



Number 35 of 2012

RESIDENTIAL INSTITUTIONS STATUTORY FUND ACT 2012

REVISED

Updated to 1 September 2017

This Revised Act is an administrative consolidation of the *Residential Institutions Statutory Fund Act 2012*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *National Shared Services Office Act 2017 (26/2017)*, enacted 26 July 2017, and all statutory instruments up to and including *Residential Institutions Statutory Fund Act 2012 (Section 43) (Commencement) Order 2017 (S.I. No. 379 of 2017)*, made 16 August 2017, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1994, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Education and Training Boards Act 2013 (11/2013)*

All Acts up to and including *National Shared Services Office Act 2017 (26/2017)*, enacted 26 July 2017, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Residential Institutions Statutory Fund Act 2012 (Section 43) (Commencement) Order 2017* (S.I. No. 379 of 2017)
- *Residential Institutions Statutory Fund (Appeals) Regulations 2014* (S.I. No. 21 of 2014)
- *Residential Institutions Statutory Fund Act 2012 (Commencement) Order 2014* (S.I. No. 20 of 2014)
- *Residential Institutions Statutory Fund Act 2012 (Part 4) (Commencement) Order 2013* (S.I. No. 96 of 2013)
- *Residential Institutions Statutory Fund Act 2012 (Establishment Day) Order 2013* (S.I. No. 95 of 2013)
- *Residential Institutions Statutory Fund Act 2012 (Commencement of Certain Provisions) Order 2013* (S.I. No. 79 of 2013)
- *Residential Institutions Statutory Fund Act 2012 (Commencement) Order 2012* (S.I. No. 387 of 2012)

All statutory instruments up to and including *Residential Institutions Statutory Fund Act 2012 (Section 43) (Commencement) Order 2017* (S.I. No. 379 of 2017), made 16 August 2017, were considered in the preparation of this revision.



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RESIDENTIAL INSTITUTIONS STATUTORY FUND ACT 2012

REVISED

Updated to 1 September 2017

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO SUPPORT THE NEEDS OF FORMER RESIDENTS TO BE KNOWN AS BORD AN CHISTE REACHTÚIL FORAS CÓNAITHE OR IN THE ENGLISH LANGUAGE, THE RESIDENTIAL INSTITUTIONS STATUTORY FUND BOARD, AND TO DEFINE ITS FUNCTIONS; TO PROVIDE FOR THE MAKING OF CONTRIBUTIONS BY CERTAIN PERSONS; TO AMEND THE RESIDENTIAL INSTITUTIONS REDRESS ACT 2002; TO AMEND THE COMMISSION TO INQUIRE INTO CHILD ABUSE (AMENDMENT) ACT 2005; AND TO PROVIDE FOR RELATED MATTERS.

[25th July, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement.

1.— (1) This Act may be cited as the Residential Institutions Statutory Fund Act 2012.

(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.

Annotations

Editorial Notes:

E1 Power pursuant to subs. (2) exercised (1.09.2017) by *Residential Institutions Statutory Fund Act 2012 (Section 43) (Commencement) Order 2017* (S.I. No. 379 of 2017).

2. The 1st day of September 2017 is appointed as the day on which section 43 of the Residential Institutions Statutory Fund Act 2012 (No. 35 of 2012) comes into operation.

E2 Power pursuant to section exercised (28.01.2014) by *Residential Institutions Statutory Fund Act 2012 (Commencement) Order 2014* (S.I. No. 20 of 2014).

2. The 28th day of January 2014 is appointed as the day on which sections 21 and 22 of the Residential Institutions Statutory Fund Act 2012 (No. 35 of 2012) come into operation.

- E3** Power pursuant to section exercised (29.03.2013) by *Residential Institutions Statutory Fund Act 2012 (Part 4) (Commencement) Order 2013* (S.I. No. 96 of 2013).

2. The 29th day of March 2013 is appointed as the day on which Part 4 of the Residential Institutions Statutory Fund Act 2012 (No. 35 of 2012) comes into operation.

- E4** Power pursuant to section exercised (8.03.2013) by *Residential Institutions Statutory Fund Act 2012 (Commencement of Certain Provisions) Order 2013* (S.I. No. 79 of 2013).

2. The 8th day of March 2013 is appointed as the day on which the following provisions of the Residential Institutions Statutory Fund Act 2012 (No. 35 of 2012) come into operation:

- (a) Part 2, other than sections 21 and 22;
- (b) Part 3;
- (c) section 42.

- E5** Power pursuant to section exercised (4.10.2012) by *Residential Institutions Statutory Fund Act 2012 (Commencement) Order 2012* (S.I. No. 387 of 2012).

2. The 4th day of October 2012 is appointed as the day on which Part 1 and section 44 of the Residential Institutions Statutory Fund Act 2012 (No. 35 of 2012) come into operation.

Interpretation. **2.**— In this Act, unless the context otherwise requires—

“abuse” has the meaning given to it by the Act of 2002;

“Act of 2002” means the Residential Institutions Redress Act 2002;

“Act of 2005” means the Commission to Inquire into Child Abuse (Amendment) Act 2005;

“Agency” means the National Treasury Management Agency;

“appeals officer” shall be construed in accordance with *section 21 (1)*;

“approved service” shall be construed in accordance with *section 8*;

“Board” shall be construed in accordance with *section 6*;

“chief executive” shall be construed in accordance with *section 13*;

“decision maker” shall be construed in accordance with *section 20 (7)*;

“dissolved body” shall be construed in accordance with *section 32*;

“enactment” has the meaning given to it by section 2 of the Interpretation Act 2005;

“establishment day” shall be construed in accordance with *section 6*;

“former resident” shall be construed in accordance with *section 3*;

“investment account” means the account established under *section 29 (3)*;

“liaison officer” shall be construed in accordance with *section 25 (2)*;

“Minister” means the Minister for Education and Skills;

“public authority” means:

- (a) a Department of State (other than, in relation to the Department of Defence, the Defence Forces) for which a Minister of the Government is responsible;

- (b) the Health Service Executive;
- (c) a local authority, within the meaning of the Local Government Act 2001;
- (d) a person established—
 - (i) by any enactment (other than the Companies Acts),
 - (ii) by any scheme administered by a Minister of the Government, or
 - (iii) under the Companies Acts, in pursuance of powers conferred by 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 the issue of shares held by or on behalf of a Minister of the Government;
- (e) a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government;
- (f) other than for the purposes of *section 7(1)(c), 20(4)(a)(ii) or 25*, a person situated outside the State corresponding to a person referred to in *paragraphs (a) to (e)*;

“publicly available service” means any service or facility of any kind provided by a public authority that is available to or accessible by the public generally or a section of the public, whether or not the service or facility is subject to a charge;

“relevant trust” means a trust, which may include a company, a body corporate other than a company or an unincorporated body of persons, established for charitable purposes and—

- (a) which is or was engaged in the management, administration, operation, supervision or regulation of an institution specified in the Schedule to the Act of 2002, or
- (b) which is a person listed in the First Schedule to the Deed made on 5 June 2002 between the Minister for Finance and the Minister for Education and Science of the one part and the persons listed in the First Schedule to that deed of the other part;

“terms” in relation to a relevant trust means terms whether or not in writing;

“trustee” in relation to a relevant trust means the relevant trust or a trustee of the relevant trust on its behalf.

Application.

3.— (1) This Act shall apply to the following person (in this Act referred to as a “former resident”) whether or not he or she is resident in the State:

- (a) a person who has received an award (other than an award referred to in *subsection (2)*) under the Act of 2002;
- (b) a person who has received an award or settlement referred to in *section 7(2)* of the Act of 2002.

(2) The following shall not be an award for the purposes of *subsection (1)(a)*:

- (a) an award made under *section 9* of the Act of 2002, or
- (b) an award of a nil amount made under the Act of 2002.

(3) A reference in this Act to a former resident, as appropriate, shall include a reference—

- (a) to a person who has been nominated in writing by the former resident for the purposes of making an application under this Act,
- (b) where the donor of a power of attorney is a former resident, to a person who is the donee of a power of attorney given the power to act on behalf of the donor of the power,
- (c) where the former resident is a ward of court, to the Committee of the Person of that ward, duly authorised in that behalf, or
- (d) to a person appointed by a former resident to be his or her attorney under an enduring power of attorney where—
 - (i) the attorney is not prohibited or restricted by the terms of the power from performing any matter performable under this Act by an attorney, and
 - (ii) the enduring power of attorney has been registered and the registration has not been cancelled.

(4) In subsection (3)—

“enduring power of Attorney” means a power of attorney within the meaning of section 2 of the Powers of Attorney Act 1996, which is an enduring power construed in accordance with section 5 of that Act;

“registration” in relation to an enduring power of attorney means registration under section 10 of the Powers of Attorney Act 1996.

Orders and regula- 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 8(3)*, 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) Where an order (other than an order under *section 1(2)* or *6(1)*) is proposed to be made under this Act a draft of that order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.

Annotations

Editorial Notes:

- E6** Power pursuant to subs. (1) exercised (29.01.2014) by *Residential Institutions Statutory Fund (Appeals) Regulations 2014* (S.I. No. 21 of 2014).

Expenses. 5.— The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

PART 2

RESIDENTIAL INSTITUTIONS STATUTORY FUND BOARD

Establishment of Residential Institutions Statutory Fund Board.

6.— (1) The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.

(2) There shall stand established on the establishment day, a body to be known as *Bord an Chiste Reachtúil Foras Cónaithe* or, in the English language, the Residential Institutions Statutory Fund Board (in this Act referred to as the “Board”), to perform the functions conferred on it by this Act.

(3) Subject to this Act, the Board shall be independent in the performance of its functions.

Annotations

Editorial Notes:

E7 Power pursuant to section exercised (25.03.2013) by *Residential Institutions Statutory Fund Act 2012 (Establishment Day) Order 2013* (S.I. No. 95 of 2013).

2. The 25th day of March 2013 is appointed as the establishment day for the purposes of the Residential Institutions Statutory Fund Act 2012 (No. 35 of 2012).

Functions of Board.

7.— (1) The Board, in a manner that promotes the principles of equity, consistency and transparency, shall—

(a) utilise the resources that are available to it in the investment account to—

(i) make arrangements with persons, whether or not they are resident in the State, for the provision of approved services to support the needs of former residents,

(ii) pay grants to former residents in order that they may avail of approved services,

(b) determine under—

(i) *section 8* whether a service is an approved service,

(ii) *section 9* criteria by reference to which the Board shall make a decision on an application to the Board for an arrangement or a grant,

and

(c) promote understanding, among persons involved in the provision of approved services and publicly available services to former residents, of the effects of abuse on former residents.

(2) For the purpose of performing the functions referred to at *subsection (1)*, the Board shall—

(a) make information relating to the functions of the Board available to former residents,

(b) evaluate the effectiveness of approved services in meeting the needs of former residents, and

(c) take such steps as the Board considers appropriate to consult with persons the Board considers may be affected by the performance by the Board of its functions.

(3) In performing any functions conferred on it by or under this Act, the Board 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.

(4) The Board shall have all such powers as are necessary or expedient for the performance of its functions.

(5) The Board may perform any of its functions through or by any member of the staff of the Board duly authorised in that behalf by the Board.

(6) The Minister may, with the consent of the Minister for Public Expenditure and Reform, by order—

- (a) confer on the Board such additional functions relating to the functions conferred on the Board by this section or by an order under this subsection as the Minister considers appropriate, and
- (b) make such provision as he or she considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the Board of those additional functions.

(7) The Board, from time to time as it considers necessary for the performance of its functions and with the approval of the Minister, may—

- (a) enter into contracts with persons, and
- (b) engage consultants or advisers,

for such period and subject to such terms and conditions as the Board considers appropriate and any sums thereby payable by the Board to such persons, consultants or advisers shall be paid by the Board out of moneys at its disposal.

Approved
services.

8.— (1) In this Act “approved service” means a service belonging to one of the following classes of service, in relation to which the Board makes a determination under *subsection (2)*:

- (a) a mental health service relating to care and treatment of a person suffering from a mental illness or a mental disorder, a counselling service or a psychological support service;
- (b) a health and personal social service, including—
 - (i) a general practitioner, medical or surgical service provided by a registered medical practitioner (within the meaning of section 2 of the Medical Practitioners Act 2007) in relation to all medical conditions,
 - (ii) a hospital treatment service,
 - (iii) a pharmacy service including provision of drugs, medicines, medical or surgical appliances,
 - (iv) a nursing service provided otherwise than in a hospital,
 - (v) a service to assist in the maintenance at home of a former resident who is sick or infirm and who, but for the provision of the service, would require to be maintained otherwise than at home,
 - (vi) a dental, ophthalmic or aural treatment service, including provision of a dental, ophthalmic or aural appliance,
 - (vii) a service of an ancillary nature such as chiropody, chiropractic, occupational therapy, physiotherapy, podiatry or speech therapy;

- (c) an educational service;
- (d) a housing support service, including adaptation or improvement of real property but not including financial aid for the purchase, mortgage or charge of real property;
- (e) a service prescribed under *subsection (3)*.

(2) The Board may determine whether a service belonging to a class of service referred to in *subsection (1)* is an approved service and in making such a determination the Board shall have regard to:

- (a) the likely effect of the provision of the service on the—
 - (i) health and general well-being,
 - (ii) personal and social development,
 - (iii) educational development, or
 - (iv) living conditions,
 of a former resident;
- (b) the need for minimum standards to be met by a provider of an approved service;
- (c) any other matter that the Board considers, having regard to the functions of the Board, is a proper matter to be taken into account.

(3) The Minister, on receipt of a recommendation from the Board or following consultation by him or her with the Board, may prescribe a class of service, other than a class of service referred to in *paragraph (a), (b), (c) or (d) of subsection (1)*, to be a class of service in relation to which the Board may make a determination under *subsection (2)* and—

- (a) in so recommending or during such consultation with the Minister the Board shall have regard to the matters referred to in *paragraphs (a) to (c) of subsection (2)*, and
- (b) in so prescribing, the Minister shall have regard to—
 - (i) the matters referred to in *paragraphs (a) and (b) of subsection (2)* and any matter that the Board considers is a proper matter under *paragraph (c) of that subsection*, and
 - (ii) any other matter that the Minister considers is a proper matter to be taken into account.

(4) An approved service may be determined under this section by reference to a particular class of approved service, and different approved services or classes of approved service may be determined by reference to different former residents or classes of former resident.

(5) The Board may amend or revoke a determination under this section, including an amendment thereto under this subsection, that a service is an approved service and that amendment or revocation may provide for incidental, consequential or transitional matters.

(6) Information relating to approved services shall be made available in writing free of charge by the Board to any person on request therefor and shall be published by the Board in such manner, including by electronic means, as it sees fit.

(7) For the purposes of this Act, a service that—

(a) is available outside of the State, and

(b) corresponds to a service in relation to which a determination under *subsection (2)* is made,

shall be taken to be an approved service.

Determination of criteria by Board. **9.—** (1) The Board shall determine criteria by reference to which the Board shall make a decision in respect of an application under *section 20*.

(2) The Board in determining criteria under *subsection (1)* shall have regard to the need to—

(a) take account of the individual circumstances, including personal and financial circumstances, of former residents,

(b) assess the likely effect of the provision of a service on the—

(i) health and general well-being,

(ii) personal and social development,

(iii) educational development, or

(iv) living conditions,

of former residents,

(c) apply limits to the moneys that may be made available for an arrangement or grant,

(d) specify minimum standards to be met by a provider of an approved service,

(e) specify any supporting evidence that may be required to be furnished by former residents, and

(f) take into account any other matter that the Board considers, having regard to the functions of the Board, is a proper matter to be taken into account.

(3) Different criteria may be determined under this section as respects—

(a) different circumstances or classes of circumstance relating to former residents,

(b) different approved services or classes of approved service, and

(c) different former residents or classes of former resident.

(4) Criteria determined under this section may include criteria, consistent with this Act, for the purpose of the relief of hardship where it is shown to the satisfaction of the Board on an application under *section 20* that exceptional circumstances exist, such that criteria (other than criteria determined under this subsection) determined under this section may be disregarded by the Board in making its decision on the application.

(5) The Board may amend or revoke any criteria determined under this section including an amendment thereto under this subsection and that amendment or revocation may provide for incidental, consequential or transitional matters.

(6) Criteria determined by the Board under this section shall be made available in writing free of charge by the Board to any person on request therefor and shall be published by the Board in such manner, including by electronic means, as it sees fit.

Directions of Minister. **10.—** (1) The Minister may, in relation to the performance by the Board of its functions, give a direction in writing to the Board 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 Board shall comply with a direction under this section.

Membership of Board and related matters. **11.—** (1) The Board shall consist of 9 members who shall be appointed by the Minister—

(a) of whom 4 are persons who were resident in an institution specified in the Schedule to the Act of 2002 before they attained the age of 18 years, and

(b) among whom there are persons other than those referred to at *paragraph (a)*, who have knowledge of, and expertise in relation to one or more than one of the following:

(i) the keeping of financial accounts and disbursement of funds;

(ii) the management and administration of an organisation;

(iii) the provision of an approved service or approved services.

(2) The Minister shall appoint one member of the Board as chairperson.

(3) The Minister shall, in so far as is practicable, ensure an equitable balance between men and women in the composition of the Board.

(4) The members of the Board shall, subject to the provisions of this Act, hold office on such terms and conditions (including terms and conditions relating to the payment of allowances for expenses) as may be determined by the Minister, with the approval of the Minister for Public Expenditure and Reform.

(5) In performing its functions, the Board shall act in utmost good faith with due care, skill and diligence.

(6) The provisions of the *Schedule* shall have effect in relation to the Board.

Term of office of members. **12.—** (1) A member of the Board 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 of the Board whose period of office expires by the passage of time is eligible for re-appointment as such a member.

(3) A member of the Board shall not hold office as such member for more than 2 terms of office that are consecutive.

Chief executive. **13.—** (1) There shall be a chief executive officer of the Board (in this Act referred to as the “chief executive”).

(2) Subject to *subsections (4) and (5)*, the chief executive shall be appointed by the Board with the consent of the Minister.

(3) The chief executive may be removed from office by the Board 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 Board.

(5) If, immediately before the establishment day, a person stands designated by the Minister under *subsection (4)*, the Board 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 Board with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.

(7) The chief executive shall not hold any other office or employment or carry on any business without the consent of the Board.

(8) The chief executive may attend any meeting of the Board.

Functions of chief executive.

14.— (1) The chief executive shall carry on and manage, and control generally, the administration of the Board and perform such other functions (if any) assigned to him or her by or under this Act or any other enactment or as may be determined by the Board.

(2) The chief executive shall perform his or her functions subject to such policies as may be determined from time to time by the Board, and shall be accountable to the Board for the efficient and effective management of the Board and for the due performance of his or her functions.

(3) The chief executive shall provide the members of the Board 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 Board on any matter relating to the functions of the Board.

(5) The chief executive may, with the consent in writing of the Board, delegate any of his or her functions to a specified member of staff of the Board, and that member of staff shall be accountable to the chief executive for the performance of the functions so delegated.

(6) The chief executive shall be accountable to the Board for the performance of functions delegated by him or her in accordance with *subsection (5)*.

(7) The chief executive may, with the consent in writing of the Board, revoke a delegation made under *subsection (5)*.

(8) In *subsection (5)*, “functions” shall not include a function delegated by the Board to the chief executive subject to a condition that the function shall not be delegated by the chief executive to anyone else.

(9) The Board may, with the agreement of the member of staff concerned, designate a member of the staff of the Board 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.

(10) The Board may at any time revoke or alter the designation made under *subsection (9)*.

Accountability of chief executive to Public Accounts Committee.

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 Board is required by this Act to prepare,
- (b) the economy and efficiency of the Board in the use of its resources,
- (c) the systems, procedures and practices employed by the Board for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting the Board 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.

Accountability of chief executive to other Oireachtas Committees.

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 Board.

(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 therefor 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.

Staff of Board. **17.—** (1) The Board shall appoint, with the consent of the Minister and the Minister for Public Expenditure and Reform, such and so many persons to be members of the staff of the Board as it may from time to time determine.

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

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

Superannuation. **18.—** (1) As soon as may be after the establishment day, the Board 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 Board, including the chief executive, as the Board may think fit.

(2) The Board 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 person.

(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 or amending scheme submitted by the Board under this section shall, if approved by the Minister with the consent of the Minister for Public Expenditure and Reform, be carried out by the Board in accordance with its terms.

(6) No superannuation benefit shall be granted by the Board to or in respect of a member of the staff (including the chief executive) of the Board, nor shall any other arrangement be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, otherwise than in accordance with a scheme or schemes submitted and approved under this section or an arrangement with the consent of the Minister and the Minister for Public Expenditure and Reform.

(7) Every scheme under this section shall make provision for appeals.

(8) The Minister shall cause a scheme made under this section to be laid before each House of the Oireachtas as soon as may be after it is approved under *subsection (5)* 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.

(9) In this section “superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.

Annual report and information. **19.—** (1) The Board shall not later than 31 March in each year prepare, 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 not later than 31 March in the second year following that in which the establishment day falls and shall relate to the year in which the establishment day falls and the following year.

(3) The Minister shall, as soon as may be after receiving the report, cause copies of the report to be laid before each House of the Oireachtas.

(4) The Board 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 Board 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—

- (a) applications for arrangements or grants from the Board,
- (b) decisions of the Board in relation to such applications, and
- (c) the reasons for decisions of the Board in relation to such applications.

(6) No information shall be provided under *subsection (5)* that constitutes confidential information within the meaning of *section 23(1)*.

Applications to Board and associated matters.

20.— (1) On application to it in that behalf the Board shall satisfy itself whether the person making the application is a former resident and may—

- (a) make an arrangement with a person, whether or not the person is resident in the State, for the provision of an approved service to support the needs of a former resident, or
- (b) pay a grant to a former resident to assist the former resident to avail of an approved service.

(2) An arrangement made or a grant paid under *subsection (1)* shall be in respect of such an approved service, of such extent, paid at such time and subject to such a condition as the Board may decide.

(3) The procedures, including procedures where *section 9(4)* applies, to be followed by the Board with respect to—

- (a) the making of an application to it, including where the Board considers it appropriate, an application in electronic form,
- (b) the consideration by the Board of an application, and
- (c) the making of a communication by the Board to an applicant for the purposes of an application or any matter consequent upon it,

shall be determined by the Board and be made available in writing free of charge by the Board to any person on request therefor and shall be published by the Board in such manner, including by electronic means, as it sees fit.

(4) Without limiting the generality of *subsection (3)(b)*, procedures under that subsection may include provision for—

- (a) the making of a request by the Board of the applicant to—
 - (i) furnish to it such information or documents as the Board may determine, or
 - (ii) authorise the Board to liaise with a public authority,

for the purpose of the Board considering the application concerned, and

(b) enabling the Board to refuse to further consider the application if the request under *paragraph (a)* is not complied with and the Board may so request or refuse to further consider the application in accordance with the procedures.

(5) The Board shall not make an arrangement or pay a grant under this section unless the Board is satisfied that—

(a) the application by the former resident satisfies the criteria determined by the Board under *section 9*, and

(b) the application is made in accordance with procedures determined by the Board.

(6) A grant paid to a former resident shall be used solely for defrayal of or contribution to defrayal of the cost to the former resident of availing of the approved service specified by the Board in its decision under this section, unless the Board on application to it in that behalf by the former resident concerned, decides to authorise the use of the grant or a part of it for defrayal of or contribution to defrayal of the cost to the former resident of availing of another approved service specified by the Board.

(7) A decision of the Board under this section shall be made by the chief executive or a member of staff of the Board to whom the chief executive delegates the function, either of whom shall in relation to the decision, be called the “decision maker”.

(8) As soon as practicable after the decision maker makes a decision under this section the Board shall give notice in writing of the decision and the reasons therefor, together with, where the Board considers it appropriate, information regarding the making of an appeal under *section 22* to—

(a) the former resident concerned, or

(b) if appropriate, a person referred to in *section 22(1)(a)*.

Appeals officer. **21.—** (1) The Minister shall appoint, on such terms and conditions as are specified in writing, one or more than one person who—

(a) is a practising barrister or solicitor of not less than 5 years’ standing, or

(b) has a special interest or expertise in or knowledge of matters regarding approved services, administration of schemes of payments or fair procedures,

to consider an appeal under *section 22* who shall, in relation to the appeal, be called the “appeals officer”.

(2) An appeals officer shall be independent in the performance of his or her functions under this Act.

(3) An appeals officer—

(a) shall be paid such remuneration and allowances as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines,

(b) may be provided with such staff, whose terms and conditions of service and to whom payment of remuneration and allowances shall be such as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines as reasonably necessary to enable the appeals officer to perform his or her functions under this Act, and

(c) may resign from the appointment by notice in writing given to the Minister.

(4) The Minister may revoke the appointment of an appeals officer for stated reasons.

(5) (a) An appeals officer shall, at such intervals and in relation to such periods as are specified in writing by the Minister, submit a report in writing to the Minister in relation to the performance of his or her functions under this Act as an appeals officer during the period to which the report relates.

(b) No information shall be provided under *paragraph (a)* that constitutes confidential information within the meaning of *section 23(1)*.

(c) The Minister shall cause copies of a report submitted under *paragraph (a)* to be laid before each House of the Oireachtas.

Appeals. **22.**— (1) The following persons may appeal a decision of a decision maker to an appeals officer:

(a) a person who the decision maker decides is not a former resident;

(b) a former resident to whose application the decision relates.

(2) An appeal shall be made not later than 30 days after giving of the notice, under *section 20(8)* of the decision of the decision maker however, this period at the request in writing of the appellant, may be extended by the appeals officer for a further period not exceeding 30 days if the appeals officer is satisfied that the person has given reasonable cause to so extend.

(3) An appeal under this section shall state the reasons for the appeal.

(4) The Minister shall prescribe procedures for hearing and determining appeals by an appeals officer including—

(a) the form in which the appeal shall be made, including electronic form,

(b) making of submissions, whether oral or written, to the appeals officer,

(c) requests for further information by the appeals officer, and

(d) examination by the appeals officer of the appellant and any other person whom the appeals officer considers appropriate.

(5) In considering an appeal under this section an appeals officer shall—

(a) not be confined to the grounds on which the decision of the decision maker was based, but may decide the matter the subject of the appeal as if it were being decided for the first time,

(b) subject to procedures prescribed under *subsection (4)*, as he or she considers appropriate, consider written or oral submissions made by the appellant and consult with the Board,

(c) make a decision in writing determining the appeal as soon as is practicable in all the circumstances of the case which may be a determination to—

(i) confirm the decision the subject of the appeal,

(ii) revoke the decision and replace it with such other decision as the appeals officer considers appropriate, or

(iii) refer the matter back to the decision maker for reconsideration in accordance with such directions as the appeals officer considers appropriate,

and

(d) send a copy of the decision to the appellant, the Board and the decision maker together with his or her reasons for the decision.

(6) A person (including the Board) affected by a decision under *subsection (5) (c)* may appeal to the High Court—

(a) on a point of law from the decision, and

(b) not later than 28 days after he or she receives a copy of the decision and the reasons for the decision under *subsection (5)(d)*.

(7) A decision of the High Court following an appeal under *subsection (6)* shall, where appropriate, specify the period within which effect shall be given to the decision.

(8) A decision of the High Court on an appeal under *subsection (6)* shall be final and conclusive.

(9) The Board shall—

(a) if applicable, give effect to a decision under *subsection (5)(c)* as soon as is practicable after the period referred to in *subsection (6)(b)* has elapsed without any appeal under *subsection (6)* having been made in respect of that decision,

(b) if applicable, give effect to a decision of the High Court on an appeal under *subsection (6)*—

(i) within the period, if any, specified in the decision,

(ii) if *subparagraph (i)* is not applicable, as soon as is practicable.

Annotations

Editorial Notes:

- E8** Power pursuant to subs. (4) exercised (29.01.2014) by *Residential Institutions Statutory Fund (Appeals) Regulations 2014* (S.I. No. 21 of 2014).

Prohibition of unauthorised disclosure of information.

23.— (1) In this section “confidential information” means information that refers to a former resident or that could reasonably lead to the identification of a former resident.

(2) Except in the circumstances specified in *subsection (3)* a person shall not disclose confidential information obtained by him or her while performing or as a result of having performed functions as—

(a) a member of the Board or a committee of the Board,

(b) the chief executive or any other employee of the Board,

(c) a person engaged by the Board to provide consultancy, advice or other services to the Board,

(d) a person with whom the Board makes an arrangement for the provision of approved services,

(e) a liaison officer,

(f) an appeals officer or any staff of the appeals officer, or

(g) an employee of a person referred to in *paragraph (c)* or *(d)*.

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

- (a) is made to or authorised by the Board,
- (b) is made to the Garda Síochána where the person is acting in good faith and reasonably believes that such disclosure is necessary in order to prevent an act or omission constituting a serious offence,
- (c) is made to an appropriate person (within the meaning of the Protections for Persons Reporting Child Abuse Act 1998) where the person is acting in good faith and reasonably believes that such disclosure is necessary to prevent, reduce or remove a substantial risk to life or to prevent the continuance of abuse of a child,
- (d) is in compliance with this Act, or
- (e) is required by law or an enactment other than this Act.

(4) Nothing in *subsection (2)* shall prevent the disclosure of confidential information to a former resident to whom that information relates.

(5) A person who contravenes *subsection (2)* is guilty of an offence and is liable—

- (a) on summary conviction to a class C fine 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.

(6) In *subsection (3)(b)* “serious offence” means an offence for which a person of full age and capacity and not previously convicted may be punished by imprisonment for a term of 5 years or by a more severe penalty.

Transfer of certain information from Residential Institutions Redress Board.

24.— (1) Notwithstanding anything contained in the Residential Institutions Redress Acts 2002 to 2011 or any other enactment the Residential Institutions Redress Board shall furnish personal information to the Board.

(2) The Board shall use personal information furnished under *subsection (1)* in order to determine whether a person is eligible to make an application to the Board and for no other purpose.

(3) In this section “personal information” means the name, address and date of birth of a person referred to in *section 3(1)(a)*.

Liaison officers.

25.— (1) A public authority shall ensure, so far as practicable, that the activities of the Board 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 Board, authorise such and so many of its employees as it considers appropriate (in this Act referred to as “liaison officers”) to—

- (a) advise former residents on the publicly available services provided by the public authority,
- (b) provide to the Board information in relation to the range of publicly available services operated by that public authority, and
- (c) liaise with the Board in relation to any application received by the Board under *section 20*.

(3) The Board may, with the consent of a former resident, consult with a public authority for the purpose of determining to what if any publicly available services the former resident is entitled.

False statements and offences. **26.—** (1) A person who for the purpose of an application to the Board for an arrangement or grant for himself or herself or for any other person—

(a) makes any statement or representation (whether written or oral) which is to his or her knowledge false or misleading in any material respect, or is reckless as to whether such statement or representation is false or misleading, or

(b) furnishes or causes or knowingly allows to be furnished, any document or information which he or she knows to be false in a material respect or is reckless as to whether such document or information is so false or misleading,

to a member of the Board, the chief executive, a member of staff of the Board, an appeals officer, any staff of the appeals officer or a decision maker is guilty of an offence.

(2) A person guilty of an offence under *subsection (1)* is liable—

(a) on summary conviction to a class C fine 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.

Application of Freedom of Information Act 1997. **27.—** Paragraph 1 of the First Schedule to the Freedom of Information Act 1997 is amended, in subparagraph (2), by inserting “the Residential Institutions Statutory Fund Board,”.

Amendment of First Schedule to Ombudsman Act 1980. **28.—** Part I of the First Schedule to the Ombudsman Act 1980 is amended by inserting “Residential Institutions Statutory Fund Board”.

PART 3

FINANCIAL MATTERS

Management of moneys relating to Board. **29.—** (1) As soon as may be after the coming into operation of this section the Minister, with the consent of the Minister for Public Expenditure and Reform, shall pay to the Agency—

(a) an amount equal to the total of moneys received by the Minister and the Minister for Public Expenditure and Reform from the trustees of a relevant trust and lodged in an account established at the Central Bank in the names of the Minister and the Minister for Public Expenditure and Reform for the purpose of receiving cash contributions towards the costs incurred by the Board in the performance of its functions,

(b) an amount equal to the aggregate of the interest on the amount referred to in *paragraph (a)* since establishment of the account referred to in that paragraph.

(2) Notwithstanding that it may not be authorised by the terms, or may be inconsistent with the charitable purposes, of a relevant trust the trustees of the relevant

trust may make, and the Minister, with the consent of the Minister for Public Expenditure and Reform may accept—

- (a) a payment of moneys where the purpose of the payment is to make a contribution towards the costs incurred by the Board in the performance of its functions, and
- (b) an amount equal to the aggregate of the interest on the moneys referred to in *paragraph (a)* which the trustees of the relevant trust confirm to be due,

and the Minister shall, with the consent of the Minister for Public Expenditure and Reform, pay those moneys to the Agency.

(3) The Agency shall establish an investment account into which the amounts and moneys referred to in *subsections (1) and (2)* shall be deposited.

(4) The total of the amount under *subsection (1)(a)* and the moneys under *subsection (2)(a)* paid to the Agency shall not exceed €110,000,000.

(5) Moneys in the investment account that are not required for the purposes of *section 30* shall be invested by the Agency and any income, capital or other benefit received in respect of moneys invested under this subsection shall be paid into the investment account or invested under this subsection.

(6) An investment under *subsection (5)* 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.

Advances from Fund.

30.— (1) The expenses and other costs incurred by the Agency under this Act shall, subject to the approval of the Board, be charged on the investment account to the benefit of the Agency.

(2) The Agency may advance to the Board out of the investment account such sum as is requested by the Board for the purpose of defraying expenditure incurred by the Board in the performance of its functions.

(3) The Agency shall advance to the Minister out of the investment account such sum as is requested by the Minister to enable the Minister to make a payment, under *section 21(3)*, to an appeals officer and any staff of an appeals officer.

Accounts and audits.

31.— (1) The chief executive shall keep in such form as may be approved by the Minister, with the consent of the Minister for Public Expenditure and Reform, all proper and usual accounts and records of moneys received or expended by the Board.

(2) The accounts of the Board prepared by the chief executive and approved by the Board shall be submitted to the Comptroller and Auditor General for audit not later than 3 months after the end of the accounting period to which the accounts relate.

(3) Within one month of the Comptroller and Auditor General issuing an audit certificate for the accounts of the Board, 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 Board shall furnish to the Minister the information the Minister may require in respect of any balance sheet, account or report of the Board.

- (5) The Board, the chief executive and other members of staff of the Board—
- (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 Board in respect of any financial year or other period, and
 - (b) shall facilitate the examination,
- and the Board shall pay such fee as may be fixed by the Minister for the examination.

PART 4

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

Dissolution of Education (Former Residents of Certain Institutions for Children) Finance Board.

32.— On the commencement of this Part, the Education (Former Residents of Certain Institutions for Children) Finance Board (in this Act referred to as the “dissolved body”) is dissolved.

Transfer of functions to Board.

33.— Subject to *section 41(2)* all functions that, immediately before the commencement of this Part, were vested in the dissolved body are transferred to the Board and references in any enactment to the dissolved body shall be construed as references to the Board.

Transfer of property.

34.— (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 Board without any assignment.

(2) Every chose-in-action vested in the Board under *subsection (1)* may on and from the commencement of this Part be sued on, recovered or enforced by the Board in its own name, and it shall not be necessary for the Board to give notice to any person bound by the chose-in-action of the vesting effected by that subsection.

Transfer of rights and liabilities.

35.— (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 Board.

(2) Every right and liability transferred by *subsection (1)* to the Board may, on and after the commencement of this Part, be sued on, recovered or enforced by or against the Board in its own name, and it shall not be necessary for the Board to give notice to the person whose right or liability is transferred by that subsection of such transfer.

Transfer of employees.

36.— (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 Board.

(2) Except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person transferred under this section shall not, on the commencement of this Part, be brought to less beneficial conditions of remuneration than the conditions of remuneration to which the person was subject immediately before the commencement of this Part 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 2011,
 - (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 Board 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 Board 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 commencement of this Part with the dissolved body;

“terms and conditions of employment” includes terms and conditions in respect of tenure of office, remuneration and related matters.

Liability for loss occurring before commencement.

37.— (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 of the dissolved body transferred to the Board under *section 33* shall after that day, lie against the Board 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 Board, shall be continued, with the substitution in the proceedings of the Board, 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 would have been enforceable

against the dissolved body, be enforceable against the Board 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 Board by this Act, be regarded as having been made by or proper to be made by the Board and may be pursued and sued for by the Board as if the loss or injury had been suffered by the Board.

Provisions consequent upon transfer of functions, assets and liabilities to Board.

38.— (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 of the dissolved body transferred to the Board under *section 33*, be carried on or completed on or after the commencement of this Part by the Board.

(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 33*, 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 Board.

Final accounts and final annual report of dissolved body.

39.— (1) The Board shall, in respect of the specified period, prepare final accounts of the dissolved body.

(2) The Board shall submit the final accounts to the Comptroller and Auditor General for audit not later than 3 months after the expiration of the specified period, and within one month of the Comptroller and Auditor General issuing an audit certificate for the final accounts of the dissolved body, a copy of the accounts together with the report of the Comptroller and Auditor General thereon shall be presented by the Board to the Minister.

(3) The Board shall prepare a final report for the dissolved body in respect of the specified period and submit the report to the Minister not later than 3 months after the expiration of the specified period.

(4) The Minister shall cause copies of the accounts and both of the reports presented to him or her under this section to be laid before each House of the Oireachtas as soon as may be after his or her receipt of them.

(5) In this section “specified period” shall be the period beginning on 1 January 2012 and ending on a date, determined by the Board, that is not more than 9 months after the commencement of this Part.

Amendment of Commission to Inquire into Child Abuse (Amendment) Act 2005.

40.— The Act of 2005 is amended—

(a) in section 24 by deleting subsections (5) and (6),

(b) in section 31 by deleting subsections (2) and (3), and

(c) in section 32 by deleting subsections (1), (2) and (3).

Closure of account of dissolved body and end of certain functions.

41.— (1) The Board shall, not later than 30 days after the laying of accounts by the Minister under *section 39(4)*, request the Agency to close the investment account established by the Agency under section 26(3) of the Act of 2005 and to pay moneys, if any, standing in that account into the investment account and the Agency shall so close the account and pay moneys.

(2) The Board shall not perform any functions conferred on the dissolved body under section 27 of the Act of 2005 on or after the day the investment account established under section 26(3) of the Act of 2005 is closed under *subsection (1)*.

PART 5

MISCELLANEOUS

Charitable status
of contributions
to Board and to
relevant costs.

42.— (1) Notwithstanding that it may not be authorised by the terms, or may be inconsistent with the charitable purposes, of a relevant trust the trustees of the relevant trust may make, and the Minister, with the consent of the Minister for Public Expenditure and Reform may accept, a payment of moneys where the purpose of the payment is to make a contribution towards the relevant costs.

(2) Subject to *subsection (4)*, notwithstanding that it may not be authorised by the terms, or may be inconsistent with the charitable purposes, of a relevant trust the trustees of the relevant trust may transfer all or part of the estate, right, title or interest of a relevant trust in land and the Minister may, with the consent of the Minister for Public Expenditure and Reform—

- (a) accept such transfer, or
- (b) direct the relevant trust to make such transfer to—
 - (i) a Minister of the Government (other than the Minister),
 - (ii) the Health Service Executive, or
 - F1[(iii) an education and training board,]

where the purpose of the transfer is to make a contribution towards the relevant costs.

(3) Subject to *subsection (4)*, notwithstanding that it may not be authorised by the terms, or may be inconsistent with the charitable purposes, of a relevant trust the trustees of the relevant trust may—

- (a) sell all or part of the land vested in a relevant trust, or
- (b) raise money by mortgaging or charging, by way of security for the repayment of the sum to be borrowed, all or part of the land vested in a relevant trust,

where the purpose of the sale, mortgage or charge is to enable the trustees of the relevant trust to make a contribution towards—

- (i) the costs incurred by the Board in the performance of its functions by way of payment under and in accordance with *section 29(2)*, or
- (ii) the relevant costs by way of payment under and in accordance with *subsection (1)*.

(4) (a) The trustees of a relevant trust shall not transfer land under *subsection (2)* or sell, mortgage or charge land under *subsection (3)* without seeking and obtaining the prior authorisation of the Commissioners.

- (b) Notwithstanding section 34 of the Charities Act 1961 the Commissioners, upon application to them in that behalf by the trustees of the relevant trust concerned, shall if satisfied that—
 - (i) a proposed transfer under *subsection (2)* shall be in accordance with, and for the purpose of the transfer referred to in, that subsection, or
 - (ii) a proposed sale, mortgage or charge under *subsection (3)* shall be in accordance with, and for the purpose of the sale, mortgage or charge referred to in, *paragraph (i) or (ii)* of that subsection,

authorise the transfer or sale, mortgage or charge subject to any directions in relation thereto that the Commissioners see fit to impose.

(5) The following shall be a charitable gift within the meaning of the Charities Act 1961:

(a) a payment—

(i) of moneys referred to in *section 29(1)(a)* received by the Minister and the Minister for Public Expenditure and Reform,

(ii) under *section 29(2)*,

(iii) under *subsection (1)*;

(b) a transfer under *subsection (2)*.

(6) Unless the act or omission concerned was done in bad faith, a trustee of a relevant trust shall not be liable in damages in respect of any act done or omitted to be done by him or her as trustee of the relevant trust where he or she—

(a) has made a payment of moneys referred to in *section 29(1)(a)* received by the Minister and the Minister for Public Expenditure and Reform,

(b) makes a payment under *section 29(2)*,

(c) makes a payment under *subsection (1)*,

(d) transfers land under *subsection (2)*, or

(e) sells, mortgages or charges land under *subsection (3)*,

notwithstanding that the payment, transfer, sale, mortgage or charge concerned is not authorised by the terms, or may be inconsistent with the charitable purposes, of the relevant trust.

(7) In this section—

“Commissioners” means the Commissioners for Charitable Donations and Bequests for Ireland;

“relevant costs” means the costs incurred by the Exchequer—

(a) in response to abuse in a residential institution specified in the Schedule to the Act of 2002, or

(b) in relation to the Commission to Inquire into Child Abuse Acts 2000 and 2005;

“transfer” includes a transfer, assignment, conveyance, lease, licence, sublease, sublicence, exchange, letting, subletting or otherwise parting with possession.

Annotations

Amendments:

- F1** Substituted (1.07.2013) by *Education and Training Boards Act 2013* (11/2013), s. 72(1) and sch. 6 item 62, S.I. No. 211 of 2013.

Special account. **43.**— (1) There shall be set up for the purposes of this section a special account in the name of the Minister for Health and any moneys accepted by the Minister under *section 42(1)* shall be placed in the special account.

(2) The moneys in the special account shall be used only—

(a) for the purposes of making contributions towards building, furnishing and equipping a new national paediatric hospital, or

(b) if purposes referred to at *paragraph (a)* no longer exist, for the purposes of making contributions towards extending, refurbishing, equipping or reequipping the hospital referred to in that paragraph.

(3) The moneys, including interest, in the special account may be used at any time for the purposes referred to in *subsection (2)* and shall be issued out of that account only by the Minister for Health with the consent of the Minister for Public Expenditure and Reform.

(4) The Minister for Health shall cause to be kept all proper and usual accounts of all moneys received into or payments made from the special account.

(5) In this section, “special account” means the account set up for the purposes of this section which account shall be—

(a) an account with the Central Bank,

(b) operated subject to such terms and conditions as the Minister for Public Expenditure and Reform may determine, and

(c) subject to audit by the Comptroller and Auditor General.

Amendment of
Residential Insti-
tutions Redress
Act 2002.

44.— The Act of 2002 is amended—

(a) in section 8 by inserting the following new subsections after subsection (5) (inserted by section 1 of the Residential Institutions Redress (Amendment) Act 2011):

“(6) Notwithstanding anything contained in subsection (2) or (3), the Board may strike out a request before it to extend the period referred to in subsection (1) where the person making the request has failed to comply with a direction of the Board under subsection (7).

(7) The Board shall not, under subsection (6), strike out a request unless it gives at least 28 days’ notice in writing to the person making the request of the Board’s intention to so strike out unless the person complies with the direction of the Board contained in the notice.”,

(b) in section 13—

(i) by inserting the following new subsections after subsection (9):

“(9A) Notwithstanding that an applicant has established the matters referred to in paragraphs (a), (b) and (c) of section 7(1), the Board may decide to strike out an application before it where an applicant has failed to comply with a direction of the Board under subsection (9B).

(9B) The Board shall not, under subsection (9A), strike out an application unless it gives at least 28 days’ notice in writing to an applicant of the Board’s intention to so strike out unless the applicant complies with the direction of the Board contained in the notice.

(9C) An applicant may submit a decision, under subsection (9A), to the Review Committee within one month, or such greater period as may be prescribed, of receipt of notice from the Board of the decision.”,

and

(ii) in subsection (10)(b) by inserting the following new subparagraph after subparagraph (i):

“(ia) has his or her application struck out under subsection (9A),”

and

(c) in section 15—

(i) in subsection (1)(c) by inserting “or 13(9C)” after “section 13(9)”, and

(ii) by inserting the following new subsection after subsection (4):

“(4A) The Review Committee, in a review of a decision referred to in section 13(9A)—

(a) shall review evidence relating to failure to comply with the direction of the Board under section 13(9B),

(b) may hear submissions on behalf of the applicant and such other evidence as it considers appropriate,

(c) shall review the decision taken by the Board and shall consider whether the decision of the Board was reasonable in all of the circumstances,

(d) may decide to—

(i) confirm the decision of the Board, or

(ii) annul the decision of the Board and give such other directions in relation thereto as the Review Committee thinks fit,

and

(e) shall inform the applicant and the Board of its decision under paragraph (d) as soon as practicable.”.

Section 11.

SCHEDULE

THE BOARD

1. In this Schedule, unless the context otherwise requires, “member” means a member of the Board.

2. (1) The Board shall be a body corporate with perpetual succession and an official seal and shall have power to sue, and may be sued, in its corporate name and shall, with the consent of the Minister and the consent of the Minister for Public Expenditure and Reform, have power to acquire, hold and dispose of land or an interest in land, and shall have power to acquire, hold and dispose of other property.

(2) The seal of the Board shall be authenticated by—

(a) the signature of any 2 members of the Board, or

(b) the signature of both a member of the Board and a member of the staff of the Board,

authorised by the Board to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Board and every document purporting to be an instrument made by, and to be sealed with the seal of, the Board 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 from office by giving notice in writing to the Minister and the resignation shall take effect on the day on which the Minister receives the notice.

(2) A member shall cease to be qualified for office and shall cease to hold office if he or she—

(a) is adjudicated bankrupt,

(b) makes a composition or arrangement with creditors,

(c) is sentenced to a term of imprisonment by a court of competent jurisdiction,

(d) is convicted of any indictable offence in relation to a company,

(e) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not,

(f) is the subject of an order under section 160 of the Companies Act 1990.

(3) If a member of the Board, a member of a committee established under *paragraph 9(1)* or the chief executive—

(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 that Parliament, or

(d) becomes a member of a local authority,

he or she thereupon ceases to be a member of the Board, the committee concerned or chief executive, as the case may be.

(4) Where a member of the staff of the Board—

- (a) is nominated as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or to be a representative in 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 that Parliament, or
- (d) becomes a member of a local authority,

he or she shall thereupon stand seconded from employment by the Board and shall not be paid by, or be entitled to receive from, the Board any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been so elected (as the case may be), and ending when such person ceases to be a member of either such House or a member of such Parliament or local authority.

(5) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member in the European Parliament or local authority shall, while he or she is so entitled or is such a member, be disqualified from being a member of the Board, a committee established under *paragraph 9(1)*, the chief executive or a member of the staff of the Board.

(6) Without prejudice to the generality of *subparagraph (4)*, that subparagraph shall be read as prohibiting *inter alia* the reckoning of a period mentioned in that subparagraph as service with the Board for the purposes of any superannuation benefit.

4. The Minister may at any time, on reasonable notice in writing and for stated reasons, remove from office a member of the Board (or, if the appointed member concerned is the chairperson, either from the Board or only from being chairperson) if, in the opinion of the Minister—

- (a) the member has become incapable through ill-health of performing his or her functions, or
- (b) the member has committed stated misbehaviour, or
- (c) the member's removal from office appears to be necessary or expedient for the effective performance by the Board 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 Board to fill the casual vacancy so occasioned in the same manner as the member of the Board who occasioned the casual vacancy was appointed.

(2) A person appointed to be a member of the Board 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 and shall, subject to *paragraph 3*, be eligible for reappointment as a member of the Board on the expiry of the said period.

(3) Subject to *paragraph 6(8)*, the Board 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 Board.

(2) The Board shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.

- (3)(a) In addition to meeting with all participants physically present, the Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time and such a meeting shall be referred to as an “electronic meeting”.
- (b) A member who participates in an electronic meeting is taken for all purposes to be present at the meeting.
- (4) The chairperson may, at any reasonable time, call a meeting of the Board and the chairperson shall convene a meeting of the Board whenever requested to do so by not less than the number of members which constitute a quorum.
- (5) At a meeting of the Board—
- (a) the chairperson of the Board shall, if present, be the chairperson of the meeting, or
- (b) if and so long as the chairperson of the Board is not present or if that office is vacant, the other members of the Board who are present shall choose one of their number to be chairperson of the meeting.
- (6) Every question at a meeting of the Board shall be determined by a majority of the votes of the members of the Board 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.
- (7) Subject to this Act, the Board shall regulate its procedures, including procedures for an electronic meeting, and business by rules or otherwise.
- (8) The quorum for a meeting of the Board shall, unless the Minister otherwise directs, be 5.
7. (1) Where at a meeting of the Board any of the following matters arise, namely—
- (a) an arrangement to which the Board is a party or a proposed such arrangement, or
- (b) a contract or other agreement with the Board or a proposed such contract or other agreement,
- then any member of the Board present at the meeting who, otherwise than in his or her capacity as such member, has a material interest in the matter shall—
- (i) at the meeting disclose to the Board the fact of the interest and the nature thereof in advance of any consideration of the matter,
- (ii) neither influence nor seek to influence a decision to be made in relation to the matter,
- (iii) take no part in any deliberation of the Board in relation to the matter,
- (iv) absent himself or herself from any meeting or part of a meeting during which the matter is discussed, and
- (v) not vote or otherwise act on a decision relating to the matter.
- (2) Where a material 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 at a meeting of the Board 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 Board presiding over the meeting may determine the question and the chairperson's or presiding member's decision is final.

(4) If a question referred to at *subparagraph (3)* 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 and in the case of *subparagraph (3)* or this subparagraph particulars of the determination shall be recorded in the minutes of the meeting.

(5) If the Minister is satisfied that a member of the Board has contravened *subparagraph (1)*, the Minister may, if he or she thinks fit, remove that member from office and, in case a person is removed from office pursuant to this subparagraph, he or she shall thenceforth be disqualified from membership of the Board.

8. (1) Where a member of the staff of the Board has a pecuniary interest or other beneficial interest in, and material to, otherwise than in his or her capacity as such a member, a contract, agreement or arrangement that falls to be considered by the Board, that person shall—

- (a) disclose to the Board 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 Board or members of the staff of the Board in relation thereto, and
- (c) neither influence nor seek to influence a decision to be made in relation to the contract, agreement or arrangement 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 Board with the Board.

(3) Where a person contravenes this paragraph the Board 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 Board may establish—

- (a) such advisory committees as it considers necessary or desirable to advise it in the performance of its functions, and
- (b) committees to perform such functions of the Board as may stand delegated to them under *paragraph 10*.

(2) A committee established under *subparagraph (1)* may include persons who are not members of the Board, but a majority of the members of such a committee shall be members of the Board.

(3) In appointing members of a committee established under this paragraph, the Board shall—

- (a) have regard to the range of qualifications and experience necessary for the proper and effective discharge of the functions of the committee,
- (b) have regard to the desirability of there being such balance between men and women on the committee as is appropriate.

(4) A member of a committee established under *subparagraph (1)* may be removed from office at any time by the Board.

(5) The Board may determine the terms of reference and procedures of a committee established under *subparagraph (1)*.

(6) There may be paid by the Board to a member of a committee established under *subparagraph (1)* such allowances for expenses (if any), as the Minister, with the approval of the Minister for Public Expenditure and Reform, may from time to time determine.

(7) The acts of a committee established under *subparagraph (1)* shall be subject to confirmation by the Board, unless the Board otherwise determines.

(8) The Board may appoint a chairperson of a committee established under *subparagraph (1)*.

(9) A committee established under *subparagraph (1)* shall provide the Board with such information as the Board may from time to time require, in respect of its activities and operations, for the purposes of the performance of the functions of the Board.

(10) The Board may at any time dissolve a committee established under *subparagraph (1)*.

10. The Board may, with the consent of the Minister, delegate such one or more of its functions as it considers appropriate to a committee established under *paragraph 9(1)*.

11. (1) This paragraph applies to the following persons:

- (a) each member of the Board;
- (b) each member of a committee established under *paragraph 9*;
- (c) a member of staff of the Board.

(2) Where the Board 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 Board in good faith, the Board shall indemnify that person against all actions or claims however they arise in relation to the discharge by that person of those functions.