



Number 17 of 2005

**COMMISSION TO INQUIRE INTO CHILD ABUSE
(AMENDMENT) ACT 2005**

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Number 17 of 2005

**COMMISSION TO INQUIRE INTO CHILD ABUSE
(AMENDMENT) ACT 2005**

AN ACT TO AMEND THE COMMISSION TO INQUIRE INTO CHILD ABUSE ACT 2000 AND THE RESIDENTIAL INSTITUTIONS REDRESS ACT 2002, TO ESTABLISH A BODY TO BE KNOWN AS AN BORD AIRGEADAIS OIDEACHAIS (IAR-CHÓNAITHEOIRÍ DE CHUID FORAS ÁIRITHE DO LEANAÍ) OR, IN THE ENGLISH LANGUAGE, THE EDUCATION (FORMER RESIDENTS OF CERTAIN INSTITUTIONS FOR CHILDREN) FINANCE BOARD AND TO DEFINE ITS FUNCTIONS AND TO PROVIDE FOR RELATED MATTERS.

[9th July, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Commission to Inquire into Child Abuse (Amendment) Act 2005.

Short title,
construction and
collective citation.

(2) The Principal Act, section 32 of the Residential Institutions Redress Act 2002 and *Part 2* of this Act may be cited together as the Commission to Inquire into Child Abuse Acts 2000 and 2005 and shall be construed together as one.

(3) The Residential Institutions Redress Act 2002 and *section 34* may be cited together as the Residential Institutions Redress Acts 2002 and 2005.

2.—(1) In this Act, “Principal Act” means the Commission to Inquire into Child Abuse Act 2000.

Interpretation
generally.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or adapted by or under any other enactment.

PART 2

AMENDMENTS OF PRINCIPAL ACT

Amendment of section 1 (interpretation) of Principal Act.

3.—Section 1(1) of the Principal Act is amended—

- (a) in the definition of “abuse”, by inserting in paragraphs (c) and (d), after “results”, “, or could reasonably be expected to result.”,
- (b) by inserting the following definition after the definition of “abuse”:

“‘admit’, in relation to a document, means—

- (a) if the document is an original document, admit that it was written, signed or executed as it purports to have been, and
- (b) if the document is a copy of another document, admit that it is a true copy of the other document,

and cognate words shall be construed accordingly;”,

- (c) by inserting the following after the definition of “advisor”:

“‘authorised officer’ shall be construed in accordance with section 23;”,

- (d) by deleting the definition of “inquiry officer”, and

- (e) by substituting the following definition for the definition of “serious offence”:

“‘serious offence’ means an offence for which a person of full age and capacity and not previously convicted may be punished by imprisonment for a term of one year or by a more severe penalty;”.

4.—Section 4 of the Principal Act is amended—

Amendment of section 4 (functions of Commission) of Principal Act.

(a) in subsection (1)(b)—

(i) by inserting the following subparagraph after subparagraph (i):

“(ia) to inquire into the manner in which children were placed in, and the circumstances in which they continued to be resident in, institutions during the relevant period,”

and

(ii) by deleting, in subparagraph (ii), “where it is satisfied that such abuse has occurred,”

and

(b) by substituting the following subsection for subsection (6):

“(6) In performing its functions the Commission shall bear in mind the need of persons who have suffered abuse in childhood to recount to others such abuse, their difficulties in so doing and the potential beneficial effect on them of so doing and, accordingly, the Commission and the Confidential Committee shall endeavour to ensure that meetings of the Confidential Committee at which evidence is being given are conducted—

(a) so as to afford to persons who have suffered such abuse in institutions during the relevant period an opportunity to recount in full the abuse suffered by them in an atmosphere that is sympathetic to, and understanding of, them, and

(b) as informally as is possible in the circumstances.”.

5.—Section 5 of the Principal Act is amended—

Amendment of section 5 (reports of Commission) of Principal Act.

(a) in subsection (3)—

(i) by substituting the following paragraph for paragraph (a):

“(a) may contain findings that abuse of children, or abuse of children during a particular period, occurred in a particular institution and may identify—

(i) the institution where the abuse took place, and

(ii) the person or, as the case may be, each person who committed the abuse but only if he or she has been convicted of an offence in respect of abuse,”

and

- (ii) by substituting the following paragraph for paragraph (b):

“(b) may contain findings in relation to the management, administration, operation, supervision and regulation, direct or indirect, of an institution referred to in paragraph (a),”

and

- (b) by substituting the following subsection for subsection (4):

“(4) In preparing its report, the Commission shall, in so far as any part of the report is based on evidence recorded by the Confidential Committee, have regard to the fact that that evidence received by that Committee could not be tested or challenged by any person and (if it be the case) was not corroborated.”

Amendment of section 11 (meetings and procedures of Committees) of Principal Act.

6.—Section 11 of the Principal Act is amended—

- (a) in subsection (3)—

- (i) by substituting the following paragraph for paragraph (a):

“(a) A meeting of the Investigation Committee, or a part of such a meeting, at which evidence relating to particular instances of alleged abuse of children is being given may, if the Committee considers it appropriate, having had regard to the desirability of holding such meetings otherwise than in public, be held in public.”

and

- (ii) by inserting the following paragraph after paragraph (b):

“(c) A meeting of the Investigation Committee, or a part of such a meeting, at which evidence relating to particular instances of alleged abuse of children is being given may, if the Committee considers it appropriate, be held otherwise than in public but with such access thereto as may be determined by the Committee by such persons as are deemed by the Committee to have a sufficient interest in the meeting.”

and

- (b) in subsection (6), by substituting the following paragraph for paragraph (a):

“(a) A Committee may, if and whenever the Chairperson so determines, act in divisions each of

which shall consist of such member or members of that Committee as the Chairperson may determine.”.

7.—Section 12 of the Principal Act is amended, in subsection (1)—

Amendment of section 12 (functions of Investigation Committee) of Principal Act.

(a) by substituting the following paragraph for paragraph (a):

“(a) to provide, as far as is reasonably practicable, for persons who have suffered abuse in childhood in institutions during the relevant period, an opportunity to recount the abuse and other relevant experiences undergone by them in institutions,”,

(b) by inserting the following paragraph after paragraph (a):

“(aa) to inquire into the manner in which children were placed in, and the circumstances in which they continued to be resident in, institutions during the relevant period,”,

and

(c) by substituting, in paragraph (d), the following subparagraph for subparagraph (iii):

“(iii) the manner in which any of the things referred to in subparagraph (ii) was done,”.

8.—Section 13 of the Principal Act is amended—

Amendment of section 13 (report of Investigation Committee) of Principal Act.

(a) in subsection (2), by substituting the following paragraphs for paragraphs (a) and (b):

“(a) may contain findings that abuse of children, or abuse of children during a particular period, occurred in a particular institution and may identify—

(i) the institution where the abuse took place, and

(ii) the person or, as the case may be, each person who committed the abuse but only if he or she has been convicted of an offence in respect of abuse,

(b) may contain findings in relation to the management, administration, operation, supervision and regulation, direct or indirect, of an institution referred to in paragraph (a), and”,

and

(b) in subsection (4)(b), by inserting, after “interim reports”, “(which may specify the determinations standing made, at the date of the preparation of the interim report concerned, by the Committee pursuant to section 12)”.

Amendment of section 14 (powers of Investigation Committee) of Principal Act.

9.—Section 14 of the Principal Act is amended by adding the following subsections after subsection (7):

“(8) The chairperson of the Committee may direct in writing a person whom the Committee considers to be in possession or control of evidence or a document that is required by the Committee—

(a) to make an affidavit setting out or exhibiting the evidence or document and to furnish the affidavit and any exhibits referred to in it to the Committee not later than such date as may be specified in the direction for that purpose, or

(b) to give, by notice in writing furnished to the Committee not later than 6 days after the date of the direction or such later date, notified to the person in writing by the chairperson, as the Committee may determine, the particulars specified in the direction in relation to the evidence or document.

(9) The chairperson of the Committee may, in relation to evidence or a document that is required by the Committee—

(a) deliver interrogatories in writing, signed by the chairperson, to a person whom the Committee considers to be in possession or control of the evidence or document for the examination of the person, and

(b) direct the person in writing to make an affidavit answering the interrogatories and to furnish it to the Committee not later than the date specified in the direction for that purpose.

(10) The evidence contained, and, as appropriate, any exhibit referred to, in a document or affidavit furnished to the Committee pursuant to subsection (1), (8) or (9) or in a notice furnished to it pursuant to subsection (8) may be received by the Committee as *prima facie* evidence of the matters to which it relates.

(11) The chairperson of the Committee may direct in writing a person whom the Committee considers to be in possession or control of a document required by the Committee to admit—

(a) the document, or

(b) the contents of the document,

or both, saving all just exceptions, by notice in writing furnished to the Committee not later than such date as may be specified in the direction for that purpose, and, if a person admits the contents of a document pursuant to a direction under this paragraph, those contents may, in relation to the person, be received by the Committee as *prima facie* evidence of the matters to which they relate.

(12) Where a person, without just cause or excuse, does not comply with a direction under subsection (1), (8), (9) or (11) the chairperson of the Committee may direct that the whole or part of the costs, as taxed by a Taxing Master of the High Court, of—

- (a) a person appearing before the Committee (including the person to whom the first-mentioned direction was given), or
- (b) the Committee,

in relation to proof of the matters specified in that direction shall be borne by the person to whom it was given.

(13) Subsection (12) is in addition to, and not in substitution for, section 20A (inserted by the Residential Institutions Redress Act 2002).

(14) Evidence of a conviction of a person of an offence whose ingredients consist of or include abuse of a child in an institution during the relevant period in relation to the Committee shall be received by the Committee as evidence of abuse of the child in the institution during the relevant period aforesaid.”.

10.—Section 15 of the Principal Act is amended in subsection (1) by substituting the following paragraph for paragraph (c):

Amendment of section 15 (functions of Confidential Committee) of Principal Act.

- “(c) to make proposals of a general nature with a view to their being considered by the Commission in deciding what recommendations to make under section 5(2), and”.

11.—Section 16 of the Principal Act is amended—

Amendment of section 16 (report of Confidential Committee) of Principal Act.

- (a) by substituting the following subsection for subsection (1):

“(1) Subject to subsection (2), the Confidential Committee (‘the Committee’) shall prepare a report in writing (‘the report’), based on the evidence received by it pursuant to subsection (1)(b) of section 15, setting out the proposals made by it pursuant to subsection (1)(c) of that section.”,

and

- (b) in subsection (4) by substituting the following paragraph for paragraph (a):

“(a) shall, not more than one year after the establishment day, prepare and furnish to the Commission an interim report on such matters relating to the evidence and proposals aforesaid or otherwise relating to its functions as it may determine, and”.

12.—Section 17(1) of the Principal Act is amended by substituting “authorised officer” for “inquiry officer”.

Amendment of section 17 (privilege) of Principal Act.

<p>Pt.2</p> <p>Amendment of section 18 (privileges and immunities for witnesses) of Principal Act.</p>	<p>[No. 17.] <i>Commission to Inquire Into Child Abuse (Amendment) Act 2005.</i> [2005.]</p> <p>13.—Section 18(2) of the Principal Act is amended by substituting “authorised officer” for “inquiry officer” in each place where it occurs.</p>
<p>Amendment of section 19 (option for certain persons) of Principal Act.</p>	<p>14.—Section 19 of the Principal Act is amended by substituting the following subsection for subsection (1):</p> <p>“(1) Notwithstanding section 14(4), a person who is giving, or is to give, evidence to the Investigation Committee of alleged abuse suffered by the person in childhood may at any time, with the consent of that Committee and subject to the rights of others and the requirements of justice, cease giving, or decline to give, evidence to that Committee and, if he or she does so, may, with the consent of the Confidential Committee, give evidence to the Confidential Committee of the alleged abuse.”.</p>
<p>Amendment of section 21 (admissibility of certain evidence) of Principal Act.</p>	<p>15.—Section 21(2) of the Principal Act is amended by substituting “authorised officer” for “inquiry officer”.</p>
<p>Amendment of section 23 (inquiry officers) of Principal Act.</p>	<p>16.—Section 23 of the Principal Act is amended—</p> <p>(a) by substituting the following subsection for subsection (1):</p> <p>“(1) The Commission may authorise such and so many members of its staff or such and so many consultants or members of their staffs as it may determine (referred to in this Act as ‘authorised officers’) to perform the functions conferred on authorised officers by this section.”,</p> <p>(b) in subsections (2) to (8) by substituting ‘authorised officer’ for ‘inquiry officer’, in each place where it occurs, and</p> <p>(c) by adding the following subsection after subsection (8):</p> <p>“(9) In addition to the functions specified in the preceding subsections, an authorised officer shall, for the purpose of assisting the Investigation Committee and the Commission in the performance of their functions, perform such other functions as the Investigation Committee may determine and specify in writing for the purposes of this subsection.”.</p>
<p>Amendment of section 25 (directions of High Court) of Principal Act.</p>	<p>17.—Section 25 of the Principal Act is amended—</p> <p>(a) in subsection (1), by deleting “sitting otherwise than in public”, and</p> <p>(b) by adding the following subsection after subsection (5):</p> <p>“(6) The High Court shall, if it considers it appropriate to do so, hear an application under subsection (1) otherwise than in public.”.</p>

18.—(1) Notwithstanding anything in the Principal Act, the Commission may direct a Committee to perform its functions in relation to a specified period (“a specified period”) that is longer than the relevant period and, if it does so—

Periods in relation to which Confidential Committee and Investigation Committee perform their functions.

- (a) that Committee shall comply with the direction, and
- (b) references in the Principal Act, in relation to that Committee, to the relevant period shall be construed as references to the specified period.

(2) If the Commission gives a direction to a Committee under *subsection (1)*, the Commission shall, in performing its functions and notwithstanding anything contained in the Principal Act, take account of reports of that Committee in respect of the whole or any part of the specified period in relation to that Committee.

19.—The Principal Act is amended by inserting the following section after section 26:

Judicial review.

“26A.—(1) A person shall not question in a court or other tribunal a decision or determination of the Commission or a Committee otherwise than by way of an application to the High Court for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (‘the Order’).

(2) Subject to subsection (3), an application to the High Court for leave to apply for judicial review under the Order in respect of such a decision or determination as aforesaid—

- (a) shall be made not later than 2 months from the date of the decision or determination, and
- (b) shall be made by motion on notice (grounded in the manner specified in the Order in respect of a motion *ex parte* applying for such leave) to the Commission or, as the case may be, the Committee that made the decision or determination,

and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision or determination is invalid or ought to be quashed.

(3) The High Court may extend the period specified in *subsection (2)* if it considers that there is good and sufficient reason for doing so.

- (4) (a) The decision of the High Court on an application for leave to apply for judicial review, or on an application for judicial review, of such a decision or determination as aforesaid shall be final and no appeal shall lie from the decision to the Supreme Court in either case except with the leave of the High Court, which leave shall be granted only where that Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.
- (b) Paragraph (a) shall not apply to a decision of the High Court in so far as it involves a question as to the

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validity of any law having regard to the provisions of the Constitution.

(5) References in this section to the Order shall be construed as including references to the Order as amended or replaced (with or without modification) by rules of court.”.

Amendment of section 31 (provisions in relation to discovery) of Principal Act.

20.—Section 31(1) of the Principal Act is amended by substituting “authorised officer” for “inquiry officer”.

Transitional.

21.—(1) Nothing in this Part shall affect the operation after the passing of this Act of a direction given under the Principal Act before such passing (including a direction given before the resignation on 12 December 2003 from the office of Chairperson of the person who held that office before that day) and such a direction shall continue to have full force and effect after such passing.

(2) As respects—

(a) evidence (whether in documentary or any other form) or a submission or statement given or made to or produced before the Commission or a Committee before the passing of this Act (whether before or after the resignation referred to in *subsection (1)*), or

(b) evidence given to or produced before the Investigation Committee after such passing pursuant to discovery made before such passing,

the Commission or the Committee, as the case may be, may, for the purpose of the performance of its functions, take account of the evidence, submission or statement to the extent (if any) that it would have taken account of it, and attach to it the weight (if any) that it would have attached to it, if it had been given, made or produced after such passing or (in the case of evidence referred to in *paragraph (b)*) if the discovery had been made after such passing.

PART 3

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

Interpretation (*Part 3*).

22.—In this Part, unless the context otherwise requires—

“Act of 2002” means the Residential Institutions Redress Act 2002;

“Board” means the Education (Former Residents of Certain Institutions for Children) Finance Board;

“childhood” in relation to a person, means the period of the person’s life before he or she attained the age of 18 years;

“establishment day” means the day appointed by the Minister under *section 23*;

“grant” shall, other than in *section 26(7)*, be construed in accordance with *section 27(1)*;

“institution” means an institution that is specified in the Schedule to the Act of 2002;

“Minister” means the Minister for Education and Science;

“relative” means the spouse, son, daughter, grandson, granddaughter, stepson or stepdaughter of a former resident of an institution.

23.—The Minister shall not later than one year from the date of the passing of this Act by order appoint a day to be the establishment day for the purposes of this Part. Establishment day.

24.—(1) There shall stand established on the establishment day a body which shall be known as An Bord Airgeadais Oideachais (Iar-Chónaitheoirí de chuid Foras Áirithe do Leanaí) or, in the English language, the Education (Former Residents of Certain Institutions for Children) Finance Board and is referred to in this Act as “the Board”, to perform the functions conferred on it by or under this Act. Establishment of Education (Former Residents of Certain Institutions for Children) Finance Board.

(2) The Board shall be a body corporate with perpetual succession and a seal and shall have power to sue and may be sued in its corporate name and may, with the consent of the Minister for Finance, acquire, hold and dispose of land or an interest in land and may acquire, hold and dispose of any other property.

(3) The *Schedule* to this Act applies to the Board.

(4) The Board and its members shall be independent in the performance of their functions.

(5) When the Minister is satisfied, after consultation with the chairperson of the Board, that the Board has completed the performance of its functions, the Minister may by order dissolve the Board and may, subject to the provisions of this Part, include in the order such incidental, ancillary or consequential provisions as the Minister considers necessary or expedient.

(6) Where an order under *subsection (5)* is proposed to be made, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

25.—(1) The principal functions of the Board are— Principal functions of Board.

- (a) to pay grants in accordance with the provisions of this Part to former residents in institutions and their relatives,
- (b) to determine and publish the criteria by reference to which it will make decisions on applications to it for the payment of such grants, and
- (c) to make available to the persons aforesaid information in relation to the educational services in respect of which such grants are payable.

(2) The Board shall have all such powers as are necessary or expedient for the purposes of its functions.

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Management of moneys relating to Board.

26.—(1) The Minister for Finance shall pay to the Agency the appropriate amount.

(2) In *subsection (1)* “appropriate amount” means the amount obtained by adding—

- (a) the first relevant amount,
- (b) the second relevant amount, and
- (c) the third relevant amount,

and subtracting from that total the fourth relevant amount.

(3) The Agency shall establish an investment account (the “account”) into which the amount paid to it under *subsection (1)* shall be deposited.

(4) Moneys in the account that are not required for the purposes of *subsection (6)* shall be invested and the investments shall, with the consent of the Minister for Finance, be realised or varied as occasion requires and the proceeds of any such realisation, and any dividends or other payments received in respect of moneys invested under this subsection, shall be paid into the account or invested under this subsection.

(5) The investment under *subsection (4)* shall be in securities in which trustees are for the time being authorised by law to invest trust funds or in any of the stocks, funds or securities in which moneys of the Post Office Savings Bank are for the time being authorised to be invested.

(6) The Agency may, in each financial year of the Board, pay to the Board out of the account a grant of such amount as the Board specifies in relation to that year towards the expenditure of the Board in the performance of its functions.

(7) In this section—

“Agency” means the National Treasury Management Agency;

“first relevant amount” means €12,700,000, being the amount that is equal to the amount secondly-mentioned in Clause 7(i) of the relevant deed and paid to the Minister for Finance, pursuant to that deed, by the persons listed in the First Schedule to that deed;

“fourth relevant amount” means the amount that is equal to the aggregate of any sums that have been paid by the Minister before the passing of this Act as grants to former residents in institutions and the relatives of such persons to assist those persons or relatives to avail of educational services;

“relevant deed” means the deed made on 5 June 2002 between the Minister for Finance and the Minister of the one part and the persons listed in the First Schedule to that deed of the other part;

“second relevant amount” means €240,000, being the amount that is equal to the aggregate of the interest on the first relevant amount that has been earned since the making of the payment to the Minister for Finance referred to in the definition of “first relevant amount” in this subsection;

“third relevant amount” means €510,000, being the amount which is deemed by the Minister for Finance to have arisen by way of accretion to the first relevant amount and the second relevant amount and which is to be paid out of moneys provided by the Oireachtas.

27.—(1) The Board may, on application to it and subject to this Part, pay a grant (a “grant”) to or in respect of a person who was a resident in an institution during any part of his or her childhood or a relative of such a person to assist the person or the relative to avail of such educational services as the Board may determine.

Educational grants to former residents of institutions and their relatives.

(2) A grant shall be of such amount, be in respect of such educational service, be paid at such time or times, and be subject to such conditions, as the Board may determine and communicate in writing to the person who made the application in respect of it.

(3) The Board shall determine the criteria by reference to which it will make decisions under this section as to the payment of grants under it and the Board shall make any such decision by reference to those criteria accordingly.

(4) Criteria determined under *subsection (3)* shall be recorded in writing and published by the Board in such manner as it thinks fit.

28.—(1) The procedures to be followed with respect to—

- (a) the making of an application under *section 27(1)*,
- (b) the consideration by the Board of such an application, and
- (c) the making of a communication by the Board to the applicant, or by the applicant to the Board, for the purposes of the application or any matter consequent on it,

Application for grants and consequential matters.

shall be determined by the Board and be made available in writing, free of charge, by it to any person on request therefor.

(2) Without limiting the generality of *subsection (1)*, procedures under that subsection may include provision for the making of a request by the Board of the applicant to supply to it such information or documents as the Board may determine for the purpose of considering the applicant’s application and enabling the Board to refuse to consider further the application if the request is not complied with.

(3) A grant paid to or in respect of a person shall be used solely to defray or contribute to the defrayal of the cost to the person of availing of the educational service specified by the Board in its communication, under *section 27(2)*, to the person who made the application in respect of it unless the Board authorises it or a specified part of it to be used for such defrayal or contribution as aforesaid in respect of another specified educational service.

(4) Notwithstanding anything contained in the Ombudsman Act 1980, that Act shall apply to a decision of the Board under *section 27(1)* with the following and any other necessary modifications as if it were an action taken by a Department of State—

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- (a) in section 4, in subsection (2), the words from and including “(being an action taken in the performance of administrative functions)” to the end of the subsection shall be deleted,
- (b) in section 5, in subsection (1)(a), subparagraph (iii) shall be deleted, and
- (c) in section 6, the following subsection shall be substituted for subsection (3):

“(3) Where, following an investigation under this Act into an action, it appears to the Ombudsman that the action adversely affected a person by whom or on whose behalf an application was made under *section 27* of the *Commission to Inquire into Child Abuse (Amendment) Act 2005* and the Ombudsman considers that in all the circumstances he should do so, he may recommend to the Education (Former Residents of Certain Institutions for Children) Finance Board—

- (a) that its decision on foot of that application be further considered,
- (b) that measures or specified measures be taken to remedy, mitigate or alter the adverse effect of the action, or
- (c) that the reasons for taking the action be given to the Ombudsman,

and, if the Ombudsman thinks fit to do so, he may request that Board to notify him within a specified time of its response to the recommendation.”.

Membership of Board.

29.—(1) The Board shall consist of a chairperson and 8 ordinary members who shall be appointed by the Minister.

(2) Four of the members shall be persons who are each former residents of one or more of the institutions.

(3) The members may be paid by the Minister such allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

Employees.

30.—(1) The Board shall have such and so many employees as it may determine with the consent of the Minister and the Minister for Finance.

(2) The employees of the Board shall be paid by it such remuneration (including superannuation) and allowances for expenses as the Board may, with the consent of the Minister and the Minister for Finance, determine.

(3) Employees of the Board shall be subject to such other terms and conditions of employment as the Board may, with the consent of the Minister and the Minister for Finance determine.

31.—(1) The Board shall keep in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts and records of moneys received or expended by it. Accounts and audits.

(2) Accounts kept in pursuance of this section shall be submitted not later than 3 months after the end of the accounting period to which they relate by the Board to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of such of the accounts as the Minister directs, together with the report of the Comptroller and Auditor General thereon, shall be presented by the Board to the Minister.

(3) The Minister shall cause copies of the accounts and the report presented to him or her under *subsection (2)* to be laid before each House of the Oireachtas not later than 3 months after his or her receipt of them.

32.—(1) The Board shall not later than 31 March in each year prepare and publish, in such form and manner as it considers appropriate, a report of its activities and proceedings during the preceding year. Annual report and information.

(2) If the establishment day falls in the period from 1 October to the following 31 December, the first report under *subsection (1)* shall be prepared and published not later than the 31 March in the second year following that in which the establishment day falls and shall relate to that year and the following year.

(3) The Board shall furnish a copy of a report under this section to the Minister and he or she shall cause a copy of it to be laid before each House of the Oireachtas.

(4) The Board shall provide the Minister with such information (if any) as he or she may request in relation to the performance of its functions and may provide such other (if any) persons as it considers appropriate with such (if any) information as it considers appropriate in relation to applications under *section 27(1)* and its decisions in relation to them and the reasons for the decisions.

(5) No information shall be provided under *subsection (4)* that could reasonably lead to the disclosure of the identity of any applicant for a grant under *section 27(1)* or any payee of such a grant.

33.—(1) Where the Minister is of opinion that the Board has failed, neglected or refused to perform any of its functions or has failed to perform effectively any of its functions or otherwise has contravened this Act, the Minister may, after first advising the Board of his or her opinion and considering any explanation given in response, appoint a person to inquire into any matter giving rise to that opinion. Removal of members of Board from office.

(2) A person appointed under *subsection (1)* shall—

(a) inquire into the matters giving rise to the Minister's opinion and any related matter and make and submit a report in writing to the Minister on the findings of the inquiry.

(b) for the purposes of this section, be entitled at all reasonable times to enter the premises of the Board to inquire

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into the affairs of the Board or to conduct an inspection of the premises, equipment and records where the inspection is, in his or her opinion, relevant to the inquiry.

- (c) be afforded all reasonable co-operation and assistance by the Board and its employees, including access to such premises, equipment and records as the person may require, for the purposes of his or her functions under this section.

(3) Where the Minister, after considering the report referred to in *subsection (2)(a)*, remains of opinion that the Board has failed, neglected or refused to perform any of its functions or has failed to perform effectively any of its functions or otherwise has contravened this Act, the Minister shall, by notice in writing, inform the chairperson of the Board and shall give a copy of the report to the chairperson.

(4) The Board may make representations to the Minister in respect of the report within 14 days after the date of its receipt of the report.

(5) After the end of the period referred to in *subsection (4)* and after considering the representations, if any, of the Board in respect of the report, the Minister may by order remove the members of the Board from office and terminate their membership if—

- (a) the Minister remains of opinion that the Board has failed, neglected or refused to perform any of its functions or has failed to perform effectively any of its functions or otherwise has contravened this Act, and
- (b) the Minister is of opinion that the members of the Board should be removed from office.

(6) Where an order is made under *subsection (5)*, the Minister shall appoint such person as he or she thinks fit to perform the functions of the Board and that person shall perform those functions until the commencement of the first meeting of the Board after the appointment of its members under *subsection (8)*.

(7) Where an order is proposed to be made under *subsection (5)*, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(8) The Minister shall, within 12 months from the removal of the members of the Board, appoint, in replacement of those members, members of the Board in accordance with *section 29* and the *Schedule* to this Act.

(9) The remuneration, if any, of a person appointed under *subsection (1)* or of a person appointed under *subsection (6)* shall be determined by the Minister with the consent of the Minister for Finance and be paid out of moneys provided by the Oireachtas.

PART 4

MISCELLANEOUS

- 34.**—The Residential Institutions Redress Act 2002 is amended— Amendment of
Residential
Institutions Redress
Act 2002.
- (a) in section 7, by deleting, in subsection (6), “who makes an application under this Act and”,
- (b) in section 9, by inserting the following subsection after subsection (2):
- “(2A) Where an award is made by the Board or the Review Committee but the applicant dies before deciding whether to accept or reject it or (in case the award is made by the Board) submit it to the Review Committee—
- (a) if the applicant is survived by a spouse or a child of his or hers, he or she or (if there is more than one of them) such one of them as is determined by the Board may proceed with the matter as if he or she were the applicant, and
- (b) if the applicant is survived by neither a spouse nor a child of his or hers, the applicant shall be deemed, for the purposes of this Act, to have accepted the award, and the Board shall direct that it be paid to the personal representatives of the applicant and that they shall treat it as if it has been paid to the applicant immediately prior to his or her death.”,
- (c) in section 10—
- (i) in subsection (11), by substituting “The Board may” for “The Board shall”,
- (ii) in subsection (13), by substituting “may appear in person and may be represented by counsel” for “shall appear in person and may be represented by counsel”, and
- (iii) in subsection (15), by substituting “may” for “shall”,
- (d) in section 11—
- (i) in subsection (1), by inserting “, if so requested by the Board,” before “prepare a report”, and
- (ii) by substituting the following subsection for subsection (3):
- “(3) (a) The Board may establish a committee, to regulate, subject to the provisions of this Act, by standing orders or otherwise, the procedure and business of the Board.
- (b) The members of the committee shall be appointed by the Board and shall consist of the chairman and three ordinary members of the Board.”,

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(e) in section 13—

- (i) in subsection (1), by substituting the following paragraph for paragraph (c):

“(c) any relevant report under section 10(12) or 11(11),”

- (ii) by inserting the following subsection after subsection (4):

“(4A) Where an applicant submits an award made to him or her by the Board to the Review Committee pursuant to subsection (4)(b), he or she may, not later than two weeks from the date of the submission, withdraw the award from the Review Committee by notifying it of his or her intention to do so and, if he or she withdraws the award as aforesaid, he or she shall be deemed, for the purposes of this Act, to have accepted it.”

- (iii) in subsection (8), by inserting after “Review Committee”, “, within one month from the date on which it was given,” and

- (iv) by adding the following subsections:

“(14) Where the Board directs—

- (a) under paragraph (a) of subsection (8), that an award shall be paid to the applicant concerned in instalments, or

- (b) under paragraph (b) of that subsection, that an award shall be paid to the applicant concerned in instalments or that it shall be so paid in another manner (otherwise than in a single payment) that is appropriate having regard to the circumstances of the applicant and—

- (i) the applicant does not submit the direction to the Review Committee, in accordance with subsection (8), for a review of the direction, or

- (ii) under section 15(12), the Review Committee upholds the direction or directs the award be paid to the applicant concerned otherwise than in a single payment,

the High Court may, on application to it in that behalf in a summary manner by the Board, order that the amount of the award or (if part of the amount of the award has been paid to the applicant) the amount thereof then remaining be paid into the High Court and dealt with by it for the benefit of the applicant in accordance with the direction of the Board or, if appropriate, the Review Committee and with rules of court.

(15) Where funds are held in the High Court pursuant to subsection (14), that Court may, on application to it in that behalf in a summary manner by the applicant concerned, by order vary the terms upon which the funds are held in, or dealt with by, that Court, if it considers it appropriate, having regard to the circumstances of the applicant at the time of the application, to do so.”

- (f) in section 14, by inserting, in subsection (13), after “it”, “and any such division shall consist of at least a person to act as chairperson of the division (and that person may be a person other than the Review Committee Chairperson) and one other member of the Review Committee”;
- (g) in section 21, by substituting “applicant” for “claimant”;
- (h) in section 28, by inserting the following subsections after subsection (5):

“(5A) Nothing in subsection (1) operates to prohibit the production of a document prepared for the purposes or in contemplation of an application to the Board or a submission for a review by the Review Committee, or given in evidence in such application or review, to—

- (a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or
- (b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.

(5B) Nothing in subsection (1) operates to prohibit the giving of information or evidence provided or given to the Board or the Review Committee to—

- (a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or
 - (b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.”;
- (i) in section 34, by substituting “section 7(6) or 28(9)” for “sections 7(6) and 28(9)”, and
 - (j) in the Schedule—

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- (i) by substituting “Glensilva, 95 Monkstown Road, Dun Laoghaire, Co. Dublin” for “Our Boy’s Home, 95 Monkstown Road, Dun Laoghaire, Co. Dublin”,
- (ii) by deleting—
 - (I) “St. Mary’s Orthopaedic Hospital, Baldoyle, Dublin 13”, where those words firstly occur,
 - (II) “St. Mary’s Orthopaedic Hospital, Cappagh, Dublin 11”,
 - (III) “St. Clare’s Orphanage, Harold’s Cross, Dublin 6”, where those words secondly occur,
 - (IV) “St. Joseph’s Orphanage, Tivoli Road, Dun Laoghaire”, where those words secondly occur, and
 - (V) “St. Joseph’s School for the Visually Handicapped, Drumcondra, Dublin 9”.

Regulations and orders.

35.—(1) The Minister may make regulations for the purpose of giving full effect to the provisions of this Act.

(2) An order or regulation under this Act (other than an order under *section 23, 24 or 33*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(3) The Minister may by order amend or revoke an order under this Act (other than an order under *section 23* but including an order under this section).

(4) An order under *subsection (3)* shall be made in the like manner and its making shall be subject to the like (if any) consents and conditions as the order that it is amending or revoking.

(5) The Government has, and shall be deemed always to have had, power to amend or revoke, by order, an order under paragraph (b) of section 5(5) of the Principal Act and the provisions of that section 5(5) as to the manner in which, and the conditions subject to which, an order under that paragraph (b) may be made shall apply, and be deemed always to have applied, to an order amending or revoking such an order.

Section 24.

SCHEDULE

MEMBERSHIP AND MEETINGS OF BOARD

1. In this Schedule, unless the context otherwise requires, “member” means a member of the Board.

2. (1) Upon its establishment the Board shall provide itself with and retain in its possession a seal.

(2) The seal of the Board shall be authenticated by the signature of—

(a) the chairperson of the Board or another member authorised by the Board in that behalf, and

(b) an employee of the Board authorised by the Board in that behalf.

(3) Judicial notice shall be taken of the seal of the Board and every document purporting to be an instrument made by the Board and to be sealed with the seal of the Board (purporting to be authenticated in accordance with *subparagraph (2)*) shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.

3. (1) The Minister may at any time, for stated reasons, remove a member from office.

(2) A member (other than the chairperson) may at any time resign from office as a member by notice in writing to the chairperson and the resignation shall take effect on the date of the meeting of the Board next held after the receipt by the Board of the notice.

(3) The chairperson may at any time resign from office as a member by notice in writing to the Minister and the resignation shall take effect on the date of the meeting of the Board next held after the receipt by the Minister of the notice.

(4) A member who is absent from all meetings of the Board for 12 consecutive months shall, unless the absence was due to illness or was approved of by the Board, cease to be a member at the expiration of that period.

(5) Subject to this Schedule, a member shall hold office for a term of such duration, not exceeding 4 years, as the Minister may determine at the time of his or her appointment.

(6) A member shall not hold office as a member for more than 2 terms of office that are consecutive.

(7) Where a casual vacancy occurs among the members, the Board shall notify the Minister and he or she shall appoint a person to fill the vacancy. A person so appointed shall, subject to this Schedule, hold office as a member for the remainder of the term of office of the member whose death, resignation, removal from office or otherwise ceasing to hold office occasioned the vacancy.

(8) If the person who occasioned the vacancy among the members had been appointed to the Board for the purposes of *section 29(2)* being complied with, the person who is appointed under *subparagraph (7)* to fill the vacancy shall be a former resident of an institution.

4. (1) There shall be a deputy chairperson of the Board.

(2) The Board shall, from time to time, elect from among its members a person to be appointed by it to be deputy chairperson of the Board (“deputy chairperson”).

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(3) Subject to this Schedule the deputy chairperson shall hold office for such term as may be determined by the Board at the time of his or her appointment.

(4) The Board may, by a resolution passed by it, of which not less than 7 days prior notice of the intention to propose it is given to each member and for which not less than two thirds of the members vote, remove the person who is deputy chairperson from that office.

(5) The person who holds the office of deputy chairperson may at any time resign from the office by notice in writing to the Board and the resignation shall take effect on the date of the meeting of the Board next held after the receipt by the Board of the notice.

(6) Where, at an election for the appointment of a deputy chairperson, 2 or more persons receive an equal number of votes, it shall be determined by lot by the chairperson which of those persons shall be appointed by the Board to be deputy chairperson.

5. (1) The Minister shall fix the date, time and place of the first meeting of the Board.

(2) The Board shall hold at least 2 meetings in each year at such times as the chairperson may determine and such and so many other meetings as the chairperson may determine.

(3) The quorum for a meeting of the Board shall be 4.

(4) At least 3 days before a meeting of the Board, notice of the time and place of the meeting shall be sent to each member of the Board signed—

(a) by the chairperson, or

(b) if the meeting is convened by members, by those members.

(5) If the meeting is convened by members, the notice convening the meeting shall specify the business to be transacted at the meeting.

(6) At a meeting of the Board—

(a) the chairperson shall, if present, be the chairperson of the meeting, or

(b) if and so long as the chairperson is not present, or if the office of chairperson is vacant, the deputy chairperson shall, if present, be the chairperson of the meeting, or

(c) if and so long as the chairperson is not present or the office of chairperson is vacant, and the deputy chairperson is not present or the office of deputy chairperson is vacant, the members who are present shall choose one of their number to be the chairperson of that meeting.

6. (1) Minutes of the proceedings of meetings of the Board shall be drawn up and entered in a book kept for that purpose and such minutes shall be signed by the chairperson of the next subsequent meeting of the Board.

(2) The names of the members present at a meeting of the Board shall be recorded in the minutes of the proceedings of the meeting.

(3) Subject to *paragraph 4(4)*, at a meeting of the Board every act of the Board and every question coming before the Board shall be determined by a majority of the votes of the members present and voting in relation to the act or question and, in the case of an equal division of votes, the chairperson of that meeting shall have a second or casting vote.

7. Subject to *paragraph 5(3)*, the Board may act notwithstanding one or more than one vacancy among its members or any deficiency in the appointment of a member which may subsequently be discovered.

8. (1) Where at a meeting of the Board any of the following matters arise, namely—

- (a) an arrangement to which the Board is a party or a proposed such arrangement, or
- (b) a contract or other agreement with the Board or a proposed such contract or other agreement,

then, any such member of the Board present at the meeting who otherwise than in his or her capacity as such a member has an interest in the matter shall—

- (i) at the meeting disclose to the Board the fact of such interest and the nature thereof,
- (ii) neither influence nor seek to influence a decision to be made in relation to the matter,
- (iii) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,
- (iv) take no part in any deliberation of the Board relating to the matter, and
- (v) not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this paragraph, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the Board a question arises as to whether or not a course of conduct, if pursued by a member of the Board, would constitute a failure by him or her to comply with the requirements of *subparagraph (1)*, the question may be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Minister is satisfied that a member of the Board has contravened *subparagraph (1)*, the Minister may, if he or she thinks fit, remove that member from office and, in case a person is removed from office pursuant to this subparagraph, he or she shall thenceforth be disqualified for membership of the Board.

9. (1) Where a member of the staff of the Board has an interest, otherwise than in his or her capacity as such a member, in any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which the Board is a party, that person shall—

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- (a) disclose to the Board his or her interest and the nature thereof,
- (b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the Board or members of the staff of the Board in relation thereto, and
- (c) neither influence nor seek to influence a decision to be made in relation to the matter nor make any recommendation in relation to the contract, agreement or arrangement.

(2) *Subparagraph (1)* shall not apply to contracts or proposed contracts of employment of members of the staff of the Board with the Board.

(3) Where a person contravenes this paragraph the Board may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment.

10. Subject to the provisions of this Act, the Board may regulate by standing orders or otherwise the procedure of meetings of the Board.