



Northern Ireland
Assembly

Research and Information Service Bill Paper

25 June 2012

Jane Campbell

The Inquiry into Historical Institutional Abuse Bill

NIAR 457-12

The Inquiry into Historical Institutional Abuse Bill was introduced to the Assembly on 12 June 2012. The Bill confers powers on the First Minister and deputy First Ministers to initiate an inquiry into Historical Institutional Abuse between the years 1945 and 1995. The Bill also contains provisions to empower the inquiry panel to compel witnesses and documentary evidence. This paper outlines the background to the legislation, examines the responses to the Executive's consultation and briefly summarises the main provisions of the Bill. Some key issues are included in the final section.

Paper 107/12

25 June 2012

Key Points

- The Inquiry into Historical Institutional Abuse Bill was introduced to the Assembly on 12 June 2012. The Second Stage debate took place on Monday 25 June 2012.
- The Bill confers powers on the First Minister and deputy First Ministers to initiate an inquiry into Historical Institutional Abuse between the years 1945 and 1995.
- The Executive consulted widely on the nature and content of the Bill and met with Victims and Survivors and other key stakeholder groups. It was also briefed by officials who had experience of similar inquiries in other jurisdictions.
- The purpose of the Inquiry is to examine if there were systemic failings by institutions or the state in their duties toward those children in their care between the years 1945 and 1995.
- The Inquiry is also authorised to make recommendations on an apology, an appropriate memorial or tribute to those who suffered abuse and the requirement or desirability for redress to be provided by the institutions and/or the Executive to meet the particular needs of victims.
- The inquiry will have three strands consisting of an Acknowledgement Forum, a Research and Investigation Team and an Inquiry and Investigation Panel with a statutory power which will submit a report to the First Minister and deputy First Minister.
- The inquiry is expected to last three years and is estimated to cost between £7.5 and £9 million.

Contents

	Key Points	1
1	Background and purpose of the Bill	5
2	Good practice guidance and consultation	9
3	Content of the Bill	15
4	Issues.....	23
5	Annexe: Ministerial Statement of 31 May 2012	26
	containing the Terms of Reference	

1 Background and purpose of the Bill

Ryan Commission

In the late 1990's the Irish Government introduced a number of measures in response to revelations of abuse of children from 1940 to 1999 in institutions run by the State and parts of the Roman Catholic Church within the Republic of Ireland. It set up the Commission to Inquire into Child Abuse¹ (the Ryan Commission) in May 1999. The Commission reported in May 2009 making 21 recommendations aimed at alleviating and addressing the effects of the abuse on those who had suffered and preventing and reducing the incidence of abuse of children in institutions.

On 2 November 2009 the Northern Ireland Assembly passed the following motion:

“this Assembly expresses grave concern at the findings of the Commission to Inquire into Child Abuse report (the Ryan Report) published in May 2009 in the Republic of Ireland; considers that such neglect and abuse of children and young people’s human rights must be subject to criminal law; recognises that children who were placed by state authorities in Northern Ireland in establishments or settings where they became victims of abuse are entitled to support and redress; calls on the Executive to commission an assessment of the extent of abuse and neglect in Northern Ireland, to liaise and work with the authorities in the Republic of Ireland and to report to the Assembly; calls on the Executive to provide funding to support helpline and counselling services which are now facing new demands; and further calls on the Executive to work, through the North South Ministerial Council, to ensure that all-Ireland protections for children and vulnerable adults are in place as soon as possible.”²

Options Paper

In response, the Minister for Health, Michael McGimpsey, agreed to prepare an Options Paper on Historical Institutional Abuse in Northern Ireland. This was issued to the Executive in March 2010³. The Minister said:

The twin issues of historical institutional and clerical abuse are very complex and responding to them in a sensitive and meaningful way represents a huge challenge for

1 <http://www.childabusecommission.ie/>

2 <http://archive.niassembly.gov.uk/record/reports2009/091102.htm#a3>

3 <http://www.northernireland.gov.uk/news/news-dhssps/news-dhssps-march-2010/news-dhssps-19032010-options-paper-on.htm>

all of us. At the heart of this are all the victims, who as children suffered terrible abuse at the hands of those who were supposed to be protecting and caring for them... I have therefore today issued an Executive paper which will enable the Executive as a whole to form a view on the way ahead.

Taskforce

An Interdepartmental Taskforce on Historical Institutional Abuse was established following an Executive announcement on 16 December 2010⁴. It was tasked with bringing forward recommendations before the Assembly's summer recess on the nature of the inquiry. The taskforce reported its recommendations to the Executive and on 29 September 2011 the Executive announced that there would be an investigation and inquiry into historical institutional abuse⁵. On 31 May 2012 the First Minister and deputy First Minister announced Terms of Reference for an Inquiry into the abuse of children living in residential care between 1945 and 1995. The Inquiry would be chaired and directed by Sir Anthony Hart.

The Bill

The *Inquiry into Historical Institutional Abuse Bill* was introduced to the Assembly on 12 June 2012⁶. The Explanatory and Financial Memorandum (EFM) to the Bill provides a helpful explanation of the contents and policy objectives of the Bill.⁷ It states that during the planning process the department considered three options for the legislation. These were:

- an amendment to the Inquiries Act 2005 by way of an Assembly Bill to allow for its application to a Historical Institutional Abuse Inquiry,
- an Assembly Bill which sets out comprehensive provision for an inquiry into Historical Institutional Abuse, and
- an Assembly Bill which provides the inquiry panel with powers only to compel witnesses and documentation.

⁴ <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-ofmdfm/news-ofmdfm-dececeember-archive-2010/news-ofmdfm-161210-historical-institutional-abuse-statement.htm>

⁵ <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-ofmdfm/news-archive-ofmdfm-september-2011/news-ofmdfm-290911-executive-announces-inquiry.htm>

⁶ Officials from OFMdFM briefed the Assembly Committee for the Office of the First Minister and deputy First Minister on 6 June 2012 on the forthcoming Bill. <http://www.niassembly.gov.uk/Documents/Official-Reports/OFMdFM/Minutes-of-Evidence/Inquiry%20into%20Historical%20Institutional%20Abuse%20Bill.pdf>

⁷ Explanatory and Financial Memorandum <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation---Current-Bills/Inquiry-into-Historical-Institutional-Abuse-Bill/Inquiry-into-Historical-Institutional-Abuse-Bill-as-Introduced-Explanatory-and-Financial-Memorandum/>

The Memorandum states that the proposed Bill, (presumably) option 2

“...provides a robust framework and comprehensive provision for the inquiry, while allowing for scrutiny by the Assembly”.

The *Inquiry into Historical Institutional Abuse Bill 2012*⁸ is enabling legislation; Clause 1 Subsection (1) authorises the First Minister and deputy First Minister, acting jointly, to set up the Inquiry. Whilst the Bill is not a duplication of the Inquiries Act 2005, some of its provisions are the same or similar.

Terms of reference: purpose of the inquiry

The Bill does not state the purpose of the inquiry; this is stated in the Ministerial Statement which contains the terms of reference. Clause 1(2) of the Bill refers to the Terms of Reference⁹ of 31 May 2012; which state that the purpose of the inquiry is to:

...examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1945-1995.

The Inquiry must also make findings and recommendations on:

- an apology (by whom and the nature of the apology),
- an appropriate memorial or tribute to those who suffered abuse, and
- the requirement or desirability for redress to be provided by the institutions and/or the Executive to meet the particular needs of victims.

Terms of reference: Inquiry report

The terms of reference state that within 6 months of the conclusion of the inquiry the Chair must provide a report to the Executive. If additional time is needed the Chair may request an extension from the First Minister and deputy First Minister – which will be granted, provided it is not unreasonable.

Terms of reference: definitions

The term “abuse” is not defined in the terms of reference; neither is it defined in the Bill or the EFM. The following definitions are included in the terms of reference:

- *a child is any person under 18 years of age;*

⁸ http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive%20Bills/Session-2011-12/niabill_7_11-15.pdf

⁹ <http://www.northernireland.gov.uk/statement-to-assembly-hia-inquiry-tor>

- *“institution” means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children;*
- *“relevant period” means the period between 1945 and 1995 (both years inclusive).*

The inquiry will have three strands consisting of:

An Acknowledgement Forum

This will provide a confidential setting for victims and survivors to speak about their experiences. It will be led by a 4 person team appointed by the First Minister and deputy First Minister. The panel will deliver a report recounting the experiences of the victims and survivors.

A Research and Investigative team

The Chair of the inquiry will direct this team; its work will involve the collection and collation of all information and witness statements provided to the Acknowledgement Forum. It will also profile the historical context at the time of reported abuses and deliver a report to the Acknowledgement Forum and Chair of the Inquiry.

An Inquiry and Investigation Panel with a statutory power which will submit a report to the First Minister and deputy First Minister

This Panel will consist of the Chairperson and two other members appointed by the First Minister and deputy First Minister. It will consider the report of the Acknowledgement Forum, the report of the Research and Investigative team and any other evidence it considers necessary. Following this, it will provide a report to the Executive within 6 months of the conclusion of its inquiry and investigation.

In addition, **A Witness Support Service** will be established to support Victims and Survivors at all times during their contact with the inquiry process.

2 Good practice guidance and consultation

This section of the paper considers best practice guidance on the setting up and running of public inquiries. The paper then outlines the consultation process undertaken by the Executive to inform the content of the Bill.

2.1 Good practice guidance

Over the past 20 years in countries such as Ireland, Canada, Australia, New Zealand and Scotland there has been increasing recognition of a history of abuse in child care institutions. Whilst it is recognised that every context of abuse is different, both at the individual level and at the systemic level, the experiences within these countries and the response of governments have much in common and provide a body of guidance material for undertaking an inquiry into historic child abuse. Looking to international standards, many of these countries have drawn up frameworks for the design and implementation of a process of justice, remedies and reparation for survivors of historic child abuse. It is possible to identify key and common approaches.

Functions of an inquiry

A review of past public inquiries¹⁰ identifies that the key functions of an inquiry may involve:

- establishing the facts
The inquiry must aim to provide a full and unbiased account of the circumstances that resulted in the abuse.

- learning from events
The inquiry must identify and report on lessons learned to inform policy and practice.

- catharsis or therapeutic exposure
An inquiry can be a platform allowing for the public (and private) venting of anger, distress and frustration. It can build a sense of fairness and be an experience encouraging healing.

- reassurance
The inquiry can help rebuild public confidence after the damage to public

¹⁰ CEDR www.cedr.com

morale following an inquiry into distressing events. It can help repair the damages to the credibility of government and policy makers.

- accountability, blame and retribution

An inquiry can apportion blame and accountability to institutions (and individuals) for their actions, and be a precursor to litigation.

- political considerations

The composition of the inquiry panel is crucial. The review of events and systems can be a political agenda for government.

Good practice guidance also identifies a number of general principles that apply to the establishment and conduct of inquiries, these are:

1. Independence
2. Transparency, consistent with the interest of justice and national security
3. Fairness and respect for individuals
4. Power to seek to establish the facts
5. Access to necessary resources and avoidance of unnecessary expenditure

2.2 Consultation

Inter-departmental taskforce

In line with good practice and the wishes of victims and survivors, the Executive consulted on the content of the Bill and the terms of reference for the inquiry. An inter-departmental taskforce to consider the nature of the inquiry was announced in December 2010¹¹. The taskforce included representatives from OFMDFM, DHSSPS, DE, DOJ, DSD, DFP, DOE, DEL and DCAL. It consulted with a wide range of groups and individuals including:

- ❖ Victims and survivors and other key stakeholder groups
- ❖ *Amnesty International*
- ❖ the *Northern Ireland Human Rights Commission*,

¹¹ The Terms of Reference for the Taskforce are available at:
http://www.northernireland.gov.uk/terms_of_reference_-_taskforce_on_historic_institutional_abuse.pdf

- ❖ Children’s rights organisations
- ❖ the *PSNI*
- ❖ Officials in the Republic of Ireland and in Scotland who had been involved in similar inquiries

A taskforce website was established with links connecting victims and survivors to accessible and relevant information. Meetings with victims and survivors took place in Armagh, Belfast and Londonderry/ Derry in March 2011¹²

Chair of the Inquiry

Good practice guidance emphasises the value of the Chairman being involved in agreeing the terms of reference for an inquiry. The EFM confirms that Sir Anthony Hart, Chair (presiding member) of the inquiry was consulted on and agreed the terms of reference before they were published on 31 May. He was also consulted on the contents of the Bill. The EFM states:

*Throughout, ministers and officials have had on-going engagement with victims and survivors, including on the establishment and terms of reference for this enquiry. The inquiry terms of reference have been discussed in detail with victims and survivors, and agreed with the presiding member of the inquiry. The presiding member has been consulted on the contents of the Bill.*¹³

Written submissions

Written submissions were also sought by the taskforce during the consultation.

Northern Ireland Human Rights Commission (NIHRC)

The Northern Ireland Human Rights Commission submitted an advice paper on the human rights aspects of a public inquiry¹⁴. At this stage, the format of the legislation was unknown, and whether the Executive would model the legislation on the Inquiries Act 2005¹⁵, the ‘default’ legislation for carrying out public inquiries in the UK. The Commission’s paper took account of the international and domestic human rights standards relevant to a public inquiry. The Commission questioned the compatibility of the Inquiries Act 2005 with Articles 2 and 3 of the European Convention on Human Rights (ECHR). It was particularly wary of some of the powers afforded to Ministers

¹² <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-ofmdfm/news-ofmdfm-march-archive-2011/news-ofmdfm-070311-interdepartmental-taskforce-on.htm>

¹³ EFM paragraphs 13 and 14

¹⁴ <http://www.nihrc.org/documents/advice-to-government/2011/institutional-child-abuse-public-inquiry-january-2011.pdf>

¹⁵ <http://www.legislation.gov.uk/ukpga/2005/12/contents>

under the Act believing these powers to be a threat to an inquiry's independence. One of the key issues for the Commission was the power afforded to Ministers in setting and amending an inquiry's terms of reference. The Commission stated that in order for an inquiry to be compliant with the European Convention on Human Rights:

The Minister should not be empowered to narrow/restrict the terms of reference after the consultation process. The Minister should be enabled to broaden the terms of reference.

The Inquiries Act 2005 had received similar criticism at the time when it was being drawn up. The Westminster Joint Committee on Human Rights thought that certain aspects of the new legislation risked compromising the independence of an inquiry, potentially breaching Article 2 of the ECHR through, for example, the power given to the Minister to bring an inquiry to a conclusion before publication of the report. This power is available to the First Minister and deputy First Minister in the Northern Ireland Bill.¹⁶

Amnesty International

Amnesty International made a submission to the taskforce¹⁷ stating:

...as enshrined in international and regional human rights treaties, victims of human rights abuses have a right to an effective remedy and reparation, which included restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition¹⁸.

It recommended a statutory inquiry but noted its own, previous concerns, about the ability of the Inquiries Act 2005 to provide for a truly independent inquiry. It stressed that the proposed inquiry should be independent, impartial, thorough and effective and in line with human rights standards. It should also allow for effective victim participation, and be open to public scrutiny. It supported the inquiry having powers to compel attendance and cooperation of witnesses, including officials and powers to order the production of documents, including government and medical records. It recommended

¹⁶ Investigatory Inquiries and the Inquiries Act 2005 Standard Note SN/PC/02599 November 2011

¹⁷ *Proposed Inquiry into Historic Institutional Abuse in Northern Ireland: Submission to the Historical Abuse Taskforce of the Northern Ireland Executive from Amnesty International* May 2011

¹⁸ *Proposed Inquiry into Historic Institutional Abuse in Northern Ireland: Submission to the Historical Abuse Taskforce of the Northern Ireland Executive from Amnesty International* May 2011
http://www.amnesty.org.uk/uploads/documents/doc_21546.pdf

sufficiently comprehensive terms of reference for the inquiry that would allow for conclusions to be drawn about those who committed abuse but would also:

...examine the responsibility of all those who either failed to protect children, or acted to facilitate or cover up abuse. In addition the terms of reference must ensure that the inquiry is also able to identify the systemic failures underlying the abuse and the circumstances which allowed it to take place and go on happening.

Victims and Survivors

In its submission to the taskforce, victims group *Survivors and Victims of Institutional Abuse in Northern Ireland* (SAVIA) called for an inquiry process which is independent, impartial and capable of delivering justice. It advocated that opportunities to participate in the inquiry process should be proactively extended to all survivors whether affiliated with any organised groups or not. It wanted government to take steps to enable participation and ensure that it would be accessible. It was also important to the group that victims should be offered support throughout the duration of the inquiry. In short, SAVIA advocated an inquiry which is:

- independent
- public
- judge-led
- supported by an independent panel of people with acknowledged expertise
- not solely based in Belfast

Officials from the Republic of Ireland and Scotland

Officials from Scotland and the Republic of Ireland with experience of similar inquiries met with the taskforce in April 2011.¹⁹

Ryan Commission

Three officials who had worked on the *Commission to Inquire into Child Abuse* in the Republic of Ireland (the *Ryan Commission*) briefed the taskforce on their experiences and key lessons learned. The Ryan Inquiry was established by legislation in 2000 and took 10 years to complete its task, working through two complementary teams, a Confidential Committee and an Investigations Committee. Of the 25,000 children who

¹⁹ Note of meeting with Norah Gibbons and Brenda McVeigh held on Tuesday 19 April 2011
http://www.northernireland.gov.uk/note_of_meeting_with_norah_gibbons_and_brenda_mcveigh_tuesday_19_april_2011.pdf

Note of meeting with Mr Tom Shaw and the Inter-departmental taskforce into Historical Institutional Abuse held on Monday 4 April 2011. http://www.northernireland.gov.uk/note_of_meeting_with_tom_shaw_monday_4_april_2011.pdf

had attended the institutions in the time period concerned, around one thousand five hundred persons came forward. The Commission published its final report (the *Ryan Report*) in May 2009. Key lessons highlighted to the taskforce included:

- The Ryan Inquiry cost €1.2B in total and a key issue was the cost associated with legal representation. In light of this, they recommended that a panel of lawyers be appointed rather than allowing victims and survivors their own lawyers.
- For reasons of efficiency and cost effectiveness, there needs to be clear lines of authority (governance) and accountability. This needs to be established from the outset, in any legislation governing the inquiry.
- Membership of the Commission – their background was scrutinised by survivors. Important to have indemnification and absolute privilege by the State.
- Inquiry to be held in therapeutic setting. Counselling and Witness Support Officers were very important as well as pre care; care throughout the process and after care. A pro forma had been devised to report back and survivors were able to hear recordings.
- Panel of legal representatives from which the witnesses could draw assistance
- Public hearings were held between 2004 – 2007 but these should have been held at the start of the inquiry
- Acknowledgement and redress had been important for victims/survivors
- Defined categories of abuse and institutions. Neglect was defined as one of the categories and this had a huge long term effect on survivors
- Accessibility to records was a key consideration
- Cross-border co-operation and sharing of information between the two jurisdictions would be an issue for consideration, bearing in mind that some institutions would already have made records/evidence available to the Ryan Commission.
- Survivors NEED TO BE HEARD

Scottish Inquiry

Mr Tom Shaw made a presentation to the taskforce on the scope, aims, format and outcomes of a review in Scotland in relation to historical abuse in residential schools and children's homes in Scotland from 1950 to 1965. An Acknowledgment Forum *Time to be Heard* was established on a pilot basis for adult survivors of abuse in care to describe their experiences in a confidential supportive setting. This was modelled on

Ireland's "Confidential Committee" and focused on the former residents of Quarriers Homes. The independent Forum included 3 Commissioners and two support staff along with access to an In Care Survivor Service. Lessons learned from the experience were highlighted for the taskforce and included:

- the approach was a very valuable process in terms of providing acknowledgement for victim/survivors
- lack of access to records can be a difficulty when looking into historical institutional abuse
- confidentiality of records is crucial. It is important to get permission to take notes and follow agreed procedure for handling of same
- obligation to breach confidentiality where there were allegations of criminal activity
- the Scottish approach did not have an inbuilt accountability dimension
- it is essential to have a proper, sensitive and meaningful relationship between the inquiry and survivors
- any truth forum for survivors needs to be open and accessible to all
- timeframe- the importance of considering time as a critical factor for many victims/survivors who are older/unwell
- consider neutral environment for inquiry
- the selection of the inquiry team is crucial to the effectiveness of the process

3 Content of the Bill

This section of the paper provides a broad overview of the contents of the Bill. It is subdivided as follows:

- Provisions of the Bill relating to the inquiry
- Provisions of the Bill relating to the inquiry proceedings
- Provisions of the Bill relating to expenses
- Supplementary Provisions of the Bill
- General Provisions of the Bill

3.1 Provisions relating to the inquiry

The inquiry

The *Inquiry into Historical Institutional Abuse Bill 2012*²⁰ **Clause 1 Subsection (1)** authorises the First Minister and deputy First Minister, acting jointly, to set up the inquiry.

Clause 1(2) of the Bill refers to the Terms of Reference²¹ of 31 May 2012.

Clause 1(3) authorises the First Minister and deputy First Minister to amend the Terms of Reference of the inquiry at any point in the inquiry, but they must first consult the presiding officer (the Chair).

Clause 1(4) specifies the name of the inquiry as the *Inquiry into Historical Abuse Inquiry 1945 to 1995*.

Clause 1 (5) specifies that the inquiry panel must not make a ruling on or a determination on any person's civil or criminal liability.

This section contains some very important provisions of the Bill. It is worth noting however that the Bill does not state the **purpose of the inquiry**. As

²⁰ http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive%20Bills/Session-2011-12/niabill_7_11-15.pdf

²¹ <http://www.northernireland.gov.uk/statement-to-assembly-hia-inquiry-tor>

stated earlier, this is contained in the Terms of Reference (found in the Ministerial Statement of 31 May) and is to:

...examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1945-1995.

and to make findings and recommendations on this plus on an apology, an appropriate memorial or tribute to those who suffered abuse, and the requirement or desirability for redress to be provided by the institutions and/or the Executive to meet the particular needs of victims.

Also note that Clause 1(3) of the Bill confers on the First Minister and deputy First Minister the **power to change the Terms of Reference** of the inquiry. They must first consult with the presiding officer. Much of the information about the inquiry and how it will proceed is contained in the Ministerial Statement/Terms of Reference (and some will be governed by statutory rules which the Department will make).

It has been stated that the inquiry will be **inquisitorial** in nature rather than adversarial. An inquisitorial inquiry is a fact finding exercise unlike most court cases which are adversarial. The prohibition of a ruling on civil or criminal liability in Clause 1(5) is similar to the No determination of liability clause: (Section 2) of the Inquiries Act 2005; the Inquiry Act's Explanatory Notes state:

The purpose of this section is to make clear that inquiries under this Act have no power to determine civil or criminal liability and must not purport to do so. There is often a strong feeling, particularly following high profile, controversial events, that an inquiry should determine who is to blame for what has occurred. However, inquiries are not courts and their findings cannot and do not have legal effect. The aim of inquiries is to help to restore public confidence in systems or services by investigating the facts and making recommendations to prevent recurrence, not to establish liability or to punish anyone.

However, as subsection (2) is designed to make clear, it is not intended that the inquiry should be hampered in its investigations by a fear that responsibility may be inferred from a determination of a fact.²²

²² <http://www.legislation.gov.uk/ukpga/2005/12/notes/contents>

What Clause 1(5) of the Bill means therefore is that the inquiry will only set out the facts as it finds them and, even where it seems clear that those facts could constitute an offence and/or civil wrong, the inquiry will not say so.

Appointment of members

Clauses 2(1) and 2(2) authorise the First Minister and deputy First Minister to appoint the members of the inquiry panel; prior to this they must consult the presiding officer (Chair).

Clauses 2(3), 2(4) and 2(5) authorise the First Minister and deputy First Ministers to appoint additional members to the inquiry panel should a vacancy arise or there is a need to otherwise increase the size of the panel. The presiding member's (Chair's) consent must be sought. A replacement presiding member may be an existing member of the panel.

Duration of appointment of members

Clause 3 governs the arrangements should a panel member leave before the end of the inquiry. Clause **3(3)** sets out the circumstances in which the Ministers, acting jointly, may terminate the appointment of a panel member. The grounds for termination include illness, failure to comply with inquiry duties, conflict of interest and misconduct.

This clause mirrors Section 12 of the Inquiry Act 2005. The Ministerial power to remove the Chair and members of the inquiry panel "*amounts to a degree of control over the Inquiry which undermines the Inquiry's independence*" according to the NIHRC.

Assessors

The inquiry presiding officer (Chair) may appoint assessors to provide expertise for all or part of the inquiry (**Clause 4**)

Under the Inquiry Act 2005 the Minister may also appoint assessors, prior to the setting up of the inquiry, and subject to consultation with the inquiry chair.

This is seen by some to undermine an inquiry's ability to control its own procedures and choose individuals whom it deems can best provide expertise. This power is not, however, replicated in the Bill.²³

End of inquiry

Clause 5 covers the arrangements for the end of the inquiry. This will be when the report is submitted and the terms of reference fulfilled. Clause 5 (1)(b) permits the Ministers acting jointly to close the inquiry at an earlier point.

In the Explanatory Memorandum the department explains this provision:

...there could arise circumstances (as yet unforeseen) in which it would be impossible for the inquiry to continue. Therefore as a safeguard, Subsection (2) provides for the Ministers acting jointly, after consulting the presiding member, to close the inquiry.²⁴

The Clause is the same as Section 14 of the Inquiries Act 2005; the NIHRC comment on this:

Even though reasons have to be provided to Parliament or to the Northern Ireland Assembly, the ability of the Minister to do such over the head of the Inquiry again undermines the independence of the Inquiry.

3.2 Provisions relating to the inquiry proceedings

Evidence and procedure

Clause 6(1) authorises the presiding officer (Chair) to decide how the inquiry should proceed and take evidence.

Clause 6(2) states the presiding officer (Chair) must act fairly and have regard to the need to avoid unnecessary cost.

Note that section 18 of the Bill authorises the department to make rules dealing with "matters of evidence and procedure".

²³ See Page 4 NIHRC submission to taskforce

²⁴ Explanatory and Financial Memorandum Section 18 Commentary on Clauses

Public access to inquiry proceedings and information

The presiding officer may decide how the public can have access to the inquiry and its evidence (**Clause 7**).

Restrictions on public access, etc.

The presiding officer may restrict attendance at the inquiry or disclosure of evidence provided to it (**Clause 8(1)**). The other subsections of Clause 8 cover the circumstances surrounding restrictions on public access. Restrictions will not prevent disclosure under the Freedom of Information Act 2000 (**Clause 8(7)**).

Powers to require production of evidence

Clause 9 authorises the presiding officer to compel people via a formal notice to attend the inquiry to give evidence or provide documentary evidence. A notice can be revoked by the presiding officer in certain circumstances, for example if the person does not have the required evidence or when the evidence requested is unlikely to be of material assistance to the inquiry.

This clause of the Bill is the same as Section 21 of the Inquiries Act 2005. Consultation respondents were strongly in support of the provision of these powers to the inquiry panel; victims group SAVIA said:

In order to conduct a thorough and wide ranging investigation, the Inquiry may have to obtain evidence from the police, other statutory authorities, as well as non-statutory agencies and individuals. It is acknowledged that the powers under the 2005 Act have been successful in compelling witnesses to give evidence or disclose information to previous inquiries and, given experience in other jurisdictions, will likely be necessary in the Inquiry.²⁵

²⁵ *Survivors and Victims of Institutional Abuse in Northern Ireland: Submission to the Historical Abuse Taskforce of the Northern Ireland Executive* May 2011 <http://www.survivorsni.org/>

Privileged information etc.

Clause 10 exempts people from providing evidence under certain circumstances – for example if it is covered by legal professional privilege or because it might incriminate them, or their spouse or civil partner.

3.3 Provisions relating to expenses

Expenses of witnesses etc.

Clause 11 authorises OFMDFM to award reasonable amounts to pay for witnesses costs.

The Explanatory and Financial Memorandum states that OFMDFM are obliged to meet the costs of the inquiry acting within its Terms of Reference. It estimates the cost of the inquiry will be around £7.5-£9 million, depending on how many victims and survivors come forward and the extent of the issues to be examined in the inquisitorial sessions.

Payment of inquiry expenses by OFMDFM

OFMDFM is required to pay the inquiry expenses and **Clause 12** specifies the circumstances in which they will not be paid.

3.4 Supplementary Provisions

Offences

Witnesses failing to comply with a notice (under Clause 9) or a restriction order (under Clause 8) will be committing an offence according to **Clause 13**. It will be an offence to do anything which is intended to distort or otherwise alter evidence or conceal evidence (**Clause 13(2) and (13(3))**).

The penalties for committing an offence are six months imprisonment and/or a £1000 fine.

Enforcement by High Court

A failure to comply with a notice under Clause 9 or a restriction order may be referred to the High Court under **Clause 14**. The High Court may then take steps to enforce the order.

Immunity from Suit

Clause 15 gives the panel, legal advisors, assessors and staff immunity from legal suit for anything done or said in carrying out their duty during the inquiry.

Time limit for applying for judicial review

After receiving a decision of the inquiry an applicant is allowed a two week period in which to apply for judicial review on the decision, (**Clause 16**).

Power to make supplementary, etc. provision

Powers for OFMdfM to make supplementary, transitional, incidental or consequential provision it considers appropriate for the purposes of the Act, (**Clause 17**).

3.5 General Provisions

Rules

Clause 18 enables OFMdfM to make rules subject to negative resolution dealing with evidence and procedure under Clause 6, the return or keeping of documentary evidence after the end of the inquiry and awards to witnesses under Clause 11.

Application to the Crown

Clause 19 binds the Crown so that the powers conferred by the Bill can be exercised in relation to Departments.

Consequential amendments

Clause 20 is an amendment to the Commissioner for Complaints (NI) Order 1996 inserting the inquiry name.

Interpretation

Clause 21 provides a definition of terms within the Bill.

Commencement, etc.

Clause 22 covers the commencement of the Act and the concluding of powers under Clauses 9 and 10.

Short title

Clause 23 - The Act may be cited as the Inquiry into Historical Abuse Act (Northern Ireland) 2012.

4 Issues

This section of the paper identifies some issues for further discussion.

- The **Terms of Reference** are contained in the Ministerial Statement as opposed to the Bill. This includes the purpose of the Inquiry. Members may wish to consider and seek clarification on whether the terms of reference should be set out in the legislation.
- The Bill includes a **power for the Ministers to amend the Terms of Reference** (after consulting the presiding member). Bearing in mind the powers granted and the offences created, should the Assembly be consulted or asked to approve proposed changes to the terms of reference of the inquiry?
- **Definition of “abuse”** – there is no definition of “abuse” in the Bill or Terms of Reference. Members may wish to seek further clarification.

Note: in the *Ryan Inquiry* the Confidential Committee was required to hear the evidence of witnesses who wished to report four types of abuse as defined by the Acts.

Physical Abuse

The wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child

Sexual Abuse:

The use of the child by a person for sexual arousal or sexual gratification of that person or another person

Neglect:

Failure to care for the child which results, or could reasonably be expected to result, in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare.

Emotional abuse:

Any other act or omission towards the child which results, or could reasonably be expected to result, in serious impairment of the physical

or mental health or development of the child or serious adverse effects on his or her behaviour or welfare.

- **Definition of “systemic.”** The purpose of the inquiry is to identify systemic failings by institutions or the state. The term is not defined in the Bill or Terms of Reference (Ministerial Statement). It is not clear how the panel will identify systemic failings and whether this could mean a narrowing of the scope of the inquiry.
- **Civil and criminal liability.** The inquiry panel must not rule on and has no power to determine any person’s civil or criminal liability. The inquiry panel or Acknowledgement Forum will have to decide how to deal with victims coming forward whose evidence may raise issues of criminal or civil liability – how will that be managed? Members may wish to flag this as an issue on which they would want clarification.
- **Financial Effects.** The cost of the inquiry is estimated at between £7.5 and £9 million²⁶. Members may wish to understand how the estimate was arrived at, what assumptions it is based on and whether it is realistic. This is particularly apt considering the very high costs associated with legal representation highlighted to the taskforce by the Ryan Commission’s former members during the consultation exercise.

²⁶ Para 19 Explanatory and Financial Memorandum

ANNEXE – Ministerial Statement of 31 May 2012

OFFICE OF THE FIRST MINISTER AND DEPUTY FIRST MINISTER

**Written Ministerial Statement by Rt Hon Peter D Robinson MLA First
Minister and**

Martin McGuinness MP MLA deputy First Minister

ANNOUNCEMENT OF THE HISTORICAL INSTITUTIONAL ABUSE INQUIRY TERMS OF REFERENCE, CHAIR AND ACKNOWLEDGEMENT FORUM PANEL MEMBERS

Published at 5.00pm on Thursday 31 May 2012

On 29 September 2011 the Executive announced there would be an Investigation and Inquiry into historical institutional abuse. We attach the agreed Terms of Reference for the Inquiry and wish to advise the Assembly of the Chair of the Inquiry and the panel members for the Acknowledgement Forum.

Chair of the Inquiry

Sir Anthony Hart has agreed to chair and direct the Inquiry. Sir Anthony has enjoyed a distinguished career as a barrister and a judge.

Acknowledgement Forum Inquiry Panel Members

The Inquiry will include a confidential “Acknowledgement Forum” in which victims and survivors can recount their childhood experiences of living in institutions to members of the Inquiry Panel. The Acknowledgement Forum Panel Members are:

- Beverley Clarke – Beverley has wide experience of social work and child care, working in England and Canada. She is an independent expert witness and has worked for the Ministry of Justice and the Home Office.
- Norah Gibbons - Norah is Director of Advocacy in Barnardo’s Ireland. She was also a Commissioner of the Ryan Inquiry into historical institutional abuse in Ireland.
- Dave Marshall QPM - Dave is a consultant in the field of child safeguarding, investigation and management. For 9 years he was Detective Chief Inspector and Head of the Metropolitan Police’ Child Abuse Investigation Command’s Major Investigation Team.
- Tom Shaw CBE - Tom was invited by Scottish Ministers to review the regulatory framework in Scotland designed to ensure the welfare needs and rights of Children in residential institutions from 1945-95. Subsequently he chaired “Time to be Heard” – a pilot acknowledgement forum for those who had experienced abuse in residential children’s institutions in Scotland.

Terms of Reference

The NI Executive’s Inquiry and Investigation into historical institutional abuse will examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1945-1995.

For the purposes of this Inquiry “child” means any person under 18 years of age;

“institution” means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the

day to day care of children; “relevant period” means the period between 1945 and 1995 (both years inclusive).

The Inquiry and Investigation will conclude within a 2 year 6 month period following the commencement of the legislation establishing its statutory powers.

The Inquiry and Investigation under the guidance of the Panel will make as many preparations as practicable prior to the passing of the relevant legislation, this will include the commencement of the research element. Commencement of the work of the Acknowledgement Forum is not dependent upon the commencement of legislation and will begin its work as soon as practicable.

The Chair of Investigation and Inquiry Panel will provide a report to the Executive within 6 months of the Inquiry conclusion. If additional time is required the Chairman will, with the agreement of the Panel, request an extension from the First Minister and deputy First Minister which will be granted provided it is not unreasonable.

The Inquiry and Investigation will take the form of

- an Acknowledgement Forum,
- a Research and Investigative team and
- an Inquiry and Investigation Panel with a statutory power which will submit a report to the First Minister and deputy First Minister.

The functions of each are as follows:

An Acknowledgment Forum

An Acknowledgment Forum will provide a place where victims and survivors can recount their experiences within institutions. A 4 person panel will be appointed by the First Minister and deputy First Minister to lead this forum. This Forum will provide an opportunity for victims and survivors to recount their experience on a confidential basis. A report will be brought forward by the panel outlining the experiences of the victims and survivors. All records will be destroyed after the Inquiry is concluded. The records will not be used for any other purpose than that for which they were intended. If necessary, the Forum will have the authority to hear accounts from

individuals whose experiences fall outside the period 1945 – 1995. The Acknowledgment Forum will operate as a separate body within the Inquiry and Investigation accountable to and under the chairmanship of the Inquiry and Investigation Panel Chair.

A Research and Investigative team

A Research and Investigative team will report to and work under the direction of the Chair of the Inquiry and Investigation. The team will:

- Assemble and provide a report on all information and witness statements provided to the Acknowledgement Forum;
- Provide an analysis of the historical context that pertained at the time the abuse occurred; and
- Provide a report of their findings to the Acknowledgement Forum and to the Chair of the Inquiry and Investigation.

An Investigation and Inquiry Panel

An Inquiry and Investigation Panel will produce a final report taking into consideration the report from the Acknowledgement Forum, the report of the Research and Investigative team and any other evidence it considers necessary. The Panel will be led by a Chairperson supported by two other members, who will be appointed by the First Minister and deputy First Minister. The Chairperson of the Inquiry and Investigation will also be responsible for the work of the Acknowledgement Forum and for the Research and Investigative Team.

On consideration of all of the relevant evidence, the Chairperson of the Inquiry and Investigation will provide a report to the NI Executive within 6 months of the conclusion of their Inquiry and Investigation. This report will make recommendations and findings on the following matters:

- An apology - by whom and the nature of the apology;

- Findings of institutional or state failings in their duties towards the children in their care and if these failings were systemic;
- Recommendations as to an appropriate memorial or tribute to those who suffered abuse;
- The requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims.

However, the nature or level of any potential redress (financial or the provision of services) is a matter that the Executive will discuss and agree following receipt of the Inquiry and Investigation report.

The Northern Ireland Executive will bring forward legislation at the beginning of this process to give a statutory power to the Inquiry and Investigation to compel the release of documents and require witnesses to give evidence to the Inquiry and Investigation. It is hoped that the legislative power will not be needed, however; the power will be available if required. As far as possible the Inquiry should be inquisitorial in nature rather than adversarial.

A Witness Support Service will be established by to support Victims and Survivors throughout their contact with the Inquiry process. The Office of the First Minister and deputy First Minister will establish a wider Victims Support Service to provide support and advice to victims before, during and after the inquiry.