

# **PRESERVATION OF DOCUMENTS (HISTORICAL INSTITUTIONS) BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial memorandum has been prepared by Alan Chambers MLA (“the Member”) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and neither is it meant to be, a comprehensive description of the Bill. Where a clause or part of a clause does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. In January 2021, following the publication of the research by Queen’s University Belfast (QUB) and Ulster University (UU) into the operation of Mother and Baby Homes and Magdalene Laundries, the Northern Ireland Executive agreed to undertake an independent investigation into the institutions. It was also agreed that the nature and shape of the investigation would be co-designed with victims/survivors over a six month period.
4. In March 2021, the Department appointed a Panel of experts (Deirdre Mahon, Director of Women and Children’s Services and the Executive Director of Social Work in the Western Health and Social Services Trust NI, Professor Phil Scraton, Professor Emeritus, School of Law, Queen’s University Belfast and Dr Maeve O’Rourke, Lecturer in Human Rights at the Irish Centre for Human Rights, School of Law, National University of Ireland Galway.) known as the Truth Recovery Design Panel (TDRP), to undertake the co-design process with victims/survivors of these institutions. Locally and internationally, 186 victims/survivors engaged with the Panel during the co-design process and informed the development of the Panel’s recommendations.
5. The TDRP published ‘Mother and Baby Institutions, Magdalene Laundries and Workhouses in Northern Ireland Truth, Acknowledgement and Accountability Truth Recovery Design Panel Report for the Northern Ireland Executive’ on 5 October 2021. The report set out five core recommendations.
  - Recommendation 1: Adoption of Guiding Principles;
  - Recommendation 2: Responsibilities of The Executive Office;
  - Recommendation 3: An Integrated Truth Investigation;
  - Recommendation 4: Access to Records; and

- Recommendation 5: Redress, Reparation and Compensation.
6. The Bill is intended to give effect to part 1 of recommendation 4 by the TDRP as set out below:

“The Truth Recovery Panel recommends immediate action by the Northern Ireland Executive, supported by the Northern Ireland Assembly, to create a statutory requirement on all relevant record holders to preserve and not destroy any information relating to Mother and Baby Institutions, Magdalene Laundries, Workhouses, adoption-related institutions and ‘baby homes’, and their policies and practices, including personal records. The requirement should extend to all State and non-State institutions and agencies, officials, representatives and professionals that serviced them.”
  7. The policy aim is to ensure that records relating to relevant historical institutions are safely maintained and not destroyed. The relevant institutions include Mother and Baby Institutions, and Workhouses – places where women were placed as a result of pregnancy outside of marriage and then gave birth to children, many of whom were adopted and many more of whom were taken into care – either residential care or foster care. They also include Magdalene Laundries – places to which many women from Mother and Baby Institutions were then moved in the absence of anywhere else to go subsequent to giving birth. The records relating to women held by the institutions in which they resided or by the agencies responsible for either placing them there or making arrangements for the adoption and care of their children hold the stories of many children’s early lives. They mark the start of many children’s adoption and/or care journeys.
  8. These are the records sought and used by adoption agencies to supplement their own records for the purpose of assisting with tracing and facilitating contact between adopted adults and their birth relatives, where this is agreed.
  9. The stated reason within the clause for preserving these records is their potential relevance to a future investigation or inquiry. The Northern Ireland Executive has agreed that both – an investigation and an inquiry – will take place in the future and The Executive Office is responsible for taking both forward. However, they are also records of historical significance to individuals and society generally and, on that basis alone, are worthy of preservation. The report of the research by QUB and UU pointed to the poor state of many of these records and the conditions in which they are being held. The Truth Recovery Design Panel also recommended the establishment of a permanent archive, to which these records will be key.

## **CONSULTATION**

10. The Bill is a product of the work of the Truth Recovery Design Panel (TDRP), established by the Minister of Health in 2021, with the endorsement of the Northern Ireland Executive, to work on a co-design basis with victims/survivors. As referenced, the Panel, made up of 3 eminent experts in this field, worked with around 180 victims/survivors

from around the world to agree the shape of a future independent investigation into the operation of historical institutions, including Mother and Baby Institutions, Workhouses and Magdalene Laundries. The TDRP reported in October 2021, with 5 core recommendations. All recommendations had the full support of the victims and survivors who engaged with the TDRP, many of whom attended the launch of the report in 2021. The report was also endorsed by bodies and professionals representing victims/survivors of the institutions, including Amnesty International. Given that this Bill is intended to give full effect to one of the recommendations of the TDRP, which has the full and unequivocal support of victims and survivors, further consultation on the content of the Bill is not considered necessary.

## **OPTIONS CONSIDERED**

11. To give effect to the recommendation of the Truth Recovery Design Panel (the creation of a duty to preserve and not destroy relevant historical records), the options considered were:

**Option 1:** A stand-alone Bill brought forward by the Minister of Health in the next mandate;

**Option 2:** A stand-alone Bill brought forward by accelerated passage by the Minister of Health in the current mandate;

**Option 3:** A stand-alone Bill brought forward by a Private Member by accelerated passage in the current mandate;

**Option 3 is the preferred option**, given the urgency associated with the creation of a duty to preserve and not destroy records and the expectations created for victims and survivors that the duty would be introduced by way of amendments to the Adoption and Children Bill. Amendments tabled to the Adoption and Children Bill by the Minister of Health were ruled out of scope prior to Consideration Stage of that Bill. Option 1 will not deliver the legislation with the required urgency. Option 2 has been ruled out on the basis that the Executive is no longer functioning, following the resignation of the First Minister in early February 2022, prior to the amendments to the Adoption and Children Bill being ruled out of scope.

## **OVERVIEW**

12. The Bill has 9 clauses and no schedules. A commentary on each of the clauses follows below.

## **COMMENTARY ON CLAUSES**

**Clause 1** (*Preservation of relevant documents*): introduces a duty to preserve, not alter, destroy or dispose of a relevant document, to not remove or transfer the document to a place outside of

Northern Ireland and to take appropriate measures to ensure that a “relevant document” is not lost, stolen, destroyed or otherwise damaged.

**Clause 2** (*Meaning of “relevant document”*): stipulates conditions which must be satisfied before a document is considered relevant. Three conditions in total are stipulated, including that the document: must contain “relevant information” [defined]; and that it is likely to be of interest to an inquiry or investigation in relation to the implementation of the recommendations made by the Truth Recovery Design Panel as set out in a statement to the Assembly made by the First Minister and deputy First Minister acting jointly on 15th November 2021. The clause also provides that a document is not a “relevant document” if a copy of the document or the information it contains is generally available to the public. It also defines “relevant period” for the purpose of this clause as the period between 1922 and 1995 (both inclusive).

**Clause 3** (*Meaning of “relevant information”*): defines “relevant information” as information: about the operation of a relevant institution; about any person resident in a relevant institution; or about the accommodation or care provided to a child born to a resident of a relevant institution. Such information may include details about the admission, treatment, care and discharge of residents, as well as information about specific residents’ admission, departure and care, information about their birth or adoption, any children born to the residents and details about their development in early life.

**Clause 4** (Meaning of “relevant institution” etc.): provides definitions of “relevant institution” and “resident of a relevant institution”. “Relevant institution” is defined as either: a workhouse; or an institution in which a voluntary organisation provided residential accommodation for women or children and took decisions about them and provided: services related to pregnancy or maternity; provided day-to-day care for the women or children; required work from the women or children (whether with or without pay); or provided such other service as may be prescribed. A “resident of a relevant institution” is defined as a person (of any age) who was provided with residential accommodation in the institution and includes periods of absence from the institution.

**Clause 5** (*Offences by bodies corporate etc.*): provides that an offence of not complying with the duty created at clause 1 applies to: a body corporate with unlimited liability; partnerships and partners jointly; and unincorporated associations (other than a partnership) alongside any identified officer or member who committed the offence. This clause also provides that proceedings for alleged offences by a partnership must be brought in the name of the partnership; offences by an unincorporated association (other than a partnership) must be brought in the name of the association; that rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate; any fines imposed on a partnership or unincorporated association on its conviction for an offence must be paid out of the respective partnership assets or out of the unincorporated association funds.

**Clause 6** (*Regulations*): stipulates the Assembly procedure to be followed in the making of future Regulations.

**Clause 7** (*Interpretation*): defines key terms used within the Bill.

**Clause 8 (Commencement):** provides for the Bill to come into force on Royal Assent, ensuring that it is commenced at the earliest opportunity.

**Clause 9 (Short title):** gives the Bill its short title.

## **FINANCIAL EFFECTS OF THE BILL**

13. This Bill requires relevant records [defined] to be kept and to be kept safely. Arguably, records of such historical significance should be retained and kept in the safest of environmental conditions. On that basis, it is considered that the costs associated with complying with the duty created by this Bill should be minimal. Also, these records will be of interest to a future independent investigation and future statutory public inquiry. It is without doubt that many the records, to which the duty created by this Bill applies, will be sought by the investigation/Inquiry. Through its compliance with the duty created by this Bill, relevant organisations should be in a state of readiness to respond to requests for information from a future investigation/inquiry when established.

## **HUMAN RIGHTS ISSUES**

14. The Member is satisfied that the Bill is human rights compliant.

## **EQUALITY IMPACT ASSESSMENT**

15. An Equality Impact Assessment has not been undertaken. The Bill is intended to be one important step towards addressing the serious inequality experienced by around 10,000 women in Northern Ireland over a 70 year period. These women were admitted to institutions, as a consequence of being pregnant outside of marriage. Many of them were separated from the children to whom they gave birth for ever, either because they were adopted or because they were admitted into state care. According to QUB/UU research, 23% of children are recorded as having been adopted from Mother and Baby Institutions and 38% moved into state care – 23% to institutions and 15% into foster care. On the basis of the above, it is considered the Bill will not have an adverse impact on any of the groups identified in section 75 of the Northern Ireland Act 1998.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

16. It is not considered that the Bill will impact negatively on the business or the voluntary sectors. It creates a duty to continue to keep records already in the possession of organisations and to do that with sufficient care and attention, which should arguably be the case in relation to records of historical significance. An organisation cannot be required to keep that which does not already have and, if it already has it, it cannot be claimed to create an additional regulatory burden.

#### **DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN**

17. The Bill is intended to ensure that records are retained securely in line with data protection legislation. While the retention period for some records may be extended by this Bill, there are no negative/adverse impacts in data protection terms given the protections provided under existing law.

#### **RURAL NEEDS IMPACT ASSESSMENT**

18. The Bill is not considered to generate negative impacts in connection with rural needs.

#### **LEGISLATIVE COMPETENCE**

19. At introduction, the sponsor of the Bill, Alan Chambers MLA had made the following statement under Standing Order 30:

*“In my view The Preservation of Documents (Historical Institutions) Bill would be within the legislative competence of the Northern Ireland Assembly.”*

#### **SECRETARY OF STATE CONSENT**

20. It is considered that the secretary of State’s consent under section 8 of the Northern Ireland Act 1998 is not required for this Bill.