**Pre-legislative Scrutiny of the General Scheme of the Retention of Records Bill 2015**

**Opening Statement from Dermot Mulligan, Department of Education and Skills**

**15 April 2015**

***Introduction***

I would like to thank the Committee for the invitation to today’s hearing on the General Scheme the Retention of Records Bill 2015, which was approved by Government in March.

The Bill amends existing legislation and its aim is to preserve the records of the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and the Residential Institutions Review Committee so that we never forget the wrong which was done to children and that we remain constantly vigilant to protect the rights of children.

Specifically, the intention is that these records will be deposited with the National Archives where they will be preserved and sealed for a period of 75 years. At the end of this period, the records will be available for public inspection subject to conditions which will be determined by the Director of the National Archives.

***Background***

I will now say a few words about the bodies whose records will be covered by this Bill.

***Commission to Inquire into Child Abuse***

The first of these is the Commission to Inquire into Child Abuse. This Commission was established by the Commission to Inquire into Child Abuse Act 2000.

Its main functions were to report on the abuse of children in certain types of institution and to give those who suffered this abuse an opportunity to describe what happened to them. Under the Act, the types of institution covered included “*a school, an industrial school, a reformatory school, an orphanage, a hospital, a children‘s home and any other place where children are cared for other than as members of their families*.”

The Commission comprised two separate and distinct Committees, the Confidential Committee and the Investigation Committee, which were required to report separately to the Commission as a whole. The Confidential Committee heard the uncontested evidence of those who did not wish to have the alleged abuse investigated further. The Investigation Committee inquired into the manner in which children were placed in institutions, the abuse they suffered while in these institutions and related matters.

Investigations were conducted into all institutions where the number of complainants was more than 20. Between the two Committees, the Commission received the evidence of over 1,500 witnesses who attended or were resident as children in schools and care facilities in the State, including particularly industrial and reformatory schools.

The Commission produced its Final Report, also known as the Ryan Report, in May 2009.

The Commission has almost completed its work and is expected to be dissolved later this year.

***Residential Institutions Redress Board/Review Committee***

The other two bodies covered by the Bill are the Redress Board and the Review Committee. These bodies were established by the Residential Institutions Redress Act 2002.

The Redress Board was established to make awards to residents of certain residential institutions who suffered abuse in childhood.

To qualify for an award from the Redress Board, applicants were required to establish to the Board’s satisfaction that they suffered injuries consistent with abuse while resident in one of the 139 specified institutions. Abuse is defined in the legislation to include physical, sexual, emotional abuse and neglect.

The legislation made it clear that the making of an award to an applicant does not constitute a finding of fact relating to fault or negligence on the part of an alleged abuser or the person responsible for the management, administration, operation, supervision, inspection and regulation of the specified institutions.

At end December 2014, the Redress Board had made 15,547 awards, with an overall average award value of €62,240.

The Review Committee was established to provide for appeals from decisions of the Redress Board.

The Redress Board and the Review Committee have also almost completed their work and it is expected that they will be dissolved this year.

The overall expenditure on the Redress scheme is some €1.2billion.

***Confidentiality***

I would now like to describe the current legislative provisions, which have imposed strict confidentiality requirements on all three bodies.

As far as the Redress Board and Review Committee are concerned, section 28 of the 2002 Redress Act prohibits the disclosure of information provided to those bodies other than to the Garda Síochána or to an appropriate person in relation to prevention of child abuse. It also provides for any unauthorised disclosure to be a criminal offence.

Section 28(6) prohibits publication of any information concerning an application or an award that could reasonably lead to the identification of an applicant, an alleged abuser or a residential institution. Any such publication is also a criminal offence.

As regards the Commission to Inquire into Child Abuse, similarly section 28 of the 2000 Act provides that the Commission cannot be required to disclose information provided to it other than to the Garda Síochána to prevent a serious offence or to an appropriate person to prevent child abuse.

Section 27 prohibits the disclosure of information provided to the Confidential Committee, other than in limited circumstances, with any unauthorised disclosure constituting a criminal offence.

While Section 5(3) of the 2000 Act provides that the Commission’s report could contain findings that the abuse of children occurred in a particular institution, the person who committed the abuse could only be identified where they had been the subject of a criminal conviction in relation to it.

Under the Act, the Commission report could not identify or contain information that could lead to the identification of those who were the subject of abuse in childhood and could not contain findings in relation to particular instances of the alleged abuse of children.

***Existing position in regard to the retention of records***

Under the existing legislation, it is a matter for each of the three bodies to dispose of their records.

As regards the Commission, Section 7(6) of 2000 Act provides that it shall make such arrangements as it considers appropriate in relation to the custody and disposal of its documents and copies of documents given to it. In this regard, the records of the Confidential Committee are expressly deemed by Section 27(5) not to constitute Departmental Records within the meaning of the National Archives Act 1986 and every witness to the Committee was given an assurance of complete confidentiality.

Similarly the records of the Redress Board/Review Committee do not constitute Departmental records within the meaning of the National Archives Act 1986 and under sections 28(6) and 28(7) of the 2002 Act, it is a matter for the Board or Committee respectively to determine the disposal of its documents.

If there were no change to the legislation then the Board and Review Committee would be required to destroy their records on dissolution. The Commission would also be required to destroy its Confidential Committee records. The Commission considered that the retention of Investigation Committee records which identify individual survivors and alleged abusers would be in breach of the 2000 Act.

***Rationale for the retention of the records***

The Oireachtas has previously considered the issue of the retention of the Commission’s records.

The Government sponsored Motion on the Ryan Report on the Commission to Inquire into Child Abuse which was adopted by Dáil Éireann on 12 June 2009 noted inter alia, “*the desirability that, in so far as possible, all of the documentation received by and in the possession of the Commission to Inquire into Child Abuse is preserved for posterity and not destroyed.”* The Labour Party Private Members’ *Institutional Child Abuse Bill* *2009* also addressed the potential retention of the records.

In July 2013 the then Minister for Education and Skills, Ruairí Quinn T. D., announced that he had secured Government agreement in principle to bring forward legislative proposals to allow for the retention of the records of these three redress bodies.

In the Press Release of 10th March 2015 announcing the publication of the General Scheme of the Bill Minister O’Sullivan announced that:

“*In keeping with the Motion adopted by Dáil Éireann following the publication of the Ryan Report, these proposals will allow the documentation received by the Commission to Inquire into Child Abuse to be preserved for posterity and not destroyed.  They will also preserve the documentation of the Residential Institutions Redress Board and Review Committee.*

*These records are highly sensitive and contain the personal stories of victims of institutional child abuse.  I believe that it is very important that these records are not destroyed both to ensure that future generations will understand what happened and out of respect to the victims who came forward.*

*By sealing the records for 75 years and ensuring appropriate safeguards on the release of the records thereafter, we are in a position to preserve these sensitive records.”*

The retention of these records therefore represents a significant departure from the position provided for in the existing legislation and it is recognised that this is a very sensitive issue.

There is a need for the legislation to balance the rights to privacy of those who gave evidence to the Commission/Redress bodies against the need to ensure that as a society we never forget the harm that was done to children and the need to ensure that the protection of children is always to the forefront of our minds. The Head of this Bill attempts to strike this balance.

The legal advice is that this balance is achieved if access to the records is prohibited for a lengthy period, of the order of 75 years, having regard to the rights of the parties who engaged with the bodies. The intention is that after this period the records will be available for public inspection in accordance with conditions stipulated by the Director of the National Archives. It is expected that the individuals involved would be deceased at that stage.

***Consultations on the General Scheme***

The draft General Scheme was circulated to the 18 congregations that are party to the 2002 Indemnity Agreement and to the various groups representing survivors of residential institutional child abuse.

***Conclusion***

The Department and the Minister would be happy to consider any views of the Committee arising out of its consideration of the Bill. It would be the Minister’s intention to proceed as quickly as possible with the drafting of the Bill after that. [ENDS]