ECHR) and also under Article 47 of the [European Union Charter of Fundamental Rights](#) (EUCFR).

Waiver of Legal Rights

A waiver of legal rights as a condition of receiving a payment from a scheme is at risk of denying victims access to justice. In January 2020, the UN Committee Against Torture (UNCAT) found, in the case of *Elizabeth Coppin vs Ireland*, that acceptance of a payment must not preclude the right to take further legal action.³⁶ The Committee's admissibility judgment in the ongoing individual case under Article 22 of the UNCAT of *Elizabeth Coppin v Ireland* is available [here](#). The Irish Government had argued that Mrs Coppin's prior waivers under the Residential Institutions Redress Act 2002 and the non-statutory Magdalene's ex gratia restorative justice' scheme should preclude her from bringing subsequent legal action against the State arising from the abuse concerned. However, the Committee affirmed that articles 12, 13 and 14 of the Convention Against Torture require the State to investigate every individual case where there is reasonable ground to believe that torture or ill-treatment occurred and that article 14 requires the State to allow civil proceedings related to allegations of acts of torture or ill-treatment. The Committee went on to dismiss the legal waivers as having no effect on Mrs Coppin's absolute rights under the Convention, stating that 'collective reparation and administrative reparation programmes may not render ineffective the individual right to a remedy and to obtain redress ([general comment No. 3, para 20](#)), including an enforceable right to fair and adequate compensation, and that judicial remedies must always be available to victims, irrespective of what other remedies may be available ([general comment No. 3, para. 30](#))'.³⁷

Previous Irish Institutional Redress Schemes

In 2003, the Residential Institutional Redress Board Scheme began to provide redress for survivors of industrial schools. The scheme was criticised as being "protracted, expensive, difficult,

³³ Ibid Para.19.

³⁴ '[Access to Justice](#)' (European Union Agency for Fundamental Rights website).

³⁵ United Nations Development Program, '[Access to Justice Practice Note](#)' (UNDP 2015) 6

³⁶ UN CAT/C/68/D/879/2018

[2020_02_17_un_torture_committe_delivers_preliminary_judgment_against_ireland.pdf \(hoganlovells.com\)](#)

³⁷ Ibid, para 6.4 and para 6.7.

and legalistic." One of the issues was the condition that an applicant had to waive their right to litigate in order to participate in the settlement process.³⁸

The Magdalene Laundries Restorative Justice ex gratia scheme was established in 2013 to provide redress to survivors of some Magdalene laundries. This scheme has also been criticised. An investigation by the Ombudsman made several recommendations, including expanding the scope of admission eligibility to the scheme to adjoining institutions and reviewing cases where there has been a dispute over the length of stay.³⁹ The High Court found that excluding women from the scheme who had worked in the laundry but not been residents, was in violation of their rights to natural justice and fair procedures. It also made a general recommendation in relation to developing future schemes:

"In order to ensure that any future restorative justice or redress schemes benefit from the learning from the operation of this and other schemes, guidance should be produced in respect of the development and operation of such schemes generally. Such guidance should be developed centrally but should be applicable across all government departments and public bodies."⁴⁰

High Court Declaration

On Friday, 17 December 2021, the High Court issued a declaration in relation to the Report of the Commission of Investigation into Mother and Baby Homes relating to the interpretation of the [Commissions of Investigation Act 2004](#).⁴¹

Two mother and baby home survivors took a case against the State and claimed (inter alia), while they were not named in the Report, they were readily identifiable in it and, as such, were entitled (pursuant to section 34 of the Act) to be given an opportunity to make submissions on the sections concerning them, seeking correction, clarification and expansion before the report was finalised.

The State argued that a finding in favour of the Applicants under section 34 of the Act would have 'dramatic consequences for the running of inquiries. It said that the Act intended that provisional copies be sent 'only to people against whom allegations were made or whose good name was at risk', which, the State argued, would not include the Applicants.

On 17 December 2021, the State (as part of a settlement) admitted that the Applicants were indeed identifiable in the Report and should have been given a right to reply to the sections relevant to them prior to the Report's publication.

The following is now published online alongside the final report under the heading "Outcome of

³⁸ Stephen Winter (2018) Two models of monetary redress: A structural analysis, 13 (3) Victims & Offenders, 299

³⁹ Ombudsman, [Opportunity Lost: An investigation by the Ombudsman into the administration of the Magdalen Restorative Justice Scheme](#), (November 2017) 7.

⁴⁰ Ibid 10.

⁴¹ Ellen O'Riordan, " [Rights of eight mother and baby home survivors breached over report, State says – The Irish Times](#)" 17 December 2021.

Judicial Review Applications”:

“A number of survivors do not accept the accounts given in the Final Report of the Commission of Investigation as a true and full reflection of the oral and documentary evidence they gave to the Confidential Committee or the Commission of Investigation. In particular, the accuracy of the following paragraphs is not accepted by survivors who believe the paragraphs in question relate to them or the evidence they gave:-

Executive Summary: second italicized prologue paragraph; paragraphs 8, 11, 15, 244, 245, 248, 250 to 259.

Recommendations: paragraphs 19, 22, 23, 26, 27, 29 to 33, 35, 39, 52

Boarding Out Chapter: paragraphs 11.141, 11.142 and 11.145

Bessborough Chapter: footnote 78; 18.304, 18.309, and 18.395

Sean Ross Chapter: paragraphs 19.195 – 19.203

Adoptions Chapter: paragraph 32.3, 32.167, 32.298

Vaccine Trials: 34.77 to 34.79

Human Rights: paragraphs 36.80 and 36.81

Report of the Confidential Committee: pages 38 (penultimate paragraph); 89 (fourth and fifth paragraphs); 90 (first and second paragraphs); 134 (first two paragraphs); 164 (last two paragraphs); 165 (first paragraph).

Had survivors been furnished with drafts of extracts of the report they would have had the opportunity to request the Commission to correct statements that survivors believe to be wrong. The Minister acknowledges that because draft extracts were not furnished, survivors did not have that opportunity.’

In the light of the evidence given by the applicants to the court, the Minister has consented to the following:-

A declaration that the Commission, by failing to provide the applicant, who is identifiable in the final report, with a draft of the Report, or the relevant part of the draft of the Report, as required by section 34(1) of the Commissions of Investigation Act 2004 prior to submitting the final report to the Minister, acted in breach of statutory duty.”⁴²

This declaration was deposited for permanent preservation in the Oireachtas Library alongside the Commission's Report.

The advocacy group Clann⁴³ has stated that:

⁴² Gov.ie, [Commission of Investigation into Mother and Baby Homes and Certain Related Matters](#)

⁴³ [Clann: Ireland's Unmarried Mothers and their Children](#): Gathering the Data ('Clann') is a joint initiative by [Adoption Rights Alliance](#) (ARA) and [JFM Research](#) (JFMR). The purpose of Clann is to help establish the truth of what happened to unmarried mothers and their children in 20th century Ireland.

“The impugned parts of the Commission's Final Report include findings and recommendations upon which the Government is relying to limit its proposed redress scheme. For example, the Commission concluded that redress should not be granted for forced or illegal adoption, forced labour in Mother and Baby Homes generally, vaccine trials in Mother and Baby Homes, or the abuse of 'boarded out' or adopted people as children. The Commission's findings were heavily contested by those personally affected when published in January 2021.”⁴⁴

⁴⁴ Clann, Press Release, [‘Irish High Court Declares That Mother And Baby Homes Commission Of Investigation Treated Survivors Unlawfully’](#) 17 December 2021

Previous legislation related to the current Bill

The Commission of Investigation into Mother and Baby Homes and Certain Related Matters, established by the Government in 2015 under the [Commission of Investigation Act 2004](#), provides a full account of what happened to women and children in Mother and Baby County Home Institutions during the period 1922 to 1998. The terms of reference for the Commission were set out in the order establishing the Commission, [SI No.57 of 2015](#).

In response, the Government's 2021 Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions includes commitments to:

Advance a comprehensive scheme of payments (this is addressed in the current Bill).

Advance Information and Tracing Legislation in respect of birth and early life information for those survivors who wish to access it, including those children who were adopted and boarded out and

Advance burials legislation to support the excavation, exhumation and, where possible, identification of remains, and their dignified reburial.

The [Birth Information and Tracing Act 2022](#) was signed into law on 30 June 2022. This legislation provides a full and clear right of access to birth certificates, birth and early life information for all persons who were adopted, boarded out, the subject of an illegal birth registration or who otherwise have questions in relation to their origins. It also allows for access to information by next of kin in certain circumstances.

See: [L&RS Bill Digest: Birth Information and Tracing Bill 2022](#).

The [Institutional Burials Act 2022](#) was signed into law on 13 July 2022. This legislation provides a lawful basis for a full-scale forensic excavation, recovery and analysis of the children's remains at the site of the former Mother and Baby Institution in Tuam. It enables a DNA based identification programme to help answer questions affected families may have about their loved ones and aims to ensure that the children there are granted a dignified burial.

See: [L&RS Bill Digest: Institutional Burials Bill 2022. Bill No. 23 of 2022](#).

Regulatory Impact Analysis (RIA)

The Department of Children, Equality, Disability, Integration and Youth prepared a Regulatory Impact Analysis (RIA) in respect of the Bill.⁴⁵ The RIA examined the policy objectives of the Bill and summarised them as follows:

- That the Scheme will provide payments and an enhanced medical card to eligible applicants based on the criteria established in terms of periods of residency.
- That the Scheme will be operated on a non-adversarial basis so that eligibility will be determined based on proof of residency in one of the institutions for a defined period of time rather than proof that abuse was suffered.
- That an Executive Office in the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) will be established to administer the Scheme and that decision-making in terms of the eligibility of applicants will be made independently by that Office.
- That the Executive Office will have the authority to access the archive of the Commission of Investigation into Mother and Baby Homes for the purposes of carrying out its functions.
- That the Minister will have the power to engage third party support to carry out certain functions of the Chief Deciding Officer.
- That the application process will be straightforward, and applicants will be assisted as much as possible in terms of providing proof of their residency, in the form of relevant records, in one of the institutions.
- That applicants may be prioritised, where possible, based on exceptional health circumstances.
- That those who receive the enhanced medical card will not be liable for charges for acute in-patient services in hospitals and that payments under the Scheme will not be included in the assessment of means under the Nursing Homes Support Scheme Act 2009, also known as the *Fair Deal* scheme.
- That an applicant who is deemed entitled to an enhanced medical card but lives outside of Ireland will have the option of choosing a once-off health support payment instead.
- That the Scheme will be established as quickly as possible, given the age and health status of many of the intended applicants.
- That applicants to the Scheme will have recourse to an independent appeals process if they are unhappy with decisions made regarding their eligibility for benefits under the Scheme.
- That payments made under the Scheme will be discounted for the purposes of determining entitlement to social welfare benefits, medical and GP visit cards and/or income tax liability and
- That the Scheme will encompass a legal waiver so that eligible applicants will be precluded from bringing a case to court if they accept a payment under the Scheme.

⁴⁵ The Department of Children, Equality, Disability, Integration and Youth kindly shared a copy of the RIA with the authors and advised that the Department will shortly publish the RIA on their webpage related to the Scheme.

The RIA considered three different policy options:

1. Do nothing. This was evaluated as offering no benefits. Failing to deliver the commitments made in the Action Plan could result in reputational damage to the State and risk increasing the volume of legal action taken against the State, with associated cost impacts.
2. Legislate as proposed in the Bill.
3. Establish the Scheme on a non-statutory basis

Options 2 and 3 were estimated to cost €800m.

The RIA concluded that the second option of legislating as per the Bill was the preferred option, due to the “scale and significance of the envisaged Mother and Baby Institutions Payment Scheme”. This approach would ensure the avoidance of gaps and provide the necessary legislative basis to establish an entity to administer the Scheme, to provide the legislative basis for financial payments under the Scheme and to establish the appropriate administrative structures and provide for the lawful access and management of data.

Pre-legislative scrutiny of the General Scheme of the Bill

The General Scheme of a Mother and Baby Institutions Payment Scheme Bill 2022 was referred to the Joint Committee on Children, Equality, Disability, Integration and Youth (the Committee) on 31 March 2022 for pre-legislative scrutiny. The Committee issued an open call for submissions on the General Scheme and held two sessions on 24 May 2022, the first with representatives from the Department of Children, Equality, Disability, Integration and Youth, the second with representatives from Oak Conflict Dynamics and Tree House Practice. The Committee also met with a number of witnesses in a public session on 24 June 2022.

The Committee published its [Report on pre-legislative scrutiny of the General Scheme of a Mother and Baby Institutions Payment Scheme Bill 2022](#) on 12 July 2022.

The Committee advised that "measures must be taken to better align the redress scheme with human rights and the principles of transitional justice. Critically, the scheme must be informed by survivors' rights and their wishes, as communicated to Oak, as well as the advice provided to the IDG by IHREC."⁴⁶

The Committee made 21 recommendations, including:

- The six-month residency requirement for children must be removed. Anyone who was resident in one of the institutions should be entitled to a payment, regardless of time spent therein.
- The relevant religious congregations and organisations must contribute significant finances to fund the scheme.
- Those boarded out should be included in the scheme and entitled to redress.
- The waiver should be removed from the scheme.
- The Bill must embody a trauma informed response, including trauma counselling and compensation that acknowledges the medical and science-based evidence around the harms time in the institutions was likely to cause.

L&RS traffic light analysis of PLS recommendations versus published Bill

As part of the Bill Digest process, the L&RS compares the recommendations made in the PLS report with their inclusion, partial or otherwise, in the subsequent Bill. To do this, a traffic light system is used by the L&RS, indicating whether a key issue is accepted and reflected in the Bill, whether a consistent or unclear approach is used, or whether the recommendation has not been

⁴⁶ Joint Committee on CEDYI, [Report on pre-legislative scrutiny of the General Scheme of a Mother and Baby Institutions Payment Scheme Bill 2022 \(July 2022\)](#) at 11.

accepted or is not reflected in the Bill. This traffic light approach represents the L&RS' own, independent analysis of the Bill.

The L&RS is grateful to the officials in the Department of Children, Equality, Disability, Integration and Youth for providing their assessment of the actions taken and comments in relation to the PLS recommendations, which are replicated in the right-hand column of the table. It should be borne in mind that several recommendations encompass broader policy issues and therefore technically cannot be addressed fully by the Bill.

Table 1 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.








L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Table 2 to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	


Table 2 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.




Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
1. The scheme should be centered on the relevant human rights and equality principles, including domestic and international laws and conventions and the Constitution and it should commence as soon as practicable.	 <p>The Mother and Baby Institutions Payment Scheme has been designed with regard to rights and equality principles. The Interdepartmental Group who developed the proposals for the Scheme was informed by an advisory paper prepared by the Irish Human Rights and Equality Commission (IHREC), at the request of the Minister, and a public consultation process. In designing proposals for the Scheme, the following high level principles were adopted:</p> <ul style="list-style-type: none"> • The right to an adequate, effective and prompt remedy; • Fair procedures and accountability; • Equality and non-discrimination; • Proportionality;

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<ul style="list-style-type: none"> • Accessibility and support; • Participation; • The 'do no harm' principle. <p>On an ongoing basis, as the operational elements of the Scheme are further developed, regard to the above principles remains a central consideration.</p> <p>Every effort is being made to ensure that the Scheme is operational as soon as possible. The operational elements of the Scheme are being progressed in tandem with the required legislation to minimise the window between legislation being enacted and the Scheme opening for applications..</p>
<p>2. Greater care must be taken with regard to language. A complete language review must be undertaken to take into account the concerns regarding language and use of terms as outlined by the submissions. The definition of '<i>resident in</i>' must be expanded to include the concept of being confined and confinement in acknowledgement that residence within the homes was not always voluntary and instead was either coerced by social pressures or by express committal enforced by members of An Garda Síochána. Plain text should be employed in so far as it is possible, both in the Bill and in any accompanying documentation,</p>	<div data-bbox="643 880 707 947">—</div> <p>The importance of using sensitive and appropriate language is at the forefront of considerations in developing the Scheme and, indeed, the broader Action Plan.</p> <p>Following a recommendation from the Mother and Baby Homes Collaborative Forum in 2018, the department issued a funding call as part of the Irish Research Council COALESCE Research Fund. Researchers from NUI Galway were successful in the funding call. The aim of this project is to highlight the stigmatising and labelling language that has been used in the past and to provide guidance as to how to address this issue. This project is expected to be concluded shortly.</p> <p>In section 2, the Bill sets out that a person shall be considered to have been resident in a relevant institution where he or she-</p> <ul style="list-style-type: none"> (a) was born in, or admitted as a resident to, and (b) spent not less than one night in, the institution. <p>The Bill also provides, in section 19, for periods of temporary absence of up to 180 days to be included when calculating the total duration of a person's time in a relevant institution and their corresponding financial payment. This recognises that many mothers and children spent time outside the institution, for example as a result of a hospital stay relating to pregnancy, childbirth, illness or</p>



Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
<p>particularly given the sensitive context of the legislation.</p>		<p>infectious disease. It was considered important that a person's period of residence (and associated payment) should not be reduced because of hospitalisation, which may have been caused by harsh institutional conditions.</p> <p>The use of plain language in the Bill itself is complicated by the technical nature of legal communication and the legislative process. However, an Explanatory Memo will be prepared and published alongside the draft Bill and this will use plain text, where possible, to clearly convey the Bill's provisions. All other public facing documentation relating to the Scheme will consider the views articulated by survivors in terms of language and will be drafted in plain English with the purpose of being clear and easy to understand for all.</p>
<p>3. The scheme must recognise all rights violations and all harms perpetrated in the institutional and family separation system, including but not limited to those identified by OAK. The OAK categories of harm should be expressly listed as an appendix or schedule to the Bill, in acknowledgement of the wider experience and understanding of harm. This should define harm as including the categories noted by OAK.</p>		<p>In considering the best approach in order to meet the collective needs of survivors, it was decided to develop a Scheme that provides for a general or 'common experience' type payment rather than individualised assessments requiring applicants to prove specific abuses. It is acknowledged that this approach is not perfect but it provides the best opportunity for a non-adversarial process, minimising the risk of further trauma and the requirement for survivors to bring forward evidence of abuse. The Scheme still stands as a recognition of time spent, harsh conditions, emotional abuse and all other forms of harm, mistreatment, stigma and trauma experienced while resident in a Mother and Baby or County Home Institution. As such, the Scheme is in no way dismissing the harms referenced by OAK but is providing a holistic and non-adversarial response to harms experienced.</p> <p>The Government's Action Plan for Survivors and Former Residents of Mother and Baby and County Homes Institutions has been developed, in an attempt to provide an enduring response to the priority needs of all those concerned and ensuring that people do not have to go through the kind of suffering that was experienced in Mother and Baby or County Home Institutions again. The Action Plan covers a vast span of areas and allows for</p>


Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
		<p>coordination to take place across Government to drive and support the implementation of everything within it. There is a very strong commitment to delivering an inclusive response to the extremely complex legacy that surrounds these institutions because it is only through a broad-ranging strategic framework that we can begin our attempts to provide the range of remedies required to properly address the needs of all those who have been affected.</p>
<p>4. The scheme, associated communications and the application process must be made as accessible as possible, with supports and non-digital applications available and measures in place to ensure that individuals who missed out on key education opportunities due to their experiences in the institutions will be provided with assistance and accessibility in understanding the scheme.</p>		<p>Work is ongoing on making the Scheme and all associated communications as accessible as possible to all survivors.</p> <p>A strong National and International Communications Strategy is currently in development and all publicity and materials developed in relation to the Scheme will take into consideration the demographic range of survivors and the potential vulnerabilities of some applicants.</p> <p>When the Scheme is operational a large communications campaign will be undertaken. All documents will be accessible in plain English and supports will be made available for those who wish to engage with the Scheme and require assistance.</p> <p>Under Action 1 of the Action Plan, work is also underway on the development of a proposed new structure to support wider stakeholder engagement which will ensure support at a systemic level in terms of accessibility and the needs of applicants and potential applicants.</p>
<p>5. The scheme should be amended to better reflect the wishes of survivors as collated by OAK and the Collaborative Forum</p>		<p>There was a very strong response to the public consultation undertaken by OAK to inform the development of proposals for the Mother and Baby Institutions Payment Scheme and the findings were considered carefully. The Minister has also met with many survivors over the past two years. What has come through from the consultation and from those meetings was that redress means many things to different people. This has been responded to through the overall Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions that was published alongside</p>


Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>proposals for the Scheme. The 22 measures set out in the Action Plan take account of the Commission of Investigation's recommendations, as well as the recommendations of the Collaborative Forum. Crucially, they are intended to respond to the priority needs and concerns of survivors and former residents and their families, as established through engagement with those most affected. The intention is to focus on the most appropriate available response to core needs and to offer a wide-ranging, inclusive and kind response which promotes healing. Although the proposals for the Scheme go well beyond the recommendations of the Commission of Investigation and approximately 34,000 people will benefit from the Scheme itself, it is very important to note that the Scheme is just one element of the Government's comprehensive Action Plan.</p> <p>The IHREC recommendations as set out in their Advisory Paper to the Interdepartmental Group were also carefully considered in terms of the design of the Scheme and will continue to be borne in mind as the Scheme is developed and implemented.</p>
<p>6. A stakeholder advisory or consultation group should be established. This group should have survivors and individuals with expertise in human rights and equality, transitional justice and trauma on it. It should provide input into the design of communications about the scheme and processes for staff interacting with survivors under the scheme, the information campaign and the review of the legislation, among other things.</p>	<div data-bbox="643 1301 707 1368"></div> <p>It is intended that a Stakeholder Reference Group will be established to provide direction and feedback on communications and application material developed in relation to the Scheme.</p>




Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill
7. The scheme should respond fully to the OAK consultation with survivors and should follow the IHREC recommendations.		Response grouped with recommendation 5.
8. The Bill must embody a trauma informed response, including trauma counselling and compensation that acknowledges the medical and science-based evidence around the harms time in the institutions was likely to cause.		<p>The Scheme that is developed in line with the proposals agreed by Government will be trauma-informed and mindful of the experiences of survivors.</p> <p>Recognising the importance of a kind and trauma-informed response, the Scheme will not provide for individualised assessments but provides for a general or 'common experience' type payment so as to minimise the risk of causing further trauma and the requirement for survivors to bring forward evidence of abuse. The Scheme stands as a recognition of time spent, harsh conditions, emotional abuse and all other forms of harm, mistreatment, stigma and trauma experienced while resident in a Mother and Baby or County Home Institution.</p> <p>As stated below in response to Recommendation 9, a dedicated counselling support service, with prioritised access, is available to survivors through the National Counselling Service.</p>
9. A range of tailored, trauma informed counselling supports should be made available to survivors and their families, to include a choice of different therapeutic options.		<p>The Government's broader Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions has been designed to meet a broad range of survivors' needs. For each survivor of these institutions, the experience has had a unique and deeply personal impact. Counselling support is available to all survivors and former residents of Mother and Baby and County Home Institutions through the National Counselling Service in the HSE. It is free of charge, includes out of hours support and those who identify themselves as survivors of the institutions are prioritised for the next available counselling space. Counselling support is also being provided to survivors and former residents by Barnardos, Tusla and AAI under the auspices of the Birth Information and Tracing Act 2022.</p>


Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
<p>10. The six-month residency requirement must be removed. Anyone who was resident in one of the institutions should be entitled to a payment, regardless of time spent therein.</p>	<div data-bbox="639 353 708 421">!</div> <p>It is important to firstly stress that the Scheme is one element of a comprehensive package of support measures agreed by the Government to respond to the priority needs of survivors and former residents as part of the Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions.</p> <p>In relation to children who spent less than six months in an institution and who were adopted or otherwise separated from their birth family, the overwhelming priority need which has been expressed, through extensive engagement with those concerned, is access to records. So, for those children who spent short periods of time in an institution during their infancy, the Action Plan provides a response to their needs through the Birth Information and Tracing Act 2022 and the investment which has been made available to support implementation of that landmark legislation which was enacted on June 30. The legislation provides guaranteed access to birth certificates, as well as wider birth and early life information for those who have questions in relation to their origins. Counselling support is also available to all survivors and former residents.</p> <p>The Government's proposals for the Scheme mean that financial payments will be made to an estimated 34,000 people and a form of enhanced medical card will be provided to an estimated 19,000 people who were resident in Mother and Baby and County Home Institutions, at a cost of approximately €800 million. These proposals go significantly beyond the recommendations of the Commission of Investigation.</p> <p>The payments under the Scheme are designed to recognise time spent in the institution, harsh conditions, emotional abuse and all other forms of harm, mistreatment, stigma and trauma experienced while resident in a Mother and Baby or County Home Institution. The Government decided to provide a payment to mothers regardless of time spent in acknowledgment of the traumatic effect of being admitted to one of these institutions. The</p>




Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>graduated payment rates under the Scheme proportionately acknowledge the more prolonged experience of harsh institutional conditions which were endured by those who spent longer periods of time in these institutions.</p>
<p>11. Anybody resident in one of the institutions should be entitled to a HAA Medical card, regardless of whether they were there for at least six months</p>	<p> The period of a minimum of six months spent in a former Mother and Baby or County Home Institution was approved by Government for the provision of an Enhanced Medical Card at the time of the publication of the Commission of Investigation's Final Report.</p> <p>This qualifying timeframe of six months or more largely encompasses those who were residents in the institutions prior to 1974, who likely experienced harsher conditions and who are more likely to be at the older end of the broad spectrum of survivors. It is also fair to say that those who spent six months or more in an institution are likely to have endured more negative impacts on their health and wellbeing than those who spent less time in one. This ties in with ensuring that access to health services is determined based on need.</p> <p>The year on year costs of providing an Enhanced Medical Card to everyone who spent time in a Mother and Baby or County Home Institution would be substantial and such an expansion of eligibility may not translate into the provision of services in what would be considered a timely manner by those who become eligible.</p> <p>It should be noted, however, that counselling support has been made available to all survivors since before the publication of the Commission's Final Report and the service has been strengthened with additional investment and an expanded out of hours service</p>
<p>12. Those boarded out should be included in the scheme and entitled to redress.</p>	<p> Following complex deliberations on the design of the Scheme, it was decided that a general payment, based on time spent in the institution, was the best option in order to provide for a non-adversarial approach to the Mother and Baby Institutions Payment Scheme. This approach, unfortunately, does not cater for the circumstances of boarding out which, given the very individual</p>


Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>experiences, would have to be assessed on a case by case basis. However, if a person spent time in a Mother and Baby or County Home Institution prior to being boarded out as a child they may qualify for the Payment Scheme based on their time spent in an institution.</p> <p>The Government's Action Plan includes other measures which will provide support and assistance to those who were boarded out as children. These measures include:</p> <ul style="list-style-type: none"> • Access to birth and early life information as part of the Birth Information and Tracing Act 2022. • The provision of an ex-gratia payment to reimburse anyone who was boarded out and had to pay inheritance taxes for farms which they inherited from their foster parents. <p>Furthermore, funding of €330,000 has been provided for specialist therapeutic counselling services to persons who were boarded out or placed at nurse as children. This service is open and is being delivered by Barnardos.</p>
<p>13. The list of institutions should be expanded to allow those survivors from the small number of other institutions to be eligible to apply.</p>	<p> The Government does not wish to disregard or diminish any person's experience and recognises that there are people who suffered stigma, trauma and abuse in other institutions and outside of institutions who will not qualify for this Scheme.</p> <p>S.I. No 57 of 2015, which established the Commission of Investigation into Mother and Baby Homes, sets out the Terms of Reference of the Commission of Investigation and lists the fourteen mother and baby homes covered by the investigation. In addition, the Commission selected four of the 30 county homes by way of a representative sample, for investigation. This was on the basis that they fulfilled a function with regard to single women and their children similar to the fourteen named mother and baby homes. The Commission's Second Interim Report highlighted that in the process of compiling information for the Social History Report, they had received calls for additional institutions to be investigated and were</p>



Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
		<p>provided with a list of approximately 160 such institutions. In relation to this list, they found that some were already being investigated by the Commission, some had already been investigated in the context of previous redress schemes and the remainder were mainly private nursing homes, private maternity homes or orphanages.</p> <p>The Commission found that the named Mother and Baby Homes being investigated by the Commission were 'unquestionably the main such homes that existed during the 20th century. They all received State funding to a greater or lesser degree. The State was directly responsible for establishing a number of them.'</p> <p>If it were to come to light that an institution fulfilled a similar function with regard to single women and their children as the 14 Mother and Baby Institutions and the State had a regulatory or inspection function, section 43 of the draft Bill does provide for the Minister to insert an additional institution into the Schedule. Section 15 constitutes a related provision in allowing for an applicant to submit a second application in a case where they were also resident in an institution that has been added to the Schedule.</p>
<p>14. The decision to add an institution in Schedule 1 should not be subject to the Minister of Public Expenditure and Reform's consent. It should fall under the decisions sanctioned by the Chief Deciding officer, in consultation with the Minister of Children, Equality, Disability, Integration and Youth, and the Minister of Public Expenditure and Reform.</p>		<p>As set out above, the Scheme covers the institutions which were considered by the Commission of Investigation to be the main such homes that existed during the 20th century. The inclusion of an additional institution, or institutions, in Schedule 1 would expand the scope of the Scheme and, inevitably, the cost. In that case, it would be inappropriate not to seek the consent of the Minister for Public Expenditure and Reform to include additional institutions.</p> <p>It would also not be appropriate for the Chief Deciding Officer to have the authority to expand the scope of the Scheme as his or her functions are restricted to the operation of the Scheme and decision-making in terms of the eligibility of applicants from the institutions listed in Schedule 1. The expansion of the coverage of the Scheme is a policy matter for the Minister to consider and, due</p>



Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	to the cost implications of any additions to Schedule 1, for the Minister for Public Expenditure and Reform to give consent to.
15. The Bill should be amended to backdate the eligibility for deceased applicants' families further, to at least the date the MBHCOI report was originally commissioned.	 <p>The date of the State Apology delivered by An Taoiseach Micheál Martin (January 13 2021), was proposed by the Interdepartmental Group, and agreed by Government as an appropriate date to allow for applications on behalf of deceased applicants for a General Payment or Work-Related Payment to be considered.</p>
16. The waiver should be removed from the scheme.	 <p>The legal waiver would only be signed at the point where an applicant accepts an offer of a financial payment under the Scheme. Therefore, the applicant will know precisely what they are being offered under the Scheme prior to signing a waiver. They will also be entitled to financial support to avail of independent legal advice prior to making this decision. Until the point where an offer is accepted, an applicant will have the right to pursue a case through the courts. Signing a waiver will not mean that survivors cannot discuss their experience of engaging with the Scheme or the payment they may have received.</p> <p>As the IDG Report points out, it is a common feature of ex-gratia schemes that those who accept financial awards through Schemes are obliged to sign a legal waiver which states that they will not then pursue an action through the courts. Part of the logic for this is that a person accepting an award under an ex-gratia scheme usually benefits from less burdensome procedures than those used in the courts, does not risk incurring high legal fees if their case is not successful and has a greater likelihood of success than they would have if they brought a case to court. The IDG Report and the IHREC advisory paper also point to an element of finality which waivers can bring to a redress process.</p>
17. Survivors should be entitled to legal aid to enable them to seek independent legal advice	 <p>The Scheme will adopt a non-adversarial approach. Applicants will not be required to bring forward evidence of abuse and will be fully supported to make an application to the Scheme</p>


Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
<p>at all stages and those costs should be met by the scheme in full.</p>		<p>and throughout the application process. It will not be necessary to obtain independent legal advice in order to make an application to or engage with the Scheme. Those administering the Scheme will deal with all applicants with sensitivity and kindness and assist them in any way they can at all stages of the process.</p> <p>Therefore, section 37 of the Bill currently provides for applicants to be financially supported in obtaining legal services in two circumstances; where an affidavit is required at the request of the Chief Deciding Officer and where they wish to seek independent legal advice at the point of accepting a payment under the Scheme and, thus, signing a legal waiver. Regulations will be enacted in this regard.</p>
<p>18. Measures must be put in place to better align the scheme with what was requested and advised in terms of independence, accountability, human rights and transitional justice.</p>		<p>This Scheme should not be viewed in isolation as the State's sole response to Ireland's legacy on Mother and Baby Homes. It is of course a very significant Scheme and an important measure in the Government's Action Plan but important work has also been underway on all other aspects of this Action Plan. The Action Plan aims to provide a holistic response that is survivor centred and survivor informed. It is comprehensive and spans the domains of transitional justice in terms of apology, restorative measures, memorialisation, and commitment to non-recurrence, reparations, rehabilitation etc.</p> <p>The Action Plan clearly demonstrates Government's commitment to ensuring that amends are made for the wrongs perpetrated on survivors in a meaningful and all-encompassing way. This is in keeping with what is expected from Ireland from a human rights perspective.</p> <p>All of the measures in the Action Plan taken together are an acknowledgement of the profound suffering experienced by Irish women and their children in these institutions, and reflects our shared understanding of the enduring impact these experiences have had on many citizens and their families.</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
19. The independence of the Chief Deciding Officer will be critical to this and should be shored up as much as possible.	 <p>The Office of the Chief Deciding Officer of the Mother and Baby Institutions Payment Scheme will be situated within the Department, but the Chief Deciding Officer will be independent in the performance of his or her functions and this will be provided for in statute. This is set out in section 9 of the Bill. He or she will have staff to support the administration of the Scheme.</p>
20. There must be strong and transparent rights of review and independent appeals mechanisms available where somebody has concerns about their application.	 <p>Section 22 of the draft Bill sets out that applicants have recourse to an internal review where they are unhappy with the decision in relation to their application. Thereafter, they have a further right of appeal to an independent Appeals Officer, as provided for in section 24 of the Bill. Section 25 sets out that a further appeal on a point of law can also be made to the High Court.</p> <p>It is intended that the Minister will establish and maintain a panel of designated Appeals Officers to consider appeals. This is set out in section 23 of the Bill. The Appeals Officers would undertake their functions as independent contractors and act in accordance with due process.</p>
21. Redress must be provided for more of the 17 harms and 12 categories of claims identified by survivors working with OAK	 <p>Through extensive engagement with survivors, it was made clear that it is a priority that the Mother and Baby Institutions Payment Scheme be non-adversarial, simple, timely and based on trust. This has informed the approach of providing a General Payment that can be awarded on the basis of a largely common experience and a low burden of proof, without requiring a person to have to demonstrate evidence of a specific harm or abuse.</p> <p>While proposals for the Scheme were being developed, detailed consideration was given to a "tiered" payment approach which could provide for individualised assessments in certain circumstances. Having considered the potential strengths and weaknesses, it was concluded that a General Payment approach offered the strongest possibility of providing a Scheme that was non-adversarial with a low burden of proof for applicants. At the same time, there were strong concerns that a "tiered" approach, while appearing</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>all encompassing, would present genuine difficulty for applicants in terms of their ability to satisfy evidence thresholds. The only way to provide for an individualised calculation of entitlements in any Scheme is through an investigation as part of an evidence based process. Such processes by their nature can be seen as adversarial. Overall, it was considered that this ran the significant risk of re-traumatising applicants.</p> <p>As well as this key requirement that there should be a low burden of proof for survivors, the proposed approach to the Scheme is also notably less complex than an approach which relies on a more individualised assessment process. This means that the process of assessing applications can be notably quicker.</p> <p>As was set out in the IDG Report, the approach chosen also takes account of the experience of the Australian Stolen Generations Reparations Scheme. This scheme moved from an individualised assessment to a common experience payment on the advice of the Independent Assessor appointed to consider applications. In making this recommendation to the Australian Government, the assessor explained that his role of assessing the level of harm that had been caused to individuals – and by extension the level of reparation to be offered – was problematic as the judgements he would make would necessarily be subjective and risk unfairness. He was also concerned that the process of having to prove the level of harm would, in itself, be harmful and could be divisive.</p>
<p>22. There should be no cut-off date or limited time period for the duration of the scheme.</p>	<p> The experience of other schemes has shown that the bulk of applications are received around the time that a Scheme is launched. This Scheme is awaited by survivors and the expectation is that a similar situation would unfold for the Mother and Baby Institutions Payment Scheme. The situation will be monitored on an ongoing basis and communication efforts will be stepped up whenever it is felt there is a need to do so. Section 9(1)(f) of the Bill places the statutory obligation on the CDO to make all reasonable efforts, including through</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>public information campaigns, to ensure that affected people are made aware of the Scheme and the deadline for applications.</p>
<p>23. The payment amounts under the scheme should be increased.</p>	<p> The payment rates for the Scheme were agreed by Government as part of the proposals for the Scheme. The Minister has improved the overall approach to the payment rates by introducing more refined bands, which are defined by reference to days and are supplemented by additional quarterly rate bands. This will serve to benefit applicants, particularly where they would have been at the upper end of a given annual band under the original proposals. They smooth and narrow the gap between payment amounts for applicants, and increase fairness and transparency.</p> <p>The payments represent just one aspect of the overall redress package of supports and measures set out in the Government's Action Plan for Survivors and Former Residents of Mother and Baby and County Homes Institutions, which seeks to provide an inclusive and enduring response to the priority needs of all survivors. It is recognised that there is no financial payment or service provision which could make up for the immense pain and suffering endured but the Scheme stands in recognition of time spent in these institutions, harsh conditions, emotional abuse and all other forms of harm, mistreatment, stigma and trauma.</p> <p>The general payment approach eliminates the need for applicants to bring forward evidence of abuse to demonstrate an entitlement or undergo cross examination of this evidence, which by its nature can be seen as adversarial and re-traumatising. However, their experience is still recognised through a payment structure which also takes account of more prolonged institutional experiences.</p>
<p>24. A HAA card should be provided to all survivors, regardless of time spent in an institution.</p>	<p> The provisions under the Health Amendment Act card were put in place for people infected with Hepatitis C. The Government at that time deemed the circumstances to be exceptional because the persons concerned had clear health and social</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
		<p>support needs as a result of having contracted a very serious and life-threatening condition.</p> <p>The form of Enhanced Medical Card which will be provided as part of this Scheme will provide the most appropriate mix of benefits for the large cohort of survivors in question, and it is more akin to the needs of the general population. Section 29(3) of the Bill sets out what the Enhanced Medical Card will provide.</p> <p>It is important to stress, however, that as part of the broader Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions, the Government has also committed to a targeted research study which should inform any further enhancement of services, if deemed necessary.</p>
<p>25. The relevant religious congregations and organisations must contribute significant finances to fund the scheme.</p>		<p>Following Government approval, on November 16 2021, for the <i>Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions</i> and the proposals for the Mother and Baby Institutions Payment Scheme, Minister O'Gorman commenced meetings on an individual basis with each of the Religious Congregations and organisations involved with these institutions.</p> <p>The purpose of these negotiations is to outline the Government's firm belief that all relevant parties have a shared moral and ethical obligation to contribute to the cost of the proposed Payment Scheme and to discuss how the Congregations and organisations intend to contribute.</p> <p>These negotiations are ongoing and, while so are being treated as confidential. However, a full report on the outcome of discussions will be provided to Government when the process is concluded.</p>
<p>26. The role of local authorities in relation to assisting survivors should be further clarified.</p>		<p>The Minister will continue to liaise with the Minister for Housing, Local Government and Heritage on how survivors can be supported as part of the focus of the Government's broader Action Plan.</p> <p>Pursuant to Action 6 of Government's Action Plan for Survivors and Former Residents of Mother and Baby and County Home Institutions, in September 2021, the Minister for Housing, Local Government</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
		<p>and Heritage established a Working Group of Departmental and Local Authority officials to consider:</p> <ul style="list-style-type: none"> • a survivor-centred approach to the access to and provision of local government services to survivors and their families, and • supporting local memorialisation projects in line with the wishes of survivors. <p>To inform its deliberations, a consultative process with survivor advocacy groups and representatives, led by independent facilitators, was conducted over the summer months. A Report on these facilitated consultations is currently being finalised, which the Working Group hopes to receive shortly.</p>
<p>27. Pharmaceutical companies and research institutes, including those within universities and higher education institutions, who undertook or participated in illegal vaccine trials should also contribute to financing the scheme.</p>		<p>This recommendation is outside the remit of the Minister.</p> <p>Following the publication of the Commission of Investigation's Final Report, Minister O'Gorman met with Glaxo Smith Kline and conveyed his view that all relevant parties, including GSK, had a moral and ethical obligation to take appropriate action in response to the Report. He urged them to consider the failures laid bare in the Commission's report and respond appropriately, given their corporate responsibilities. Ultimately, however, it is a matter for GSK to decide what action they take, or remedy they offer, having considered the Commission's findings.</p> <p>While it is a matter for GSK directly, we are aware that they publicised arrangements for persons wishing to access personal information which may be contained within their corporate archives.</p>

Principal provisions of the Bill

This section of the Bill Digest examines some of the main provisions of the Bill in greater detail. It does not consider every provision of the Bill, focusing instead on providing more information on the more significant provisions and where possible highlighting the extent to which the Bill reflects the PLS recommendations of the Joint Committee. A full summary of the 48 provisions of the Bill is provided in the Table of Provisions section at p.7 of the Digest.

Interpretation

Section 2 of the Bill sets out the details of relevant terms and definitions used in the Bill. Some of the more significant ones are set out below but it is not a complete list of all the definitions included under section 2.

"applicant" means a person who makes an application in accordance with *section 14*, or a person on whose behalf or for the benefit of whose estate such an application is, in accordance with this Act, made, and a reference in this Act to an applicant shall, where the context so requires, include a reference to a person who makes an application in accordance with *section 31* or *32* or who proceeds under *section 33* with an application;

"Chief Deciding Officer" means the person appointed under *section 8(1)* to be the Chief Deciding Officer;

"child" means a person who has not attained the age of 18 years;

"establishment day" means the day appointed under *section 5*;

"general payment" means a payment to which a relevant person is entitled under *subsection (1) or (2) of section 13*;

"health support payment" means a payment to which a relevant person is entitled under *section 13(5)*;

"information source" means—

- (a) a local authority,
- (b) the Health Service Executive,
- (c) the Child and Family Agency,
- (d) the Adoption Authority of Ireland,
- (e) the National Archives, or
- (f) a person prescribed under *section 45*;

"local authority" means a local authority within the meaning of section 2 of the Local Government Act 2001;

"Minister" means the Minister for Children, Equality, Disability, Integration and Youth;

"personal representative" has the meaning assigned to it by the Succession Act 1965;

"prescribed" means prescribed by regulations made by the Minister;

"public body" means—

- (a) a Minister of the Government,
- (b) a local authority, or
- (c) a body (other than a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act) established by or under any enactment;

"registered medical practitioner" has the same meaning as it has in the Medical Practitioners Act 2007;

"registered nurse" has the same meaning as it has in the Nurses and Midwives Act 2011;

"relevant institution", subject to *section 43*, means an institution specified in *Schedule 1*;

"relevant person" means a person who is either or both of the following:

- (a) a person who, while the person was a child, was resident in a relevant institution other than in circumstances referred to in paragraph (b);
- (b) a person who, while the person was a child or while the person was an adult, or both, was resident in a relevant institution for reasons relating to the person's pregnancy, or the birth or care of the child born as a result of the pregnancy;

"Scheme" means the Mother and Baby Institutions Payment Scheme established under section 5;

"work-related payment" means a payment to which a relevant person is entitled under section 13(3).

A person will be considered to have been resident in a relevant institution where he or she—

- (a) was born in, or admitted as a resident to, and
- (b) spent not less than one night in, the institution.

The Committee recommended that the definition of 'resident in' be expanded to include the concept of being confined and confinement in acknowledgement that residence within the homes was not always voluntary and instead was coerced (recommendation no.2). This recommendation was not incorporated into the Bill. See Table 4 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations, at p.40 to view the Department's response in relation to this recommendation.

In addition, the recommendation to include those boarded out be included in the scheme and entitled to redress was not included.

Eligibility Criteria

Section 13 provides for the eligibility criteria for the payments and services available under the Scheme.

General Payment

A relevant person who, while a **child**, was resident in a relevant institution **for not less than 180 days**, shall be entitled to a general payment in respect of the number of days they were resident, subject to details in Schedule 2.

A relevant person who, was resident in a relevant institution for reasons relating to the **person's pregnancy**, or the birth or care of the child born as a result of the pregnancy shall be entitled to a general payment in respect of the number of days they were resident, subject to details in Schedule 2.

Work-Related Payment

A relevant person who, was resident in a relevant institution for reasons relating to the **person's pregnancy**, or the birth or care of the child born as a result of the pregnancy, was resident **for not less than 90 days** in a relevant institution shall, in addition to any entitlement under this section to a general payment, be entitled to a payment in respect of the number of days, subject to Schedule 3.

The provision without charge of health services

Both types of relevant persons detailed above, in a relevant institution for not less than 180 days will be eligible for the provision to him or her without charge of the health services specified in section 29(3). This will be operationalised by the provision to the eligible applicant of a form of enhanced medical card.

Health Support Payment

Where a person who is eligible for the enhanced medical card is not ordinarily resident in the State, he or she may choose instead to apply for a once-off health support payment of €3000.

Not Entitled

A relevant person who, while a child, was resident in a relevant institution, shall not be entitled to a general payment in respect of such residence where he or she has received an award under the Residential Institutions Redress Act 2002 in respect of circumstances arising in the same institution.

A relevant person (both types) shall not be entitled to a general payment or work-related payment in respect of a period of residence in a relevant institution where he or she has received an award from a court or settlement in respect of an action arising out of any circumstances relating to the same period of residence in the institution.

A relevant person (both types) shall not be eligible for the provision without charge of the health services referred to in subsection (4) to him or her, or entitled to a health support payment, if he or she is a relevant participant, within the meaning of section 2 of the Redress for Women Resident in Certain Institutions Act 2015.

The Committee had recommended that the six-month residency requirement be removed and that anyone who was resident in one of the institutions be entitled to a payment, regardless of the time spent therein (recommendation no.10). This requirement was not removed from the Bill.

The Committee also recommended that anybody resident in one of the institutions should be entitled to a HAA Medical card, regardless of whether they were there for at least six months (recommendation no.11). This recommendation was not included in the Bill, with a period of six months being required for the provision of an Enhanced Medical Card.

See Table 4 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations at p. 40, to view the Department's response in relation to these recommendations.

Application to the Scheme

Section 14 provides that a person who considers themselves a relevant person can make an application to the Chief Deciding Officer for payments, and the provision without charge of the health services (i.e. the form of enhanced medical card).

Applications shall not be considered after the cessation date, which is five years after the Scheme has been established as provided for under section 6 of the Bill.

Only one application should be made to the Scheme. The only exception to this is where an additional institution is added to Schedule 1, and a person makes a further application in respect of that institution in accordance with section 15.

The section goes on to set out what information should be supplied in an application including

- contact details, personal data and information relating to the applicant that are necessary for the performance by the Chief Deciding Officer of their functions
- the type of payment, or provision without charge of health services for which the applicant is applying
- a statement by the applicant that they meet the relevant criteria for eligibility,
- where the application is for a health support payment, be accompanied by information to demonstrate that the applicant is not ordinarily resident in the State, and be accompanied by such other information or documentation in support of the application as may be specified by the Chief Deciding Officer.

The Committee recommended that there be no cut-off date or limited time period for the duration of the scheme (recommendation no. 22). This recommendation was not included in the Bill. See Table 4 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations at p. 40, to view the Department's response in relation to these recommendations.

Further Application

Section 15 provides that a further application can be made to the Scheme where another institution in which he or she resided is added to the list of institutions covered by the Scheme in Schedule 1.

Subsection 4 of section 15 provides that the total number of days spent by the applicant in all relevant institutions, will be used to determine the applicant's entitlement to a further application, even where the earlier application was found not to meet the minimum number of days set out in the relevant provision. It provides,

"(4) Where—

- (a) a relevant person made an earlier application in respect of his or her residence in a relevant institution, and
- (b) the final determination of the earlier application is that the relevant person is not entitled to a benefit under a relevant provision, on the basis that he or she was not resident in the relevant institution for the minimum number of days specified in the relevant provision concerned, then, in the determination, for the purposes of a further application by the relevant person, of his or her entitlement to a benefit under the relevant provision concerned, the number of days on which he or she was resident in the relevant institution referred to in *paragraph (a)* shall be deemed to be reckonable."

Section 15 sets out the following definitions applicable to the section:

"benefit" means a payment under *subsection (1), (3) or (5) of section 13*, or the provision without charge of health services under *subsection (4) of that section*;

"final determination" means, in relation to an earlier application, the determination of the application that applies after any review or appeal has concluded or where no such review has been sought or appeal made and the period for seeking such review or making such appeal has expired;

"relevant provision" means *subsection (1), (3), (4) or (5) of section 13*.

General examination of application

Section 16 provides for the manner in which the Chief Deciding Officer will examine applications.

Subsection (4) sets out the obligations of the Chief Deciding Officer when examining an application as follows. These include that the Chief Deciding Officer must

- establish the identity of the applicant
- establish whether the applicant is a relevant person
- where the applicant is a relevant person calculate the period of residence in the relevant institution
- where the application is for a health support payment, establish whether the applicant is not ordinarily resident in the State.

Subsection (6) provides for the information which the Chief Deciding Officer must take into consideration in examining an application. This includes-

- information provided by the applicant with their application or by request of the Chief Deciding Officer
- information provided by an information source or any other person where such information is requested by the Chief Deciding Officer and considered relevant to the application
- information accessed and processed by the Chief Deciding Officer as part of the processing of personal data and special categories of personal data
- information provided by affidavit by the applicant.

Calculation of period of residence in relevant institution

Section 19 provides for the calculation of an applicant's period(s) of residence in one or more relevant institutions. The Chief Deciding Officer will calculate the number of days of each period of residence in a relevant institution and the combined total of all periods of residence in a relevant institution.

Section 19(5) sets out the meaning of four key terms as follows:

“admission date” means, in relation to a period of residence, the date on which the relevant person concerned was admitted to the relevant institution and, in the case of a relevant person who was born in the relevant institution, means his or her date of birth;

“discharge date” means, in relation to a period of residence, the date on which the discharge of the relevant person concerned from the relevant institution occurred;

“period of residence” means, in relation to a relevant person, the period, beginning on the admission date and ending on the discharge date, during which he or she was, other than during a temporary absence period, continuously resident in a particular relevant institution;

“temporary absence period” shall be construed in accordance with *subsection (4)(a)*.

Notification of Applicant regarding Determination

Section 21 provides for the particulars to be included in the notification of the determination. Subsection 3 sets out the details which must be included in the statement of determination. These include a statement of facts and reasoning in relation to each payment or service for which the applicant applied:

- A statement of fact and rationale regarding a determination that an applicant is not a relevant person.
- A statement of fact including the calculated amount of payment regarding a determination in relation to entitlement to a general payment or a work-related payment.

- A statement of fact and rationale regarding a determination of non-eligibility for a general or work-related payment.
- A statement of fact where the applicant is eligible for the provision without charge of health services.
- A statement of fact and rationale regarding a determination of non-eligibility for the provision without charge of health services.
- A statement of fact regarding a determination that the applicant is entitled to a health support payment.
- A statement of fact and rationale regarding a determination where the applicant is eligible for the provision without charge of health services and it is determined they are not ordinarily resident in the State.
- A statement of fact regarding a determination that the applicant is not entitled to a health support payment.

Review of Determination

Section 22 provides for the procedure and process around the review of a determination. This includes setting out for the information and submissions which the Chief Deciding Officer must consider in carrying out a review as set out under subsection 4. This includes

- that the Chief Deciding Officer has the opportunity to decide the matter the subject of the review as it was being decided for the first time;
- they may consider written or oral submissions made by the applicant and by or on behalf of the person who made the determination the subject of the review;
- may consider any information or documents furnished by the applicant;
- may consider any matter in relation to the applicant where it is relevant to the determination under review.

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

