

**General Scheme of a Residential Institutions  
Statutory Fund Bill, 2011**

**LONG TITLE**

BILL ENTITLED AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS ..... OR IN THE ENGLISH LANGUAGE, THE RESIDENTIAL INSTITUTIONS STATUTORY FUND, TO SUPPORT THE NEEDS OF FORMER RESIDENTS WHO RECEIVED AWARDS FROM THE RESIDENTIAL INSTITUTIONS REDRESS BOARD AND TO DEFINE ITS FUNCTIONS, TO AMEND THE COMMISSION TO INQUIRE INTO CHILD ABUSE (AMENDMENT) ACT, 2005 AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

***Explanatory note***

*The Long Title of the Bill provides that the purpose of this legislation is to establish a statutory body called the Residential Institutions Statutory Fund, which will support the needs of former residents who received awards from the Residential Institutions Redress Board, to amend the Commission to Inquire into Child Abuse (Amendment) Act 2005, and to provide for related matters.*

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36. Provisions consequent upon transfer of functions, assets and liabilities to Fund.
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**Acts Referred to**

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 Carer's Leave Act 2001  
 Charities Act, 2009  
 Commission to Inquire into Child Abuse Act, 2000  
 Commission to Inquire into Child Abuse (Amendment) Act, 2005  
 Companies Acts 1963 to 2003  
 Comptroller and Auditor General (Amendment) Act, 1993  
 Data Protection Acts 1988 and 2003  
 Employees (Provision of Information and Consultation) Act 2006  
 European Parliament Elections Act, 1997  
 Freedom of Information Act, 1997  
 Local Government Act, 2001  
 Maternity Protection Acts 1994 and 2004  
 Mental Health Act, 2001  
 Minimum Notice and Terms of Employment Acts 1973 to 2005  
 Ombudsman Act, 1980  
 Organisation of Working Time Act 1997  
 Parental Leave Acts 1998 and 2006  
 Protection of Employees (Part-Time Work) Act 2001  
 Protection of Employees (Fixed-Term Work) Act 2003  
 Redundancy Payments Acts 1967 to 2007  
 Residential Institutions Redress Acts, 2002 to 2005  
 Terms of Employment (Information) Acts 1994 and 2001  
 Unfair Dismissals Acts 1977 to 2007

**PART 1**  
**PRELIMINARY AND GENERAL**

**Head 1      Short title, construction and collective citation.**

Provide that:

1.      This Act may be cited as the Residential Institutions Statutory Fund Act 2011.

***Explanatory Note***

*This Head provides for the short title of the Act.*

*[Need to clarify if a collective citation and construction is required for Part 3 of the Commission to Inquire into Child Abuse (Amendment) Act 2005 and Part 4.]*

## **Head 2 Commencement.**

Provide that:

2. This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

### ***Explanatory Note***

*This Head provides that the Act is to be brought into effect by Ministerial Order and that different parts of the Act may be brought into effect by different Orders.*

### **Head 3 Interpretation.**

Provide that:

3.(1) In this Act, unless the context otherwise requires –

“abuse” has the meaning assigned to it in the Residential Institutions Redress Acts, 2002 to 2011;

“Agency” means the National Treasury Management Agency;

“approved service” shall be construed in accordance with *section 9(2)*;

“connected person” in relation to a former resident means –

- (a) a person who has been nominated in writing by the former resident for the purposes of making an application,
- (b) the Register of Wards of Court if the former resident is a ward of court, or
- (c) a person with an enduring power of attorney in respect of the former resident.

“former resident” means a person who received an award under the Residential Institutions Redress Acts, 2002 to 2011 (other than a person to whom section 9 of the aforementioned Acts applies) or a person who received an award from a court or a settlement in respect of an action arising out of any circumstances which would otherwise have resulted in their receiving an award under the aforementioned Acts;

“investment account” means the account established by *section 27*;

“Minister” means the Minister for Education and Skills;

“public authority” means a Department of State, the Health Service Executive, a local authority for the purposes of the Local Government Act, 2001 and a person, body or organisation (other than the Defence Forces) established

- (i) by or under any enactment (other than the Companies Acts 1963 to 2003), or
- (ii) under the Companies Acts 1963 to 2003, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or shares held by or on behalf of a Minister of the Government;

“publicly available services” means any service or facility of any kind provided by a public body which is available to or accessible by the public generally or a section of the public;

(2) In this Act –

- (a) a reference to a Part, Chapter, section or Schedule is to a Part, Chapter or section of or Schedule to this Act, unless it is indicated that reference to some other enactment is intended,

- (b) a reference to a subsection, paragraph, subparagraph or clause is to the subsection, paragraph, subparagraph or clause of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any enactment or instrument made under statute is a reference to that enactment or instrument as amended, adapted or extended at any time by any enactment or instrument made under statute.

***Explanatory Note***

*This Head sets out common terms used in the Bill. The definition of “former resident” includes those who received an award from the Residential Institutions Redress Board or those who received an award following a Court decision or settlement of civil proceedings and would have otherwise received an award from the Residential Institutions Redress Board but for those proceedings.*

## **Head 4      Regulations.**

Provide that:

- 4.(1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- (2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Where regulations are proposed to be made for the purposes of **section 7(4), section 9(2)(e) or section 9(6)**, a draft of those regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.
- (4) Regulations (not being regulations of which a draft is required by this Act to be approved of by resolution of each House of the Oireachtas) made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which that House sits after the regulations are laid before it, the regulations shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### ***Explanatory Note***

*Head 4 provides for the making of regulations by the Minister to give effect to the Act. It also provides for the laying of regulations and orders and the challenge of their validity by the Oireachtas.*

*Commencement orders are provided for in Head 2 while the Minister will have powers to dissolve the Fund under Head 7 and to make regulations under Head 9.*

## **Head 5 Expenses.**

Provide that:

5. (1) The expenses incurred by the Minister in the administration of this Act shall be paid out of money provided by the Oireachtas.
- (2) Subject to subsection (3), the expenses incurred by the Fund in the administration of this Act shall be paid out of the investment account in *section 27*.
- (3) The expenses incurred by the Fund in the administration of Part 4 of this Act shall be paid out of the investment account established by section 26 of the Commission to Inquire in to Child Abuse (Amendment) Act, 2005.
- (4) The expenses incurred by the Agency under this Act shall be paid out of the Central Fund and the growing produce of that Fund.

### ***Explanatory Note***

*Head 5 provides that the expenses incurred by the Minister in the administration of the Act may be paid out of moneys provided by the Oireachtas and that the expenses incurred by the NTMA will be paid out of the Central Fund. The expenses incurred by the Statutory Fund in the administration of the Act will be paid out of the investment account set up for the purposes of the Fund, with the exception that the expenses incurred by the Fund in relation to the functions of the Education Finance Board shall be met from the investment account established for that purpose.*

## **PART 2**

### **RESIDENTIAL INSTITUTIONS STATUTORY FUND**

#### **Head 6      Establishment Day.**

Provide that:

6.      The Minister shall by order appoint a day as the establishment day for the purposes of this Act.

#### ***Explanatory Note***

*This Head provides that the Minister will by order appoint a day when the Statutory Fund is to be established.*

## **Head 7      Establishment of Residential Institutions Statutory Fund.**

Provide that:

7. (1) There is established, on the establishment day, a body which shall be known as the Residential Institutions Statutory Fund (in this Act referred to as the “Fund”), to perform the functions assigned to it by this Act.
- (2) The Fund shall be a body corporate with perpetual succession. The Fund has power to sue and be sued in its corporate name and may, with the consent of the Minister for Finance, acquire, hold and dispose of land or an interest in land, and may acquire, hold and dispose of any other property.
- (3) Except where otherwise provided by this Act, the Fund is independent in the performance of its functions under this Act.
- (4) When the Minister is satisfied, after consultation with the chairperson of the Fund, that the Fund has completed the performance of its functions, the Minister may by order dissolve the Fund and may, subject to the provisions of this Act, include in the order such incidental, ancillary or consequential provisions as the Minister considers necessary or expedient.

### ***Explanatory Note***

*This Head establishes the Statutory Fund as a statutory body on the establishment day and provides that the Minister can dissolve the Fund, following consultation with the chairperson of the Fund, if the Minister is satisfied that the Fund has completed the performance of its functions.*

## **Head 8      Objects of Statutory Fund.**

Provide that:

8.    In exercising its functions the Fund shall seek to achieve the following objectives –
  - (a)    the optimal disbursement of the resources available to it to meet the needs of former residents having regard to the principles of equity, consistency and transparency,
  - (b)    enhanced awareness of the effects of abuse on former residents by those engaged in the provision of approved services or publicly available services to such residents, and
  - (c)    the most beneficial, effective and efficient use of the resources available to it.

### ***Explanatory Note***

*This Head sets out the objectives of the Statutory Fund as being the achievement of the optimal disbursement of the funds available to it to former residents having regard to the principles of equity, transparency and consistency, enhanced awareness of public service providers of the effects of child abuse on former residents and dealing expeditiously with its funds.*

## **Head 9      Principal Functions of Fund.**

Provide that:

9. (1) The principal functions of the Fund are to utilise the resources that are available to it in the investment account referred to in *section 27* to -
  - (a) make arrangements with persons, whether resident in the State or elsewhere, for the provision of approved services to support the needs of former residents,
  - (b) pay grants to assist former residents avail of approved services,
  - (c) determine and publish the criteria by reference to which it will make decisions on applications to it for the provision of approved services and associated grants,
  - (d) make all reasonable efforts to ensure that former residents are made aware of its functions,
  - (e) promote understanding of the effects of abuse on former residents among those involved in the provision of approved services and publicly available services to former residents,
  - (f) evaluate the effectiveness of the approved services provided in meeting the needs of former residents,
  - (g) take such steps as it considers appropriate to consult with persons whom it considers may be affected by the performance by it of its functions, and
  - (h) perform any other function in relation to supporting the needs of former residents that the Minister may from time to time assign to it.
  
- (2) In this section “approved services” includes -
  - (a) counselling services, psychological support services and mental health services within the meaning of the Mental Health Act, 2001,
  - (b) such health and personal social services, as the Fund may determine, [or it could specify general practitioner medical and surgical services, in relation to all medical conditions, provided by registered medical practitioners within the meaning of the Medical Practitioners Act, 2007; hospital treatment services; pharmacy services including prescribed drugs, medicines and medical and surgical appliances; home nursing services and home support services; dental, ophthalmic and aural treatment services (including dental, optical and aural appliances) and such complementary therapies as the Fund may determine,]
  - (c) such educational services as the Fund may determine,

- (d) such housing services, including adaptation or improvement services, as the Fund may determine, and
  - (e) such other services as may be prescribed by the Minister following a recommendation from the Fund or following consultation with the Fund.
- (3) In performing its functions, the Fund shall have regard to the existence of publicly available services and the need to secure the most beneficial, effective and efficient use of the resources available in the investment account established by *section 27*.
  - (4) The Fund shall have all such powers as are necessary or expedient for the purposes of its functions.
  - (5) The Fund may perform any of its functions through or by any member of the staff of the Fund duly authorised in that behalf by the Fund.
  - (6) The Minister may assign to the Fund, by order, such additional functions connected with supporting the needs of former residents as the Minister thinks necessary, subject to such conditions (if any) as may be specified in the order.
  - (7) The Fund may engage, from time to time, consultants and advisers and other service providers (including any public authority), whether resident in the State or elsewhere, to provide services, on behalf of the Fund, where the Fund considers it necessary or expedient for the performance of its functions.

### ***Explanatory Note***

*This Head sets out the principal functions of the Statutory Fund as being to make arrangements with persons, whether resident in the State or elsewhere, for the provision of approved services to support the needs of former residents and to pay grants to former residents to assist them to avail of approved services. Approved services are defined to include counselling services, psychological support services and mental health services; and such health and personal social services, educational services and housing services as the Fund may determine. Further approved services can be prescribed by the Minister and the Fund has all powers necessary or expedient for the performance of its functions. The Fund can delegate its functions to its staff and can engage consultants and contract services as necessary. The Minister can assign further functions to the Fund in relation to supporting the needs of former residents. In performing its functions, the Fund will have regard to publicly available services and the need to secure the optimal use of its resources.*

## **Head 10    Directions of the Minister.**

Provide that:

- 10.(1) The Minister may, in relation to the performance by the Fund of its functions, give a direction in writing to the Fund requiring it to comply with such policies of the Government as are specified in the direction.
- (2) The Minister may, by direction in writing, amend or revoke a direction under this section (including a direction under this subsection).
- (3) The Fund shall comply with a direction under this section.

### ***Explanatory Note***

*This Head provides that the Minister may give directions in writing to the Fund in relation to the performance of its functions.*

## **Head 11    Membership of Fund and related matters.**

Provide that:

- 11.(1) The Fund shall consist of 7 members who shall be appointed by the Minister in accordance with this section.
- (2) Two of the members of the Fund shall be persons who, as children, were resident in institutions within the meaning of the Residential Institutions Redress Act, 2002.
- (3) The Minister shall, in appointing the other members of the Fund, ensure that among those members there are persons who have knowledge of, and expertise in relation to—
  - (a) financial management,
  - (b) administration,
  - (c) health and social personal services, and
  - (d) counselling, psychology or mental health services.
- (4) The chairperson of the Fund shall be appointed by the Minister from among the members of the Fund.
- (5) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit in that House or who is a member of the European Parliament is disqualified from appointment as an appointed member of the Fund while he or she is so entitled or is such a member.
- (6) A person who is a member of a local authority is disqualified from appointment as a member of the Fund.
- (7) The Minister shall, so far as is practicable and having regard to relevant knowledge and expertise, ensure an equitable balance between men and women in the composition of the Fund.
- (8) The members of the Fund shall hold office on such terms and conditions (including terms and conditions relating to the payment of allowances for expenses) by the Fund as the Minister, with the approval of the Minister for Finance, may from time to time determine.
- (9) In performing its functions, the Fund shall act in utmost good faith with care, skill and diligence.
- (10) The provisions of the *Schedule* shall have effect in relation to the Fund.

### ***Explanatory Note***

*This Head provides for the membership of the Fund, which shall comprise 7 members to be appointed by the Minister. Two members shall be people who as children were*

*resident in residential institutions within the meaning of the Residential Institutions Redress Act, 2002. When appointing the other 5 members, the Minister shall ensure that the members have knowledge and expertise in financial management, administration, health and social personal services, and counselling, psychology or mental health services. The Minister will also seek to ensure as far as practicable that there is a gender balance in the membership. The Minister will appoint the chairperson from the members. Members of the Oireachtas, European Parliament or local authorities are not eligible for membership of the Fund. The terms and conditions attaching to membership of the Fund will be determined by the Minister, with the approval of the Minister for Finance. The Fund members will perform their functions in good faith with care, skill and diligence. The Schedule to the Bill which contains further provisions in relation to the membership of the Fund and its meetings applies to the Fund.*

## **Head 12      Term of Office of Members.**

Provide that:

12. (1) A member of the Fund shall hold office for such period, not exceeding 4 years from the date of his or her appointment, as the Minister shall determine.
- (2) Subject to *subsection (3)*, a member whose period of office expires by the passage of time is eligible for re-appointment as such a member.
- (3) A member is not eligible to serve for more than 2 consecutive terms of office.

### ***Explanatory Note***

*This Head provides for the term of office of a member of the Fund not to exceed 4 years and that members cannot serve more than two terms of office.*

## **Head 13 Chief Executive Officer.**

Provide that:

13. (1) There shall be a chief executive officer of the Fund (in this Act referred to as the “chief executive”).
- (2) Subject to subsections (4) and (5), the chief executive shall be appointed by the Fund with the consent of the Minister.
- (3) The chief executive may be removed from office by the Fund for stated reasons, with the consent of the Minister.
- (4) The Minister may, before the establishment day, designate a person to be appointed to be the first chief executive of the Fund.
- (5) If, immediately before the establishment day, a person stands designated by the Minister under subsection (4), the Fund shall appoint that person to be the first chief executive.
- (6) The chief executive shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances and expenses) as may be determined by the Fund with the approval of the Minister given with the consent of the Minister for Finance.
- (7) The chief executive shall not hold any other office or employment or carry on any business without the consent of the Fund.
- (8) A person shall not be appointed under subsection (2) if he or she is disqualified from being appointed to the Fund.
- (9) The chief executive may attend any meeting of the Fund.

### ***Explanatory Note***

*This Head provides for the appointment of a chief executive officer to the Fund.*

## **Head 14    Functions of Chief Executive Officer.**

Provide that:

- 14.(1) The chief executive shall carry on and manage, and control generally, the administration and business of the Fund and perform such other functions assigned to him or her by or under this Act or any other enactment or as may be determined by the Fund.
  - (2) The chief executive shall perform his or her functions subject to such policies as may be determined from time to time by the Fund, and shall be accountable to the Fund for the efficient and effective management of the Fund and for the due performance of his or her functions and the implementation of the Fund's policies.
  - (3) The chief executive shall provide the members of the Fund with such information, including financial information, in relation to the performance of his or her functions as the members may require.
  - (4) The chief executive may make proposals to the Fund on any matter relating to its functions.
- (5) (a) The chief executive of the Fund may, with the consent of the Fund in writing, delegate any of his or her functions to a specified member of staff of the Fund, and that member of staff of the Fund shall be accountable to the chief executive for the performance of the functions so delegated.
  - (b) Notwithstanding any such delegation, the chief executive shall at all times remain accountable to the Fund for the performance of the functions so delegated.
  - (c) The chief executive may, with the written consent of the Fund, revoke a delegation made in accordance with this subsection.
- (6)(a) The Fund may, with the agreement of the member of staff concerned, designate a member of the staff of the Fund to perform functions of the chief executive in the absence of the chief executive or where the position of chief executive is vacant, and a member so designated shall in such absence or upon such position being vacant perform those functions.
  - (b) The Fund may at any time revoke or alter the designation made under this subsection.

### ***Explanatory Note***

*This Head provides that the chief executive of the Fund will manage and control the administration and business of the Fund and perform any other functions assigned to them. It also provides for the delegation of the functions of the chief executive. The chief executive officer can attend Fund meetings and can make proposals in relation to the Fund's functions.*

## **Head 15 Accountability of Chief Executive to Public Accounts Committee.**

Provide that:

- 15.(1) The chief executive shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General (in this section referred to as the “Committee”), give evidence to that Committee in relation to—
- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the Fund is required by this Act to prepare,
  - (b) the economy and efficiency of the Fund in the use of its resources,
  - (c) the systems, procedures and practices employed by the Fund for the purpose of evaluating the effectiveness of its operations, and
  - (d) any matter affecting the Fund referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)* that is laid before Dáil Éireann.
- (2) In the performance of his or her duties under this section, the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

### ***Explanatory note***

*Head 15 provides for the accountability of the chief executive to the Public Accounts Committee.*

## **Head 16 Accountability of Chief Executive to other Oireachtas Committees.**

Provide that:

16.(1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 15* or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee.

(2) Subject to *subsection (3)*, the chief executive shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Fund.

(3) The chief executive shall not be required to give account before a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or Tribunal in the State.

(4) Where the chief executive is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subsection (3)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chief executive is before it, the information shall be so conveyed in writing.

(5) Where the chief executive has informed a Committee of his or her opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

(a) the chief executive may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or

(b) the Chairperson of the Committee may, on behalf of the Committee, make such an application, and the High Court shall determine the matter.

(6) Pending the determination of an application under *subsection (5)*, the chief executive shall not attend before the Committee to give account for the matter the subject of the application.

(7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not apply, the chief executive shall attend before the Committee to give account for the matter.

(8) In the performance of his or her duties under this section, the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

### ***Explanatory Note***

*Head 16 provides for the accountability of the chief executive to Oireachtas Committees other than the Public Accounts Committee.*

## **Head 17    Staff.**

Provide that:

17.(1) The Fund shall appoint, with the consent of the Minister given with the consent of the Minister for Finance, such and so many persons to be members of the staff of the Fund as it may from time to time determine.

(2) The terms and conditions of service of a member of the staff of the Fund shall, with the consent of the Minister given with the consent of the Minister for Finance, be such as may be determined from time to time by the Fund.

(3) There shall be paid by the Fund to the members of its staff such remuneration, allowances and expenses as, from time to time, the Fund, with the consent of the Minister given with the consent of the Minister for Finance, determines.

(4) A Minister of the Government may, following consultation with the Fund, second an officer of the Minister to that body as a member of the staff of that body, subject to the consent of the officer.

### ***Explanatory Note***

*Head 17 provides for the Fund to appoint staff members subject to the approval of the Minister for Education and Skills and the Minister for Finance. The remuneration, allowances and expenses payable to staff members together with their terms and conditions of employment shall be determined by the Fund, with the consent of the Minister for Education and Skills and the Minister for Finance. Subsection (4) provides for secondment arrangements.*

## **Head 18 Superannuation.**

Provide that:

18. (1) The Fund shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such members of the staff of the Fund, including the chief executive, as it may think fit.
- (2) The Fund shall submit to the Minister every scheme made under this section.
- (3) Every scheme made under this section shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.
- (4) Every scheme made under this section may be amended or revoked by a subsequent scheme prepared, submitted and approved under this section.
- (5) A scheme submitted by the Fund under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Fund in accordance with its terms.
- (6) No superannuation benefit shall be granted by the Fund nor shall any other arrangements be entered into by the Fund for the provision of such a benefit to or in respect of a member of the staff of the Fund otherwise than in accordance with a scheme under this section or with the consent of the Minister and the Minister for Finance.
- (7) Every scheme made under this section shall make provision for appeals.
- (8) A scheme made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### ***Explanatory Note***

*Head 18 provides for the Fund to prepare superannuation schemes for its staff, which will be subject to the approval of the Minister for Education and Skills and the Minister for Finance. Approved schemes must be laid before the Houses of the Oireachtas.*

## **Head 19    Annual Report and Information.**

Provide that:

- 19.(1) The Fund shall not later than 31 March in each year prepare and publish, in such form and manner as it considers appropriate, a report of its activities and proceedings during the preceding year.
- (2) If the establishment day falls in the period from 1 October to the following 31 December, the first report under *subsection (1)* shall be prepared and published not later than the 31 March in the second year following that in which the establishment day falls and shall relate to that year and the following year.
- (3) The Fund shall furnish a copy of a report under this section to the Minister and he or she shall cause a copy of it to be laid before each House of the Oireachtas.
- (4) The Fund shall arrange for a report laid before both Houses of the Oireachtas in accordance with *subsection (3)* to be published on the internet as soon as practicable after copies of the report are laid before each House of the Oireachtas.
- (5) The Fund shall provide the Minister with such information as he or she may request in relation to the performance of its functions and may provide such other persons as it considers appropriate with such information as it considers appropriate in relation to applications for assistance from the Fund and its decisions in relation to them and the reasons for the decisions.
- (6) No information shall be provided under *subsection (5)* that could reasonably lead to the disclosure of the identity of any applicant for assistance from the Fund.

### ***Explanatory Note***

*Head 19 provides that the Fund shall prepare, on an annual basis, a report on its activities and submit that report to the Minister who shall cause copies of such a report to be laid before both Houses of the Oireachtas. Subsection (4) provides that the Fund shall publish a report on the internet. Subsection (5) provides that the Fund shall provide the Minister with such information as the Minister may from time to time request and may provide other persons with information on its activities provided the identity of individual applicants for assistance is protected.*

## **HEAD 20 Applications to the Fund and Associated Matters**

Provide that:

- 20.(1) The Fund may, on application to it,
  - (a) make arrangements with persons, whether resident in the State or elsewhere, for the provision of approved services to support the needs of a former resident, and
  - (b) pay a grant to or in respect of a former resident to assist that former resident avail of such approved service as the Fund may determine.
- (2) The arrangements made for the provision of approved services under this section shall be of such extent, at such time and be subject to such conditions as the Fund may determine and communicate in writing to the applicant.
- (3) A grant payable under this section shall be of such amount, be in respect of availing of such approved service, be paid at such time and be subject to such conditions, as the Fund may determine and communicate in writing to the applicant.
- (4) The Fund shall determine the criteria by reference to which it will make decisions under this section as to the making of arrangements or the payment of grants by it and the Fund shall consider any application made to it by reference to those criteria accordingly.
- (5) Criteria determined under subsection (4) shall be recorded in writing and published by the Fund in such manner as it thinks fit.
- (6) The Fund shall determine the manner in which applications to it shall be made and it shall be a condition of entitlement to assistance from the Fund that an application is made in the manner so determined.
- (7) The procedures to be followed with respect to the consideration by the Fund of an application to it and the making of a communication by the Fund to the applicant, or by the applicant to the Fund, for the purposes of the application or any matter consequent on it, shall be determined by the Fund and made available in writing, free of charge, by it to any person on request therefor.
- (8) Without limiting the generality of subsection (7), procedures under that subsection may include provision for the making of a request by the Fund of the applicant to
  - (a) supply to it such information or documents as the Fund may determine or
  - (b) authorise the Fund to liaise with any public authorityfor the purpose of considering the applicant's application and enabling the Fund to refuse to consider further the application if the request is not complied with.
- (9) A grant paid to or in respect of a former resident shall be used solely to defray or contribute to the defrayal of the cost to the resident of availing of the approved service

specified by the Fund in its communication, under subsection (4), to the applicant unless the Fund authorises it or a specified part of it to be used for such defrayal or contribution as aforesaid in respect of another specified approved service.

- (10) An application to the Fund under this section may be made by a former resident or a connected person and a reference to an applicant in this section shall be construed as including a former resident or connected person as the case may be.
- (11)(a) The making of decisions in relation to applications made under this section shall be an executive function, exercisable by the chief executive, in accordance with the criteria, arrangements and procedures determined by the Fund.
- (b) The function referred to in *paragraph (a)* may be delegated to a specified member of staff in accordance with **section 14(5)(a)**.

***Explanatory Note***

*Head 20 deals with applications to the Fund which can be made by former residents or connected people acting on their behalf. It requires the Fund to develop and publish the procedures governing the applications for assistance, how the Fund considers the applications, and how communication between the Fund and applicants will happen. Grants paid to applicants can only be used to avail of the services specified by the Fund. The processing of individual applications is an executive function exercisable by the chief executive or a staff member where so delegated.*

## **HEAD 21 Prohibition of unauthorised disclosure of information.**

Provide that:

21.- (1) Except in the circumstances specified in *subsection (2)*, a person shall not disclose information obtained while performing functions as—

- (a) a member of the Fund or a committee of the Fund,
- (b) the chief executive officer or any other employee of the Fund,
- (c) a person engaged by the Fund as a consultant, adviser or service provider, or
- (d) an employee of a person referred to in *paragraph (c)*.

(2) A person does not contravene *subsection (1)* by disclosing information if the disclosure—

- (a) is made to or authorised by the Fund, or
- (b) is required by law.

### ***Explanatory Note***

*Head 21 prohibits the unauthorised disclosure of information by a member of Fund or of a committee of the Fund, an employee, adviser, consultant or service provider or member of their staff.*

## **Head 22     Transfer of Information from the Residential Institutions Redress Board.**

Provide that:

- 22.(1) Notwithstanding the provisions of the Residential Institutions Redress Acts 2002 to 2011 and any other enactment, it shall be lawful for the Board, established under section 3 of the aforementioned Act, to provide details of the name, address and date of birth of former residents to the Fund for the purpose of determining a former resident's entitlement to make an application to the Fund under this Act.
- (2) The Board referred to in subsection (1) shall provide details of the name, address and date of birth of former residents to the Fund for the purpose of determining a former resident's entitlement to make an application to the Fund under this Act.

### ***Explanatory Note***

*Head 22 provides for the Residential Institutions Redress Board to provide details of those who received awards from the Board to the Fund for the purpose of determining a former resident's entitlement to make an application to the Fund.*

## **HEAD 23 Liaison Officers and Exchange of Information.**

Provide that:

- 23.(1) A public authority shall ensure, so far as practicable, that the activities of the Fund and those of the public authority, in so far as they relate to their respective statutory functions, are co-ordinated.
- (2) A public authority shall, when requested by the Fund, authorise such and so many of its employees as it considers appropriate (referred to in this Act as “liaison officers”)
  - (a) to advise former residents on the publicly available services provided by the authority,
  - (b) to provide to the Fund, at its request, information in relation to the range of publicly available services operated by the relevant public authority, and
  - (c) to liaise with the Fund in relation to any specific application received by the Fund.
- (3) The Fund may, with the consent of a former resident or connected person, consult with a public authority for the purpose of determining what, if any, publicly available services the former resident is entitled to.
- (4) Nothing in this section shall be construed as authorising the processing of personal data (within the meaning of the Data Protection Act, 1988) contrary to the provisions of the Data Protection Acts 1988 and 2003.

### ***Explanatory Note***

*Head 23 provides for the Fund and public authorities to co-ordinate their activities and to liaise with each other in relation to the provision of services to former residents generally and specifically in relation to any applications for assistance under the Act.*

## **Head 24    False Statements and Offences.**

Provide that:

24.-(1) Where for the purpose of obtaining assistance from the Statutory Fund for himself or herself or for any other person, any person

- (a) knowingly makes any statement or representation (whether written or verbal) which is to his or her knowledge false or misleading in any material respect, or knowingly conceals any material fact, or
- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he or she knows to be false in a material particular,

he or she is guilty of an offence.

(2) A person guilty of an offence under this section is liable –

- (a) on summary conviction to a fine not exceeding €1,500 or imprisonment for a term not exceeding 6 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €13,000 or imprisonment for a term not exceeding 3 years, or to both.

### ***Explanatory Note***

*Head 24 provides that any person who knowingly makes a false statement or produces a false document for the purposes of obtaining assistance from the Fund is guilty of an offence and liable on summary conviction to a fine of up to €1,500 or imprisonment for up to 6 months, or both. If convicted on indictment, the fine imposed can be up to €13,000 or imprisonment of up to 3 years, or both.*

## **Head 25    Application of Freedom of Information Act, 1997.**

Provide that:

25. (1) The Freedom of Information Act, 1997, is hereby amended by:-

- (a) the insertion in paragraph 1(2) of the First Schedule after “the Registry of Deeds,” of “the Residential Institutions Statutory Fund,” ,
- (b) the insertion in Part I the Third Schedule of “Residential Institutions Statutory Fund Act, 2011” in the second column and the insertion of “section 20” in the third column.

### ***Explanatory Note***

*Head 25 provides for the Fund to be subject to the Freedom of Information Act, 1997 and provides that the prohibition of unauthorised disclosure of information cannot be cited as a reason for not releasing information under Freedom of Information legislation.*

## **Head 26    Application of Ombudsman Act 1980.**

Provide that:

26. The Ombudsman Act, 1980 is hereby amended by the insertion in Part I of the First Schedule of the “Residential Institutions Statutory Fund.”

### ***Explanatory Note***

*Head 26 provides for the Residential Institutions Statutory Fund to come under the scope of the Ombudsman by way of an insertion of the Fund into to the list of persons that are subject to investigation as set out in the First Schedule to the Ombudsman Act, 1980.*

## PART 3 FINANCIAL MATTERS

### **HEAD 27 Management of Moneys Relating to the Fund.**

Provide that:

- 27.(1) The Agency shall establish an investment account (“the account”) to be funded from moneys provided by the religious congregations.
- (2) The moneys referred to in subsection (1) include those lodged to the special account held by the Ministers for Finance and Education and Skills in the Central Bank to receive cash contributions from the religious congregations, which moneys shall be transferred, together with any interest earned thereon, to the Agency.
- (3) Moneys in the account that are not required for the purposes of *subsection (5)* shall be invested and the investments shall, with the consent of the Minister for Finance, be realised or varied as occasion requires and the proceeds of any such realisation, and any dividends or other payments received in respect of moneys invested under this subsection, shall be paid into the account or invested under this subsection.
- (4) The investment under *subsection (3)* shall be in securities in which trustees are for the time being authorised by law to invest trust funds or in any of the stocks, funds or securities in which moneys of the Post Office Savings Bank are for the time being authorised to be invested.
- (5) The Agency may, in each financial year of the Fund, pay to the Fund out of the account a grant of such amount as the Fund specifies in relation to that year towards the expenditure of the Fund in the performance of its functions.
- (6) The Agency shall prepare an account of the investment account which shall be prepared in the form and manner and at the times the Minister for Finance may direct and the Comptroller and Auditor General shall examine and certify every account and a copy of every account, together with the report thereon of the Comptroller and Auditor General, shall be laid before each House of the Oireachtas
- (7) Any moneys, including interest (if any), in the investment account after the making of an order pursuant to section 7(4), shall be paid into, or disposed for the benefit of, the Exchequer in accordance with the directions of the Minister for Finance.

#### ***Explanatory Note***

*Head 27 provides that the NT MA will open an investment account into which the contributions of the religious congregations will be lodged. The Agency will invest any monies not required in a given financial year in securities or authorised investments and returns from those investments will be paid into the account. Each year the Agency will pay a grant to the Fund to meet the Fund’s expenditure. The Agency will maintain accounts for the investment account which shall be audited by the Comptroller and Auditor General. The account will be closed when the Fund is dissolved and any moneys remaining remitted to the Exchequer.*

## **Head 28    Accounts and Audits.**

Provide that:

- 28.(1) The chief executive shall keep in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts and records of moneys received or expended by the Fund.
- (2) The accounts of the Fund prepared by the chief executive and approved by the Fund shall be submitted to the Comptroller and Auditor General for audit not later than 3 months after the end of the financial year to which the accounts relate.
- (3) Within one month of the Comptroller and Auditor General issuing an audit certificate for the accounts of the Fund, a copy of—
  - (a) the accounts, and
  - (b) the report of the Comptroller and Auditor General on the accounts,shall be presented to the Minister who shall, as soon as may be, cause copies thereof to be laid before each House of the Oireachtas.
- (4) If required by the Minister, the Fund shall furnish to the Minister the information the Minister may require in respect of any balance sheet, account or report of the Fund.
- (5) The Fund, the chief executive and other members of staff of the Fund -
  - (a) whenever so requested by the Minister, shall permit any person appointed by the Minister to examine the books or other records of account of the Fund in respect of any financial year or other period, and
  - (b) shall facilitate the examination, and the Fund shall pay such fee as may be fixed by the Minister for the examination.

### ***Explanatory Note***

*Head 28 provides for the keeping of accounts by the Fund and for the audit of such accounts by the Comptroller and Auditor General. The Minister is required to have the accounts and the C&AG's report on them laid before the Houses of the Oireachtas.*

## **Head 29 Charitable Purpose.**

Provide that:

29. Notwithstanding any other enactment,
- (a) any moneys contributed by a religious congregation to the investment account referred to in *section 27*,
  - (b) any moneys contributed by a religious congregation or any other person to the Exchequer and certified by the Minister, with the consent of the Minister for Finance, as being a contribution towards the costs incurred by the Exchequer in response to abuse in residential institutions specified in the Schedule to the Residential Institutions Redress Acts, 2002 to 2011 or in relation to the Commission to Inquire into Child Abuse Acts 2000 and 2005, and
  - (c) any properties transferred by a religious congregation and certified by the Minister, with the consent of the Minister for Finance, as being a contribution towards the costs incurred by the Exchequer in response to abuse in residential institutions specified in the Schedule to the Residential Institutions Redress Acts, 2002 to 2011 or in relation to the Commission to Inquire into Child Abuse Acts 2000 and 2005,

shall be construed as fulfilling a charitable purpose within the meaning of existing law and within the meaning of section 3 of the Charities Act, 2009 when commenced and shall be deemed to have been authorised by the Commissioners of Charitable Donations and Bequests for Ireland.

### ***Explanatory Note***

*Head 29 provides that*

- *any contributions by religious congregations to the investment account used to finance the Fund; and*
- *any contributions to the Exchequer or property transfers which are certified by the Minister, with the consent of the Minister for Finance, as being contributions towards the cost to the Exchequer of the response to residential abuse*

*shall be deemed to fulfil a charitable purpose within the meaning of section 3 of the Charities Act, 2009 once commenced and authorised by the Commissioners of Charitable Donations and Bequests for Ireland.*

**PART 4**  
**DISSOLUTION OF EDUCATION (FORMER RESIDENTS OF CERTAIN INSTITUTIONS FOR CHILDREN) FINANCE BOARD AND TRANSFER OF FUNCTIONS TO THE FUND**

**Head 30     Dissolution of Education (former Residents of Certain Institutions for Children) Finance Board.**

Provide that:

30.     (1) The Education (Former Residents of Certain Institutions for Children) Finance Board (in this Act referred to as the “dissolved body”) is dissolved.
- (2) *Section 15* shall apply to the person who immediately before the establishment day performed the functions of accounting officer of the dissolved body subject to the modifications that—
- (a) references in that section to the chief executive shall be construed as references to the said accounting officer, and
- (b) references to the Fund shall be construed as references to the dissolved body.

***Explanatory Note***

*Head 30 provides for the dissolution of the Education (Former Residents of Certain Institutions for Children) Finance Board.*

*The effective date of the dissolution requires further consideration as to whether it will co-incide with the establishment of the Fund or whether it will be subsequent thereto. It is assumed that the commencement provisions in section 2 allow for either option.*

## **Head 31    Transfer of Functions to Fund.**

Provide that:

31. – All functions that, immediately before the commencement of this Part, were vested in the dissolved body are transferred to the Fund and references in any enactment or instrument under an enactment, to the Education (Former Residents of Certain Institutions for Children) Finance Board shall be construed as references to the Fund.

### ***Explanatory Note***

*Head 31 provides for the transfer of all functions vested in the Education (Former Residents of Certain Institutions for Children) Finance Board to the Fund.*

## **Head 32    Transfer of other Property.**

Provide that:

- 32.-(1) On the commencement of this Part, all property (other than land), including choses-in-action, that immediately before that commencement, was vested in the dissolved body shall stand vested in the Fund without any assignment.
- (2) Every chose-in-action vested in the Fund by virtue of *subsection (2)* may, on and from the establishment day, be sued on, recovered or enforced by the Fund in its own name, and it shall not be necessary for the Fund, or the dissolved body, to give notice to any person bound by the chose-in-action of the vesting effected by that subsection.

### ***Explanatory Note***

*Head 32 provides that on the commencement of this Part, all property formerly vested in the Education (Former Residents of Certain Institutions for Children) Finance Board is vested in the Fund.*

### **Head 33      Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by dissolved body.**

Provide that:

- 33.- (1) All rights and liabilities of the dissolved body arising by virtue of any contract or commitment (expressed or implied) entered into by it before the commencement of this Part shall on that commencement stand transferred to the Fund.
- (2) Every right and liability transferred by *subsection (1)* to the Fund may, on and after the commencement of this Part, be sued on, recovered or enforced by or against the Fund in its own name, and it shall not be necessary for the Fund, or the dissolved body, to give notice to the person whose right or liability is transferred by that subsection of such transfer.
- (3) Every lease, licence, wayleave or permission granted by the dissolved body in relation to land or other property vested in the Fund by or under this Act, and in force immediately before the commencement of this Part, shall continue in force as if granted by the Authority.

#### ***Explanatory Note***

*Head 33 contains a standard provision for the transfer of rights, liabilities, etc, from the Education (Former Residents of Certain Institutions for Children) Finance Board to the Fund, while ensuring preservation of all commitments or contracts.*

## **Head 34    Transfer of employees.**

Provide that:

- 34.- (1) Each person, who immediately before the commencement of this Part, was an employee of the dissolved body is, on that commencement, transferred to and becomes an employee of the Fund.
- (2) Except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person transferred under this section will be subject to terms and conditions of employment no less favourable than those to which the person was subject immediately before the establishment day while in the employment of the dissolved body.
- (3) The previous service of a person transferred under this section is to be counted as service for the purposes of, but subject to any exceptions or exclusions in, the following Acts—
- (a) the Redundancy Payments Acts 1967 to 2007,
  - (b) the Minimum Notice and Terms of Employment Acts 1973 to 2005,
  - (c) the Unfair Dismissals Acts 1977 to 2007,
  - (d) the Terms of Employment (Information) Acts 1994 and 2001,
  - (e) the Maternity Protection Acts 1994 and 2004,
  - (f) the Adoptive Leave Acts 1995 and 2005,
  - (g) the Organisation of Working Time Act 1997,
  - (h) the Parental Leave Acts 1998 and 2006,
  - (i) the Protection of Employees (Part-Time Work) Act 2001,
  - (j) the Carer’s Leave Act 2001, and
  - (k) the Protection of Employees (Fixed-Term Work) Act 2003.
- (4) (a) The Fund may, subject to *subsection (2)* and following consultation with any recognised trade union or staff association concerned redistribute or rearrange the duties performed by members of the staff of the Fund who are employed in a particular grade or class of employment and every such member or person shall be bound to perform the duties allotted to him or her in any distribution or rearrangement.
- (b) A redistribution or rearrangement referred to in *paragraph (a)* shall not be taken to be a removal from or abolition of office for the purposes of any scheme or enactment relating to superannuation or compensation for loss of office.
- (5) In this section—
- “consultation” has the meaning assigned to it by section 1 of the Employees (Provision of Information and Consultation) Act 2006;
- “previous service” means service before the applicable transfer day with the dissolved body.
- “terms and conditions of employment” includes terms and conditions in respect of tenure of office, remuneration and related matters.

### ***Explanatory Note***

*Head 34 provides for the transfer of staff from the Education Finance Board to the Statutory Fund.*

## **Head 35 Liability for loss occurring before Commencement of this Part.**

Provide that:

- 35.-(1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance before the commencement of this Part of the functions assigned to the Fund by or under this Act shall after that commencement, lie against the Fund and not against the dissolved body.
- (2) Any legal proceedings pending immediately before the commencement of this Part to which the dissolved body is a party, that relate to a function of the Fund, shall be continued, with the substitution in the proceedings of the Fund, in so far as they so relate, for the dissolved body.
- (3) Where, before the commencement of this Part, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, in so far as they are enforceable against the dissolved body, be enforceable against the Fund and not the dissolved body.
- (4) Any claim made or proper to be made by the dissolved body in respect of any loss or injury arising from the act or default of any person before the commencement of this Part shall, where the claim relates to functions assigned to the Fund by this Act, be regarded as having been made by or proper to be made by the Fund and may be pursued and sued for by the Fund as if the loss or injury had been suffered by the Fund.

### ***Explanatory Note***

*Head 35 provides that all claims and legal proceedings pending in respect of the Education (Former Residents of Certain Institutions for Children) Finance Board are transferred to the Fund from the commencement of this Part. All liabilities for losses occurring before the commencement are transferred to the Fund.*

## **Head 36 Provisions consequent upon transfer of functions, assets and liabilities to Fund.**

Provide that:

- 36.-(1) Anything commenced and not completed before the commencement of this Part by or under the authority of the dissolved body may, in so far as it relates to a function transferred to the Fund under **section 31**, be carried on or completed on or after that commencement by the Fund.
- (2) Every instrument made under an enactment and every document (including any certificate) granted or made, in the performance of a function transferred by **section 31**, shall, if and in so far as it was operative immediately before the commencement of this Part, have effect on and after that commencement as if it had been granted or made by the Fund.
- (3) Any money transferred by **section 32** that immediately before the commencement of this Part, was standing in the name of the dissolved body shall, on the request of the Fund be transferred into its name.
- (5) A certificate signed by the Minister that any property, right or liability has or, as the case may be, has not vested in the Fund **under section 31 or 32** shall be sufficient evidence, unless the contrary is shown, of the fact so certified for all purposes.

### ***Explanatory Note***

*Head 36 provides for matters consequent upon the transfer to Fund of the functions, assets and liabilities of the Education (Former Residents of Certain Institutions for Children) Finance Board*

## **HEAD 37 Final accounts and final annual report of dissolved body.**

Provide that:

- 37.— (1) The Fund shall, in respect of the period specified under *subsection (3)* of this section, prepare final accounts of the dissolved body.
- (2) The Fund shall submit the final accounts to the Comptroller and Auditor General for audit not later than 3 months after the commencement of this Part.
- (3) For the purposes of *subsection (1)*, the Minister may specify a period that is longer or shorter than a financial year of the dissolved body.
- (4) *Section 28(3)* shall apply with the necessary modifications in relation to accounts prepared under this section.
- (5) The Fund shall prepare the final annual report for the dissolved body and submit the report to the Minister not later than 6 months after the commencement of this Part.
- (6) *Section 19* shall apply with the necessary modifications in relation to an annual report prepared under this section.

### ***Explanatory Note***

*Head 37 provides that the Fund shall prepare final accounts for the Education (Former Residents of Certain Institutions for Children) Finance Board and submit them to the Comptroller and Auditor General within 3 months of the commencement of this Part. The Fund shall prepare and present to the Minister, within 6 months of the commencement of this Part, the final annual report of the Education (Former Residents of Certain Institutions for Children) Finance Board.*

**HEAD 38 Consequential Amendment to Commission to Inquire into Child Abuse(Amendment) Act, 2005.**

Provide that:

- 38.- Section 24 of the Commission to Inquire into Child Abuse(Amendment) Act, 2005 is hereby amended by the deletion of subsections (5) and (6).

***Explanatory Note***

*Head 38 provides a consequential amendment to remove the power to dissolve the Education (Former Residents of Certain Institutions for Children) Finance Board.*

## **HEAD 39 Closure of investment account and termination of functions of Fund.**

Provide that:

- 39.- (1) When following the commencement of this Part, the moneys in the account referred to in section 26 of the Commission to Inquire into Child Abuse (Amendment) Act, 2005 amount to less than €100,000, the Agency shall notify the Minister of the fact.
- (2) Following receipt of a notice pursuant to subsection (1), the Minister shall by Order,
- (a) direct the Agency close the account and transfer the moneys therein to the account established under section 26; and
  - (b) terminate the functions vested in the Fund by this Part and
  - (c) require the Fund to
    - (i) prepare a final account of the Fund's activities under this Part, which the Fund shall submit to the Comptroller and Auditor General for audit not later than 3 months after the making of the Order and **section 28(3)** shall apply with the necessary modifications in relation to accounts prepared under this paragraph, and
    - (ii) prepare a final report on the Fund's activities under this Part, which the Fund shall submit to the Minister not later than 6 months after the making of the Order and **section 19** shall apply with the necessary modifications in relation to a final report prepared under this paragraph.

### ***Explanatory Note***

*Head 39 provides that the NTMA will advise the Minister once the balance in the investment account established for the Education (Former Residents of Certain Institutions for Children) Finance Board falls below €100,000. Once so notified the Minister will by Order, direct the NTMA to close the account and transfer the balance to the investment account established for the Fund. The Order will also terminate the functions vested in the Fund under this Part and will require the Fund to prepare a final account and report on its activities pursued under this Part.*

## SCHEDULE

### Membership and Meetings of Fund

1. In this Schedule, unless the context otherwise requires, “member” means a member of the Fund.
2.
  - (1) Upon its establishment the Fund shall provide itself with, and retain in its possession, a seal.
  - (2) The seal of the Fund shall be authenticated by the signature of any 2 members of the Fund or in any other way that the Fund resolves.
  - (3) Judicial notice shall be taken of the seal of the Fund and every document purporting to be an instrument made by, and to be sealed with the seal of, the Fund shall, unless the contrary is shown, be received in evidence and be deemed to be such instrument without further proof.
3.
  - (1) A member may at any time resign his or her membership by letter addressed to the Minister. The resignation takes effect on the date specified in the letter or when the Minister receives the letter, whichever is the later.
  - (2) A member immediately ceases to be such a member if he or she
    - (a) is adjudicated bankrupt,
    - (b) makes a composition or arrangement with creditors,
    - (c) is convicted of an indictable offence in relation to a company,
    - (d) is convicted of an offence involving fraud or dishonesty,
    - (e) is sentenced to a term of imprisonment by a court of competent jurisdiction, or
    - (f) is disqualified or restricted from being a director of a company.
  - (3) If a member—
    - (a) is nominated as a member of Seanad Éireann,
    - (b) is elected as a member of either House of the Oireachtas or as a member of the European Parliament,
    - (c) is regarded, pursuant to Part XIII of the Second Schedule to the [European Parliament Elections Act 1997](#), as having been elected to the European Parliament to fill a vacancy, or
    - (d) becomes a member of a local authority,he or she thereupon ceases to be a member.
4. The Minister may, at any time, remove a member on reasonable notice in writing at any time from membership of the Fund (or, if the appointed member concerned is the Chairperson, either from the Fund or only from being Chairperson) if, in the Minister’s opinion —
  - (i) the member is not adequately performing his or her functions, whether because of incapacity through illness or injury or otherwise,
  - (ii) the member has committed stated misbehaviour, or

- (iii) the member's removal from office appears to the Minister to be necessary or expedient for the effective performance by the Fund of its functions.
5. (1) If a member dies, resigns, ceases to be qualified for office and ceases to hold office or is removed from office, the Minister may appoint a person to be a member of the Fund to fill the casual vacancy so occasioned in the same manner as the member of the Fund who occasioned the casual vacancy was appointed.
- (2) A person appointed to be a member of the Fund pursuant to subparagraph (1) shall hold office for that period of the term of office of the member who occasioned the casual vacancy concerned that remains unexpired at the date of his or her appointment.
- (3) Subject to this Act, the Fund may act notwithstanding one or more vacancies among the members.
6. (1) The Minister shall fix the date, time and place of the first meeting of the Fund.
- (2) The Fund shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.
- (3) The Chairperson may, at any reasonable time, call a meeting of the Fund and the Chairperson shall convene a meeting of the Fund whenever requested to do so by not less than the number of members which constitute a quorum.
- (4) At a meeting of the Fund –
- (a) the Chairperson of the Fund shall, if present, be the chairperson of the meeting, or
- (b) if and so long as the Chairperson of the Fund is not present or if that office is vacant, the other members of the Fund who are present shall choose one of their number to be chairperson of the meeting.
- (5) Every question at a meeting of the Fund shall be determined by a majority of the votes of the members of the Fund present and voting on the question, and, in the case of an equal division of votes, the Chairperson shall have a second or casting vote.
- (6) Subject to this Act, the Fund shall regulate, by standing orders or otherwise, its procedure and business.
- (7) The quorum for a meeting of the Fund is 5, or, if there is a vacancy in the Fund, 4 while the vacancy exists.
7. (1) If a member of the Fund has a pecuniary interest or other beneficial interest in, and material to, a matter that falls to be considered by the Fund—
- (a) he or she shall disclose to the other members the nature of his or her interest in advance of any consideration of the matter,

- (b) he or she shall not influence nor seek to influence a decision to be made in relation to the matter,
  - (c) he or she shall take no part in any consideration of the matter,
  - (d) he or she shall absent himself or herself from the meeting or that part of the meeting during which the matter is discussed, and
  - (e) he or she shall not vote or otherwise act on a decision relating to the matter.
- (2) Where an interest is disclosed pursuant to this paragraph, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.
- (3) If a member fails to disclose an interest pursuant to *subparagraph (1)*, and with that member present the Fund makes a decision on the matter, a contract entered into by the Fund in consequence of the decision is not, by reason only of that fact, invalid or unenforceable.
- (4) If a member of the Fund fails to disclose an interest pursuant to *subparagraph (1)*, and with that member present the Fund makes a decision on the matter, the decision is not invalid if the Fund subsequently reconsiders the matter without that member present and confirms the decision. If the Fund does so, the decision shall be taken to have always been valid.
- (5) If at a meeting of the Fund a question arises as to whether or not a course of conduct, if pursued by a member, would constitute a failure by him or her to comply with *subparagraph (1)*, the Chairperson or member of the Fund presiding over the meeting may determine the question. The Chairperson's or presiding member's decision is final. If such a question arises in relation to the Chairperson or person presiding over a meeting, he or she shall retire from the chair and the question shall be determined by majority vote of the remaining members. In either case particulars of the determination shall be recorded in the minutes of the meeting.
- (6) If the Minister is satisfied that a member of the Fund has contravened *subparagraph (1)*, the Minister may, if he or she thinks fit, remove that member from office.
8. (1) Where a member of the staff of the Fund has a pecuniary interest or other beneficial interest in, and material to, otherwise than in his or her capacity as such a member, a matter that falls to be considered by the Fund, that person shall—
- (a) disclose to the Fund his or her interest and the nature thereof,
  - (b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the Fund or members of the staff of the Fund in relation thereto, and
  - (c) neither influence nor seek to influence a decision to be made in relation to the matter nor make any recommendation in relation thereto.
- (2) *Subparagraph (1)* shall not apply to contracts or proposed contracts of employment of members of the staff of the Fund with the Fund.

- (3) Where a person contravenes this paragraph the Fund may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment.
9. (1) The Fund may establish—
- (a) such advisory committees as it considers necessary or desirable to advise it in the performance of its functions, and
- (b) such other committees and sub-committees as it considers necessary or expedient, and may appoint members to such a committee as it considers necessary.
- (2) A committee established under *subparagraph (1)* may include persons who are not members of the Fund, but a majority of the members of such a committee shall be members of the Fund.
- (3) A member of a committee established under *subparagraph (1)* shall serve on the committee on such terms (including term of office, removal and resignation) as the Fund determines.
- (4) The Fund shall determine the terms of reference and procedures of a committee established under *subparagraph (1)*.
- (5) The Fund may, from its own resources, pay a member of a committee established under *subparagraph (1)* who is not a member of the Board such allowances for expenses, as the Minister, with the approval of the Minister for Finance, may from time to time determine.
- (6) Paragraph 6 applies in relation to a member of a committee established under *subparagraph (1)* who is not a member of the Board. For the purposes of that application—
- (a) references to members of the Fund are to be construed as references to members of the committee, and
- (b) references to the Fund are to be construed as references to the committee.
10. (1) This paragraph applies to the following persons:
- (a) each member of the Fund;
- (b) each member of a committee established under paragraph 9 and
- (c) a member of the staff of the Fund.
- (2) Where the Fund is satisfied that a person to whom this paragraph applies has discharged the functions appropriate to that person in relation to the functions of the Fund in good faith, the Fund shall indemnify that person against all actions or claims however they arise in relation to the discharge by that person of those functions.
- (3) The Fund shall not be prevented from revoking an indemnity granted to, or recovering any payment made pursuant to such an indemnity from, a person who is subsequently found to have carried out his or her duties in bad faith.