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**AN BILLE UM DHROCHÚSÁID LEANAÍ I bhFORAIS 2009**  
**INSTITUTIONAL CHILD ABUSE BILL 2009**

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*Mar a tionscnaíodh*  
*As initiated*

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ARRANGEMENT OF SECTIONS

Section

1. Amendments to Residential Redress Act 2002.
  2. Waiver of legal professional privilege.
  3. Amendments to Commission to Inquire into Child Abuse Act 2000.
  4. Powers of Government in relation to ascertaining the assets of religious congregations.
  5. Disposal or destruction of records.
  6. Oireachtas approval for any amendments to deed of indemnity entered into by State with certain religious congregations.
  7. Short title and collective citations.
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ACTS REFERRED TO

Commission to Inquire into Child Abuse Act 2000	2000, No. 7
Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act 1998	1998, No.47
Freedom of Information Act 1997	1997, No. 13
Residential Institutions Redress Act 2002	2002, No. 13



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# BILL

*entitled*

5 AN ACT, BEARING IN MIND THE REPORT OF THE COM-  
MISSION TO INQUIRE INTO CHILD ABUSE AND IN  
PARTICULAR THE FAILURE OF THE STATE AND OF  
10 RELIGIOUS CONGREGATIONS TO PROTECT CHIL-  
DREN FROM ABUSE, RECOGNISING THE PAIN AND  
SUFFERING ENDURED BY THE FORMER RESIDENTS  
OF INSTITUTIONS, THAT THE COMMISSION'S REPORT  
VINDICATES THEIR CLAIMS OF ABUSE AND THAT  
15 CRIMES WERE COMMITTED BY MEMBERS OF THE  
RELIGIOUS CONGREGATIONS AND OTHERS  
AGAINST CHILDREN IN STATE CARE, TO AMEND  
THE COMMISSION TO INQUIRE INTO CHILD ABUSE  
ACT 2000 AND THE RESIDENTIAL INSTITUTIONS  
REDRESS ACT 2002; AND TO PROVIDE FOR CONNEC-  
TED MATTERS.

20 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—The Residential Institutions Redress Act 2002 is amended:

Amendments to  
Residential Redress  
Act 2002.

(a) by substituting, in section 1, the following for the definition  
of “child”:

25 “ ‘child’ means a person who, under the law as it applied  
at any time relevant to the application of the person con-  
cerned, had not reached full age and so under such law  
fell to be classed either as an infant, minor or child; and  
cognate words shall be construed accordingly;”;

30 (b) by substituting, in section 1, the following for the defini-  
tion of “institution”:

“ ‘institution’ means any—

- (a) industrial school,
- (b) reformatory school,
- (c) orphanage,

- (d) children’s home (including a home for mothers and babies),
- (e) special school which was established for the purpose of providing education services to children with a physical or intellectual disability, or 5
- (f) hospital providing medical or psychiatric services to people with a physical or mental disability or mental illness in which children were placed and resident,

in respect of which a public body had a regulatory or 10 inspection function;”;

(c) by inserting, in section 3, the following subsections:

“(5) (a) Notwithstanding any other provision of this Act, when an order under subsection (3) for the dissolution of the Board is proposed to be made, 15 the Minister shall in particular have regard to the records of the Board and, with due regard to the need to safeguard the privacy of applicants who do not wish their identity disclosed, the need to maintain these records and to 20 provide access to these records as a consistent reminder of the damage done to children whose upbringing, care and welfare was consigned to the State.

(b) An order under subsection (3) may provide for 25 different forms of access (including forms that remove information identifying individuals), and for access commencing at different times in the future, to be provided to different classes of records to which the order relates.”; 30

(d) by deleting section 4 and the Schedule;

(e) by substituting the following for section 8:

“8.—(1) An applicant shall make an application to the Board within 3 years of the establishment day.

(2) The Board may, at its discretion and where it con- 35 sidered there are exceptional circumstances, or otherwise whenever the interests of justice to and between the parties so require, extend the period referred to in subsection (1).

(3) Without prejudice to the generality of subsection 40 (2), the Board shall in particular extend the period referred to in subsection (1) where it is satisfied:

(a) that an applicant was under a legal disability by reason of unsound mind at the time when such application should otherwise have been made 45 and the applicant concerned makes an application to the Board within 3 years of the cessation of that disability;

(b) that an applicant, by reason of living outside the State, of being housebound or illiterate, or for 50

5 other valid reasons, was not aware of the establishment of the Board or of his or her entitlement to make an application to the Board and the applicant concerned makes an application to the Board within 3 years of the passing of the *Institutional Child Abuse Act 2009*;

10 (c) that an applicant became entitled to make an application to the Board only as a result of amendments to the definitions of ‘child’ and of ‘institution’ in section 1 of this Act effected by the *Institutional Child Abuse Act 2009* and the applicant concerned makes an application to the Board within 3 years of the passing of that Act.”;

15 (f) by deleting section 28(6); and

(g) by substituting the following for section 35:

20 “35.—(1) A person who was sent to and detained in an institution by order of a court as a consequence of a conviction for an offence shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction and, notwithstanding any other enactment or rule of law to the contrary, no evidence shall be admissible in any proceedings before a court to prove that such a person has committed or been charged with or prosecuted for or convicted of or sentenced for any such offence.

30 (2) A person who was sent to and detained in an institution by order of a court otherwise than as a consequence of a conviction for an offence shall not be subject to any disqualification or any other restriction that is a consequence of a conviction for an offence and shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for any offence.

40 (3) A person who was sent to and detained in an institution by order of a court, whether as a consequence of a conviction for an offence or otherwise is entitled, where a question seeking information about the person’s childhood is put to him or her or to any other person otherwise than in proceedings before a court, to treat the question as not relating to his or her stay in an institution or to any circumstances ancillary thereto, and the answer may be framed accordingly; and the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose his or her stay in a residential institution or any circumstances ancillary thereto, in the answer to the question.

50 (4) Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him or her to disclose a stay in an institution or any circumstances ancillary thereto.

(5) A stay in an institution, or any failure to disclose a stay in an institution, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him or her in any way in any occupation or employment. 5

(6) Nothing in this Act shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's stay in an institution or to circumstances ancillary thereto, in any criminal proceedings before a court (including any appeal or reference in a criminal matter).” 10

Waiver of legal professional privilege.

2.—(1) It is hereby declared that the State waives on its own behalf and on behalf of the Government, every Minister of the Government, every Department of State and the Attorney General, any claim to privilege, including but not confined to legal professional privilege, in respect of records (within the meaning of the Freedom of Information Act 1997) consisting of or relating to the deed of indemnity dated the 5th June 2002 between the Ministers for Finance and for Education and Science, on the one part, and 18 Roman Catholic religious congregations, on the other part; and all such records shall accordingly be available for publication as if no such claim of privilege arose or could be made in respect of them. 15 20

(2) Section 46(1)(b) of the Freedom of Information Act 1997, insofar as it prevents the application of that Act to records held or created by the Attorney General or the Office of the Attorney General, does not apply to records to which subsection (1) applies. 25

Amendments to Commission to Inquire into Child Abuse Act 2000.

3.—The Commission to Inquire into Child Abuse Act 2000 is amended in section 3 by inserting the following as subsection (6):

“(6) (a) Notwithstanding any other provision of this Act, when an order under subsection (4) for the dissolution of the Commission is proposed to be made, the Minister shall in particular have regard to the records of the Commission and, with due regard to the need to safeguard the privacy of former residents of institutions who do not wish their identity disclosed, he or she shall have regard to the need to maintain these records and to provide access to these records as a consistent reminder of the damage done to children whose upbringing, care and welfare was consigned to the State. 30 35 40

(b) An order under subsection (4) may provide for different forms of access (including forms that remove information identifying individuals), and for access commencing at different times in the future, to be provided to different classes of records to which the order relates.”. 45

Powers of Government in relation to ascertaining the assets of religious congregations.

4.—(1) In relation to the religious congregations who entered into the deed of indemnity dated the 5th June 2002 between the Ministers for Finance and for Education and Science, on the one part, and 18 Roman Catholic religious congregations, on the other part, the Government may, if it considers it necessary to do so, appoint an auditor: 50

5 (a) to carry out such examinations and investigations as it considers appropriate of the affairs and the books of accounts and deposits held or maintained by or on behalf of the congregations and of the affairs and other records in any form and other documents of those congregations,

(b) to carry out such additional examinations and investigations as he or she considers appropriate,

10 in order to ascertain the true extent and nature of the real and personal property available to those congregations, howsoever held and wheresoever situate, as and from the 5th June 2002, and to ascertain the details of all dispositions of property by them howsoever effected from that date; and the auditor so appointed shall carry out the examinations and investigations aforesaid.

15 (2) An auditor appointed under this section shall, *mutatis mutandis*, have all the powers available to the Comptroller and Auditor General under the Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act 1998; and the provisions of that Act shall apply to the power conferred by this Act on an auditor appointed under this section.

20 5.—No steps shall be taken by either the Residential Institutions Redress Board or the Commission to Inquire into Child Abuse, in relation to the transfer, disposal or destruction of records held by the Board or the Commission, save in accordance with orders made in relation to the dissolution of the relevant body, approved by both  
25 Houses of the Oireachtas. Disposal or destruction of records.

30 6.—In relation to the deed of indemnity dated the 5th June 2002 between the Ministers for Finance and for Education and Science, on the one part, and 18 Roman Catholic religious congregations, on the other part, no agreement shall be made by or on behalf of the State, the Government or any Minister of the Government, on the one part, and any or all of those congregations, on the other part, that amends, supplements or is otherwise ancillary to the matters the subject of that deed unless a draft of such agreement is first laid before both Houses of the Oireachtas and a resolution approving of  
35 the draft has been approved by each such House. Oireachtas approval for any amendments to deed of indemnity entered into by State with certain religious congregations.

7.—(1) This Act may be cited as the Institutional Child Abuse Act 2009. Short title and collective citations.

40 (2) Section 1 and the Residential Institutions Redress Acts 2002 and 2005 may be cited together as the Residential Institutions Redress Acts 2002 to 2009 and shall be construed together as one Act.

45 (3) Section 3 and the Commission to Inquire into Child Abuse Acts 2000 and 2005 may be cited together as the Commission to Inquire into Child Abuse Acts 2000 to 2009 and shall be construed together as one Act.



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**EXPLANATORY MEMORANDUM**

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*Purpose of Bill*

This Bill, as its long title makes clear, follows from the report of the Commission to Inquire into Child Abuse (the Ryan Report). It attempts to acknowledge in particular the failure of the State and of religious congregations to protect children from abuse, to recognise the pain and suffering endured by the former residents of institutions and that the Commission's report vindicates their claims of abuse and that crimes were committed by members of the religious congregations and others against children in state care.

As part of a parcel of measures necessary towards meeting that end, certain amendments are proposed to the Commission to Inquire into Child Abuse Act 2000 and the Residential Institutions Redress Act 2002.

*Provisions of Bill*

*Section 1* consists of a number of amendments to the Residential Institutions Redress Act 2002.

First, it replaces the definition of "child" used in the Act of 2002, which refers to a child as being under the age of 18, and replaces it with a definition more relevant to the definition of childhood applicable at the time. A child will therefore be, for the purposes of the Act, a person who, under the law as it at the relevant time applied, had not reached full age. In other words, if the law at the time said that a person did not arrive at full age until the age of 21, then that person will be deemed to be a child for the purposes of this Bill.

Second, the section includes a replacement definition of "institution", which is at present defined by reference to specified residential institutions listed in the Schedule to the Act of 2002, as amended. The Act contained a power to add new institutions to the list, so long as they were an industrial school; reformatory school; orphanage; children's home; special school established for the purpose of providing education services to children with a physical or intellectual disability; or hospital providing medical or psychiatric services to people with a physical or mental disability or mental illness in which children were placed and resident. The new definition includes all such places within the definition of "institution". The proviso is that such a place

must, in order to qualify as an “institution”, be a place in respect of which a public body had a regulatory or inspection function.

The scheduled list of institutions is accordingly proposed to be deleted.

Third, the section inserts new provisions into section 3 of the Act, dealing with the dissolution of the Board. The new provisions require that, notwithstanding any other provision of the Act, when an order for the dissolution of the Board is proposed to be made, the Minister must in particular have regard to the records of the Board and, with due regard to the need to safeguard the privacy of applicants who do not wish their identity disclosed, have regard to the need to maintain these records and to provide access to these records as a consistent reminder of the damage done to children whose upbringing, care and welfare was consigned to the State.

An order may provide for different forms of access (including forms that remove information indentifying individuals), and for access commencing at different times in the future, to be provided to different classes of records to which the order relates. Such an order requires approval by both Houses of the Oireachtas before it has effect.

Fourth, the section inserts a new section 8 into the Act of 2002, extending the timeframe for applications to the Redress Board. The new section recognises that, while the Board has at present power to extend the deadline for an application in case of “exceptional circumstances”, those circumstances need to be spelled out more specifically.

The new section requires the Board, in considering whether exceptional circumstances, or the interests of justice to and between the parties so require, justify extending the deadline for an application, to consider:

- whether an applicant, by reason of living outside the State, of being housebound or illiterate, or for other valid reasons, was not aware of the establishment of the Board or of his or her entitlement to make an application to the Board; or
- whether an applicant has become entitled to make an application to the Board only as a result of amendments to the definitions of “child” and of “institution” in section 1 of the Act of 2002 effected by this Bill.

The extended deadline for applications to the Board will be 3 years from the passing of this Bill into law.

Fifth, section 1 also proposes the deletion of section 28(6) of the Act of 2002. That subsection prohibits a person from publishing any information concerning an application to or an award by the Redress Board that refers to any other person or institution by name or which could reasonably lead to the identification of any other person or institution. As a result of that provision, applicants are effectively prohibited by law from recounting the stories of their childhood.

Finally, the section also deals with the question of court records. Some persons detained in reformatory schools under the Children Act 1908 were sent there as a result of criminal convictions imposed on them as children. The substitute section 35 for the Act of 2002 proposes that those persons must be treated for all purposes in law

as persons who have not committed or been charged with or prosecuted for or convicted of or sentenced for any offence. Their records will, in other words, be wiped clean.

Other children were sent and detained in institutions by court order following proceedings that did not involve a criminal charge or conviction. The substitute section 35 seeks to make plain that persons sent to institutions under detention orders must not be subject to any disqualification or any other restriction that is a consequence of a conviction for an offence and must be treated for all purposes in law as persons who have not committed or been charged with or prosecuted for or convicted of or sentenced for any offence.

Regardless of the manner in which children were detained, the substitute section proposes that such a person is entitled, where a question seeking information about the person's childhood is put to him or her or to any other person otherwise than in proceedings before a court, to treat the question as not relating to his or her stay in an institution or to any ancillary circumstances. The person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose his or her stay in a residential institution or any ancillary circumstances, in the answer to the question.

Furthermore, any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him or her to disclose a stay in an institution or any ancillary circumstances.

And a stay in an institution, or any failure to disclose a stay in an institution, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him or her in any way in any occupation or employment.

Necessary exceptions to these rules are made for the purposes of court proceedings.

*Section 2* relates to the deed of indemnity of the 5th June 2002 between the Ministers for Finance and for Education and Science, on the one part, and 18 Roman Catholic religious congregations, on the other part, in respect of contributions by the congregations to redress and court compensation payments made by the State. *Subsection (1)* provides for a waiver of any claim to privilege, including legal professional privilege, in respect of records consisting of or relating to that agreement. *Subsection (2)* disapplies the privileges belonging the Attorney General under the Freedom of Information Act 1997 in relation to records held by him.

*Section 3* amends the Commission to Inquire into Child Abuse Act 2000 to deal with the dissolution of the Commission and the safeguarding of its records. Section 3 of the Act of 2000 provided that the Minister for Education and Science, when satisfied that the Commission has completed the performance of its functions, must move a resolution in the Dáil and Seanad for an order to dissolve the Commission. The order may include "such incidental, ancillary or consequential provisions as the Minister considers necessary or expedient".

The amendment proposes the insertion of a new subsection (6) into section 3 of the Act of 2000, to the effect that, when an order for the dissolution of the Commission is to be made, the Minister

must in particular have regard to the need to maintain the records of the Commission.

With due regard to the need to safeguard the privacy of former residents of institutions who do not wish their identity disclosed, the Minister must have regard to the need to maintain these records and to provide access to these records as a consistent reminder of the damage done to children whose upbringing, care and welfare was consigned to the State. Different forms of access may be proposed in relation to different classes of records.

*Section 4* enables the Government to appoint an auditor to examine the financial affairs of the 18 Roman Catholic religious congregations who entered into the deed of indemnity with the State dated the 5th June 2002.

If it considers it necessary to do so, the Government may appoint an auditor to carry out such examinations and investigations as it considers appropriate of the affairs and the books of accounts and deposits held or maintained by or on behalf of the congregations since that date, including all dispositions of property, and of the affairs and other records in any form and other documents of those congregations, and to carry out such additional examinations and investigations as he or she considers appropriate.

The purpose of such an audit is to ascertain the true extent and nature of the real and personal property assets available to the congregations.

The section confers on the auditor so appointed all the powers available to the Comptroller and Auditor General under the Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act 1998 — the Act passed to confer special powers on the Comptroller in order to deal with the DIRT Inquiry.

*Section 5* provides that no steps must be taken by either the Residential Institutions Redress Board or the Commission to Inquire into Child Abuse in relation to the transfer, disposal or custody of their records until relevant draft orders have been prepared dealing with the issue and approved by both Houses of the Oireachtas.

*Section 6* provides for any future proposed amendment to the deed of indemnity of the 5th June 2002 between the State and the 18 religious congregations. The section requires that any future agreement (whether amending, or supplementary or ancillary to, the original deed of indemnity) on the part of the State and any or all of those congregations cannot be made unless a draft of the agreement is first laid before both Houses of the Oireachtas and then approved by resolution of both Houses.

*Section 7* deals in standard form with the short title of the Bill and with collective citations.

*An Teachta Ruairí Ó Cuinn,  
Meitheamh, 2009.*