

MOTHER AND BABY HOMES COMMISSION OF INVESTIGATION

73 Lower Baggot St, Dublin 2.
or P.O Box 12626, Dublin 2.

Tel: 01 644 5000
Confidential Freephone (ROI): 1800 806 688

16 September 2016

Dr Katherine Zappone TD
Minister for Children and Youth Affairs
43 – 49 Mespil Road
Dublin 4

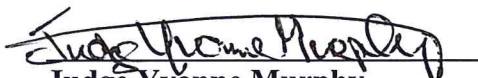


Re: Interim Report in accordance with Section 33 of the Commissions of Investigation Act 2004.

Dear Minister,

Please find enclosed second Interim Report of the Commission in accordance with Section 33 of the Commissions of Investigation Act 2004.

Yours sincerely,


Judge Yvonne Murphy
Chairperson

Email: info@mbhcoi.ie

Website: www.mbhcoi.ie

Confidential line for callers outside Republic of Ireland: 00 353 1 644 5088

Second Interim Report

September 2016

Interim report compiled at the request of the Minister for Children and Youth Affairs
under Section 33 of the *Commissions of Investigation Act 2004*

1. Introduction

1.1 Article (6) of the Commission's Terms of Reference provides that "The Commission may include in its reports any recommendation that it considers appropriate, including recommendations in relation to relevant matters identified in the course of its investigation which it considers may warrant further investigation in the public interest. In any event, on the completion of the Report on the wider social and historical context required under Article (11) the Commission shall report to the Minister on whether it considers specific matters not included in the existing scope may warrant further investigation as part of the Commission's work in the public interest."

1.2 In its Interim Report published in July 2016 (and attached as Appendix 1), the Commission requested a revision of the timeframe for the production of the Report required under Article (11) – the Social History Report. This was granted by Government decision on 27 July 2016¹.

1.3 The granting of this request had repercussions for the requirements of Article (6) of the Terms of Reference. It meant that any further clarity about the scope of the investigation would not be provided in the timeframe originally set out. Accordingly, the Minister for Children and Youth Affairs asked the Commission to issue an Interim Report under Section 33 of the *Commissions of Investigation Act 2004* on the issues raised in Article (6). The Commission is providing this Interim Report in response to the Minister's request.

1.4 ***The Commission wishes to emphasise that this report is compiled on the basis of information and evidence gathered up to August 2016.***

¹ This decision also revised the timeframe for the production of the Confidential Committee report.

2. Existing Terms of Reference

2.1 The Commission's existing Terms of Reference, which are appended as Appendix 2, are very wide. As well as compiling a Social History Report covering the bulk of the 20th century, the Terms of Reference involve analysing information about approximately 70,000 mothers² and a larger number of children³ who were resident in the 14 named Mother and Baby Homes and the four County Homes⁴ selected as a representative sample by the Commission. They also require the collection and analysis of information about, among other things:

- entry and exit pathways for those mothers and children;
- living conditions, mortality rates, post-mortem practices, burial arrangements and vaccine trials in the institutions;
- practices in relation to placement for fostering and adoption.

2.2 To date, the Commission has amassed a vast quantity of information about all these issues. This is currently being analysed and further information is being collected. The Commission is concentrating on collecting and analysing information which is relevant to its Terms of Reference. Inevitably, other information has been discovered which is not relevant but may have a bearing on the question of whether or not the Terms of Reference should be extended in the public interest. Until such time as all of this information has been collected and analysed it will not be possible to establish whether or not changes are required to those Terms. In this interim report, the Commission is not specifically recommending any changes to those Terms but is highlighting issues that have arisen and which it may be possible to deal with in ways other than by extending its Terms of Reference. When the investigation into the named Mother and Baby Homes and the selected County Homes is concluded, the Commission may be in a position to recommend further investigations.

3. Issues which have arisen

3.1 The Commission has received submissions and heard direct evidence from a number of individuals and groups about issues which are related to its Terms of Reference but are not part of those Terms.

² The Commission is in the process of collecting information about all of the relevant institutions and does not yet have a final figure for the numbers involved.

³ A substantial number of children were resident in these institutions without their mothers. The Commission does not yet have a final figure.

⁴ These are Cork City (St Finbarr's); Dublin Union (St Kevin's); Stranorlar and Thomastown

3.2 The main issues addressed here are:

- The exclusion of some children's homes from the Residential Institutions Redress Scheme
- The exclusion of some mother and baby homes from the remit of this Commission
- False registration of births.

3.3 The Commission has also had representations that all mothers whose children were adopted and all adopted children should come under its remit – in effect, that all adoptions should be investigated regardless of whether the mothers concerned were resident in mother and baby homes. This would require a full investigation into all adoption societies, the Adoption Board and all adoption orders, and would be a vast undertaking. The Commission is examining adoption practices in the cases of mothers and children who were resident in the specified institutions. As required by its Terms of Reference, the Commission is very conscious of the issue of illegality or irregularity in the adoption process. When it completes its analysis of the adoption process in the cases of mothers and children in the named Mother and Baby Homes and selected County Homes, it may be in a position to make recommendations about further investigations.

4. The Residential Institutions Redress Scheme

4.1 A number of individuals and groups have made the case that they consider the exclusion of the institutions in which they were resident as children from the Residential Institutions Redress Scheme (the "redress scheme") to be unfair and, in some cases, discriminatory on religious grounds. They argue that the former residents of these institutions are now old and a decision needs to be made very quickly to provide them with redress if they qualify.

4.2 The Commission considers that the exclusion of most of the Mother and Baby Homes and all of the County Homes from the redress scheme warrants further investigation. It considers that the Department of Education and Skills and the Department of Health should re-examine the decisions not to include them.

4.3 The Commission recognises that any decision about redress for any particular group is a matter for the Government but it is clear that children who were resident in the named Mother and Baby Homes and all County Homes without their mothers have a real cause for grievance. It is clear to the Commission, from its work to date, that the decisions on which

institutions to include in, or exclude from, the redress scheme are not consistent. Former residents of the Bethany Home have been to the forefront in arguing that they should have been included in the redress scheme. The Commission is of the view that they have a strong case for inclusion. There is also a strong case for the inclusion of Mother and Baby Homes such as Bessboro⁵, Sean Ross, Castlepollard, Tuam and Dunboyne and all of the County Homes. The Commission has not seen any evidence that the exclusion of Bethany Home constituted discrimination on religious grounds. A number of Protestant institutions were included in the redress scheme and the arguments in relation to Bethany's exclusion apply equally, or perhaps more strongly, to the other Mother and Baby Homes and County Homes which were excluded.

4.4 As its investigation is far from complete, the Commission is not asserting that abuse occurred in the institutions which it is investigating. It is simply pointing out that children who were resident in these institutions without their mothers were in the same position as children who were resident in the industrial schools and orphanages which were covered by the redress scheme. Logically, children who were resident in the named Mother and Baby Homes and all County Homes should be eligible to apply for redress in the same way and under the same conditions.

Homes which were included in the redress scheme

4.5 Department of Education and Science⁶ officials gave evidence to the Commission to Inquire into Child Abuse (generally known as the Ryan Commission) about the background to the Residential Institutions Redress Scheme – this is outlined in Volume 1 of the Ryan Report.⁷ It is clear that the redress scheme was intended primarily for former residents of industrial schools and reformatories but other institutions where children were resident were also covered.

4.6 The preamble to the *Residential Institutions Redress Act 2002* states that it is
“AN ACT TO PROVIDE FOR THE MAKING OF FINANCIAL AWARDS TO ASSIST
IN THE RECOVERY OF CERTAIN PERSONS WHO AS CHILDREN WERE
RESIDENT IN CERTAIN INSTITUTIONS IN THE STATE AND WHO HAVE OR
HAVE HAD INJURIES THAT ARE CONSISTENT WITH ABUSE RECEIVED WHILE
SO RESIDENT ...”

⁵ Bessboro is sometimes spelt Bessborough.

⁶ The name of this and other departments changed over time.

⁷ Commission to Inquire Into Child Abuse (Dublin: The Stationary Office, 2009)
<http://www.childabusecommission.ie/rpt/pdfs/>

The Bill as initiated⁸ provided that an award would be made to a person who was resident in an “institution” as a child if certain other conditions were met. The Bill defined an “institution” as “an industrial school, a reformatory school, an orphanage or a children’s home in which children were resident and in respect of which a public body had responsibilities relating to inspection or regulation”. It did not list the institutions that were to be covered by the scheme. In his Second Stage speech⁹, the Minister for Education and Science, Dr Woods, said that the Bill “will provide financial awards for people who, as children, suffered abuse in residential institutions for which public bodies had responsibility”. “Claimants to the redress board will be people who allege abuse while they were resident in an institution in respect of which State bodies had regulatory or supervisory functions. The institutions concerned are mainly reformatory and industrial schools and orphanages”.

4.7 The Bill was amended at Committee Stage to remove the definition of an institution and substitute a Schedule listing the institutions that were to be covered. It also provided for the possible addition of further institutions. After Committee Stage, there were 77 institutions named in the Schedule of which 56 were industrial schools or reformatories. Further amendments were made at later stages. When the Bill was passed by the Dáil, there were 128 institutions named in the Schedule (the additions were virtually all orphanages). Five of these were double entries¹⁰ so, in effect, there were 123 institutions covered. No further additions were made by the Seanad.

4.8 During the debates on the different stages of the Bill, the Minister for Education and Science was clear that the inclusion of an institution in the Schedule did not imply that there had been a complaint of abuse in respect of that institution.¹¹

4.9 The Act provided for the addition of other institutions to the Schedule. Section 4 (1) provided that

“The Minister may, by order, provide for the insertion in the *Schedule* of any industrial school, reformatory school, orphanage, children’s home, special school which was established for the purpose of providing education services to children with a physical or intellectual disability or a hospital providing medical or psychiatric services to people with a physical or mental disability or mental illness in which children were

⁸ *Residential Institutions Redress Bill 2001*; the progress of the Bill through the Oireachtas can be tracked at: <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2001/3501/default.htm>

⁹ Dáil Reports, 7 November 2001

¹⁰ The duplicates were deleted by the *Commission to Inquire into Child Abuse (Amendment) Act 2005*

¹¹ Seanad Committee Stage, 22 March 2002

placed and resident and in respect of which a public body had a regulatory or inspection function.”

Subsequently, 16 other institutions were added¹².

4.10 Of the institutions being investigated by this Commission, one was included in the redress scheme – St Patrick’s, Navan Road (Pelletstown). This was added to the original Schedule by SI 518/2005.

4.11 The Commission recognises that Section 4 of the *Residential Institutions Redress Act 2002* does not make the addition of other institutions mandatory even if they meet the conditions. The Commission, however, considers that it is not logical to include, for example, St Patrick’s, and not include the other Mother and Baby Homes being investigated by this Commission and all County Homes.

Why particular institutions were covered by the scheme

4.12 The rationale for the inclusion of the industrial schools and reformatories is clear – they were all certified, financed and regulated by the State. The situation with the orphanages is not quite so clear. At least some of the orphanages were approved for the boarding out of children under Section 55 of the *Health Act 1953* but it was recognised that they were “not subject to specific statutory regulations”.¹³ The Commission is not yet in a position to establish if all the orphanages were so approved. It would appear that not all institutions approved under Section 55 were included.

4.13 The Schedule also included a number of homes for children with disabilities and children’s hospitals. The homes for children with disabilities were financed or financially subvented by the State. Some of them were recognised schools over which the Department of Education had a regulatory and inspection function but that function was related to education and not to standards of residence and care.¹⁴

¹² By SI 518/2005 and SI 924/2005

¹³ Minister for Health Second Stage speech on *Child Care Bill 1988*, 14 June 1988 (this Bill became the *Child Care Act 1991*). Statutory standards for children’s residential centres were first introduced in December 1996 – SI 397/1996.

¹⁴ As is noted in the Ryan Report, the Department of Education inspected St Joseph’s School for Deaf Boys but did not inspect the residential areas.

4.14 There was no formal regulatory or inspection scheme in place for homes for children with disabilities which were not schools until 2013.¹⁵ The children's hospitals were financially supported by the State but, again, there was no formal regulatory or inspection system.

4.15 It could be argued that the fact of financing in itself would imply a regulatory or inspection function. While it was not the practice until relatively recently to have service level agreements, quality standards and other regulatory arrangements in place between the State and the institutions it financed, the fact of financing did give the State the ultimate regulatory power – that is, the power to close the institutions. This does not seem to have been considered, and certainly was not accepted, in the case of the Mother and Baby Homes which were considered for inclusion in the redress scheme but were not actually included.

Institutions which were not included

4.16 Bethany Home was considered for inclusion in the redress scheme while the legislation was going through the Oireachtas. An amendment to include Bethany Home in the Schedule to the Bill was proposed in the Seanad. In the course of discussion, the Minister for Education and Science said that Bethany Home is “probably one which should be included”.¹⁶ The amendment was not put to a vote as the facility to add other institutions was provided in the Bill and the proposer of the amendment seemed to understand that Bethany Home would be included in the first order which the Minister proposed to make.

4.17 After the Act was passed, there was extensive correspondence between the Department of Education and the Department of Health about adding other institutions to the Schedule. In 2015, the Department of Education and Skills provided the Commission with a list of the institutions which were brought to its attention when the Schedule to the Act was being compiled. Some of these were considered for inclusion in the Schedule but were not actually included. There are about 600 institutions on this list.¹⁷ This list includes the following institutions which are the subject of this Commission's work: Belmont, Bessboro,

¹⁵ The inspection and regulation of these homes come under the remit of the Health Information and Quality Authority under the *Health Act 2007*.

¹⁶ Seanad debate on the *Residential Institutions Redress Bill 2001*, Committee and remaining stages, 22 March 2002,

¹⁷ The list has 614 named institutions but there is some duplication and some on the list were covered by the redress scheme under another name. The list includes a wide range of general, psychiatric and specialist hospitals; Magdalene Laundries; nursing homes and schools. These are not immediately relevant to this Interim Report but may be relevant to the Commission's investigation and, in particular, to its analysis of the different types of institutional settings which existed – Term of Reference (11) D.

Bethany, Castlepollard, Denny House, Dunboyne, The Castle, Regina Coeli, Sean Ross,¹⁸ and Tuam. It does not include Kilrush¹⁹, Miss Carr's²⁰ or St Gerard's.

4.18 The list also includes a number of County Homes.

4.19 A number of institutions which are described as mother and baby homes and which are not being investigated by the Commission are also included on this list.²¹

4.20 The Department of Education and Skills explained to the Commission in 2015 that requests to include mother and baby homes in the redress scheme were generally refused as they "did not satisfy the eligibility conditions of Section 4".

4.21 There is really only one question to be asked in respect of eligibility – did a public body have a regulatory or inspection function in respect of that institution? The Commission considers that the Department of Education and the Department of Health may have addressed that question without full information being available to them.

4.22 The Department of Health and Children did seem to lack basic information about Mother and Baby Homes. In January 2004, it told the Department of Education:

"In relation to Mother and Baby Homes again these would have been privately operated establishments to which a person would not have been sent by the State or where the State acted in loco parentis. I would like to point out that it is the case that the Department funds or would have funded most of the institutions by way of capitation grants either directly or through Health Boards but no control would have been exercised."

4.23 As late as January 2005, the Department of Health told the Department of Education that it had been unable to locate any records in relation to Bessboro. This is despite the fact that Bessboro had been receiving State support for over 80 years. In April 2005, the Department of Health told the Department of Education that consideration would have to be given to including, among others, Castlepollard and Regina Coeli in the Schedule as

¹⁸ St Anne's, Sean Ross is in the Schedule; this is the home for children with disabilities which was established on the grounds of the Sean Ross Mother and Baby Home

¹⁹ Kilrush closed in 1932 so it is not surprising that it was not brought to the attention of the department in the 2000s.

²⁰ Children lived with their mothers in Miss Carr's so the question of redress would not arise. Miss Carr's Children's Home was in the Schedule.

²¹ Some of these are known to the Commission as having been mother and baby homes but it is not clear if all are accurately described.

evidence had been found of a regulatory or inspection function as set out in Section 4 of the Act. In May 2005, the Department of Health told the Department of Education that the inclusion of Bessboro should be considered as papers had been found which referred to an inspection having been carried out.

4.24 The correspondence between the two departments which the Commission has seen suggests that factors other than the criterion set out in Section 4 of the Act may have been taken into account. In particular, the existence or not of a complaint against an institution does seem to have become a factor even though it was clear that this was not a factor in the compilation of the original Schedule nor is it a criterion set out in the Act.

4.25 It would also appear that there was an impression that, in general, children were not resident in mother and baby homes without their mothers. The Commission, while it has not yet completed its investigations, has clear evidence that children did live in Mother and Baby Homes and in County Homes without their mothers.

4.26 While recognising that its investigation is not completed, the Commission can say that the State had a significant role in the Mother and Baby Homes being investigated. The relevant health authorities²² were instrumental in the establishment of a number of them, notably Bessboro, Tuam, Castlepollard, St Patrick's, Kilrush and Dunboyne, and were involved in various aspects of their administration, including, in some cases, deciding who was placed in the institution. For example, the records of the Cork Board of Public Assistance show that it was actively involved in decisions about entry to and exit from Bessboro especially in its early years. Bessboro was inspected by Dr James Deeny, the Chief Medical Officer in the Department of Health. He closed it down because of the existence of a severe infection. Dr Deeny says that he did this "without any legal authority".²³ He may or may not have had legal authority to close it down but the Cork Board of Public Assistance could have closed it down by removing its financial support. The Commission has seen an agreement between local authorities and one of the homes under investigation which specifically provides for inspection by officers of the local authorities and the Minister for Health. This inspection role may have been rarely, or possibly never, exercised but, nevertheless, there was an inspection role.

²² The Commission is using the term "health authorities" to include the different bodies which had responsibility over the years of its remit. Initially, these were the local authorities, specifically the Boards of Public Assistance; in 1972, the health boards were established. The Department of Health was involved in approving, for example, rates of payment for the upkeep of mothers and children and a number of other issues in relation to the Mother and Baby Homes.

²³ Deeny, James *To Cure & To Care* (Dublin: The Glendale Press, 1989), Page 85

4.27 The relationship between the health authorities and these Mother and Baby Homes may not have been exactly the same as, but it was similar to, the relationship between the health authorities and St Patrick's (Pelletstown) which is included in the redress scheme. The Commission has not seen any evidence that the health authorities were involved in the establishment of the Bethany Home but it has seen clear evidence that the State made financial contributions in respect of some of the residents and exercised an inspection/regulatory role.

4.28 The County Homes were established, owned and financed by the State and all significant decisions about them were made by State authorities.

4.29 Accordingly, the Commission considers that the exclusion of the named Mother and Baby Homes and the County Homes from the redress scheme needs to be re-examined by the Departments of Education and Health. Children who were resident in these institutions without their mothers would seem to have been in the same position as children resident in the institutions which were eligible for redress. The Commission recognises that the Residential Institutions Redress Board which heard applications for redress under the scheme has almost completed its work. However, it would be possible for the Oireachtas to enact legislation to allow the Board to hear further applications or the Government could consider other redress options.

5. Other institutions

5.1 The Commission is in the process of investigating 14 named Mother and Baby Homes and a representative sample of County Homes.

5.2 As part of its Social History Report, the Commission is compiling information about "the types of institutional settings (e.g. mother and baby homes, county homes, private nursing homes, homes for infants or children) where single women and their children, or other children, were accommodated".²⁴ These various institutions and others such as hospitals, Magdalen laundries and industrial schools also feature as entry and/or exit pathways for some of the mothers and children in the Mother and Baby Homes and County Homes under investigation. It is important to emphasise that the Commission's role in this

²⁴ Term of reference (11) D; other aspects of these institutional settings will be described under Term of reference (11) E to I.

respect is the compilation of information; it is not investigating these institutions. A number of individuals and groups wish to have the Commission investigate a wide range of these institutions.

5.3 An organisation campaigning on these issues has provided the Commission with a list of about 160²⁵ institutions which it argues should be investigated in order to give a complete picture of the treatment of unmarried mothers and children born outside marriage.

This list includes

- 10 institutions which are being investigated by this Commission
- 29 County Homes, a representative sample of which are being investigated by this Commission
- 10 Magdalen laundries which have been investigated in the Report of the Inter-Departmental Committee to establish the facts of state involvement with the Magdalen Laundries (generally known as the McAleese Report)²⁶ and in respect of which a redress scheme (an *ex-gratia* scheme separate from the Residential Institutions Redress Scheme) is in place
- 16 industrial schools and orphanages; the Ryan Commission investigated the major industrial schools and some orphanages; the 16 institutions listed were all included in the Schedule to the *Residential Institutions Redress Act*.
- 22 adoption societies; as already pointed out, the Commission is investigating adoption arrangements made in the cases of babies in the named Mother and Baby Homes – see paragraph 3.3 above.
- 4 Boards of Assistance which were involved in the running of the Mother and Baby Homes and County Homes being investigated

5.4 The Commission does not consider that it would be in the public interest that institutions which have already been investigated, or in respect of which a State apology has been given and a redress scheme put in place, should be further investigated.

5.5 There are about 70 institutions on this list which have not been investigated in the past or are not being investigated by this Commission. These 70 institutions are mainly private nursing homes/private maternity homes some of which took on a role in keeping

²⁵ There are over 160 institutions on the list provided to the Commission in May 2016; there are some duplicates and some which are outside the State and therefore not capable of being investigated by an Irish commission of investigation; there are also some individuals named on the list – these individuals are all dead.

²⁶ <http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013>

children or in boarding out children; and some are orphanages. The Commission is aware of others which are not on this list but which fall into similar categories.

5.6 The named Mother and Baby Homes being investigated by the Commission are unquestionably the main such homes that existed during the 20th century. They all received State funding to a greater or lesser degree. The State was directly responsible for establishing a number of them.

5.7 There were a number of other, generally smaller, homes, which could be described as mother and baby homes, in existence at various times during the period 1922 – 1998. The Commission has found evidence of their existence while conducting its research into the named institutions.

5.8 These homes seem to have been primarily maternity homes which then took on other roles in relation to the children of unmarried mothers. It would appear that unmarried mothers gave birth in these homes; the mothers and babies may have stayed for a period in the homes or the babies may have stayed in the homes without their mothers. The babies may have been boarded out either by private arrangement between the mother and a family or by the home owner. The Commission, so far, has not found any evidence that there was any State role in the establishment of these homes but there was a State role in inspecting them if they were maternity homes and in regulating them if they were taking care of children for reward. It also seems that some of them received some State financing but the Commission does not yet know enough about this to reach definitive conclusions.

5.9 The Report of the Commission on the Relief of the Sick and Destitute Poor (1927) refers to the existence of maternity homes which were poorly run and catered mainly for unmarried mothers.

“The Commission drew attention to different evils which they traced to the poor-class maternity homes, or to the not too scrupulous management of those homes, particularly the connivance of the management at the secret disposal of children to unsuitable foster parents, and the consequent high death rate amongst the children.”²⁷

²⁷ Dr Ward, Parliamentary Secretary to the Minister for Local Government and Public Health, during his 2nd stage speech on the *Registration of Maternity Homes Bill 1934*; Seanad Reports, 11 April 1934

It recommended that there be a regulation and inspection system for such homes. Such a system was put in place by the *Registration of Maternity Homes Act 1934*.

5.10 As already stated, the Commission has come across a number of such private nursing homes/maternity homes while conducting its research. Some information is available about a number of them but there is very little information available about most of them. Many are just addresses of what are now private houses and it is clear that they have not operated as private nursing homes/private maternity homes since the 1950s/1960s. The Commission has come across some which were entry or exit pathways for the Mother and Baby Homes under investigation. It would appear that most were not used exclusively by unmarried mothers. Some seem to have been used for the boarding out of children – the Commission has not yet been able to establish if they were approved for this purpose by the State authorities or if there were purely private arrangements involved.

5.11 If the Commission can find further information about these institutions, relevant information will be included in the Social History Report. At that stage, the Commission may be in a position to comment on whether or not further investigation would be fruitful.

Westbank

5.12 The Commission has heard arguments specifically in relation to a home which was associated with Bethany Home – Westbank/Mayil in Wicklow.

5.13 Westbank was not generally regarded as a mother and baby home but rather as an orphanage. The Commission has discovered some evidence that there was an element of State involvement with Westbank in that children were sent there by the health authorities.

5.14 The Commission does not consider that it would be appropriate to include Westbank in its Terms of Reference. However, there is an argument that it should have been included in the Residential Institutions Redress Scheme.

5.15 Many of the children in Westbank were sent to families in Northern Ireland. Some of the complaints heard by the Commission relate to their time with these families. Clearly, the Commission could not investigate such complaints. A separate approach would have to be taken to any alleged abuse which occurred outside the State.

6. False registration of birth

6.1 The term “illegal adoption” can be used to cover a wide variety of situations including actions taken (or not taken) prior to the adoption and illegality in the adoption orders made.²⁸ The issue of illegality in adoptions is part of the Commission’s remit to the extent that it must examine the adoption process, including placements and pre-adoption procedures, in the cases of mothers in the named Mother and Baby Homes and the selected County Homes.

6.2 The term “illegal adoption” is also sometimes used to describe the false registration of a birth. The Commission is aware of a number of people who allege that they have been illegally adopted or, perhaps more accurately, their births were falsely registered. It is possible that the Commission will come across other such cases in its analysis of the records of the Mother and Baby Homes within its remit and, if so, these cases will be investigated. Any false registrations involving mothers who were not in one of the institutions under investigation do not come within its remit.

6.3 By its nature, information about false registration of birth is very difficult to find and consequently it is impossible to fully investigate the issue. In many cases, there may be no records other than the birth registration. The date of birth given on such registrations may also not be accurate.

6.4 False registration of birth was a criminal offence at all times in the period covered by the Commission’s remit²⁹. It is possible that such registrations were carried out for what were perceived to be good reasons (this does not change the fact that it was an offence). Formal legal adoption did not become available in Ireland until 1953. There is some anecdotal evidence to suggest that, prior to the availability of formal adoption, “adoptive” parents may have falsely registered the birth in the belief that they were conferring legal status on the child. Private placement for adoption was legal until 1998. It may be that some people registered the adopted child in their own name without realising that this was illegal and that they should have applied for an Adoption Order.

6.5 In most cases of false registration it is likely that the baby was handed over to a couple and the baby was registered as the child of this couple. There are a number of possible scenarios:

²⁸ For a full discussion of all the issues, see Baglietto C, Cantwell N, Dambach M (Eds) *Responding to Illegal Adoptions: A Professional Handbook*, (Geneva: International Social International, 2016)

²⁹ Section 30 of the *Births and Deaths Registration Act (Ireland) 1880*.

- (a) The child was registered as the child of the “adoptive” parents and there is no adoption order; in these cases, there would be no records held by an adoption society or the Adoption Authority of Ireland³⁰; there may be no records held by anyone. In these cases, it is likely that the person who organised the handover of the baby was the mother herself, her family or a person associated with the mother or family, for example, a doctor, priest, or maternity home. The “adoptive” parents may have then organised the registration.
- (b) The child was registered as the child of the “adoptive” parents but there is an adoption order; in these cases, the Adoption Authority of Ireland have records and, if there was an adoption society involved, that society should have records. In these cases, the normal tracing arrangements would apply but, of course, there may not be a record of the mother’s name. The mother in such cases may or may not be aware of the false registration. (The Commission is, of course, aware that changes to the tracing legislation are planned.) If the false registration was organised by a hospital, nursing home or adoption society, the institution may have records. In general, the records of adoption societies are extant while those of nursing homes or hospitals may or may not be.
- (c) The child was the child of a married woman and the father was not her husband. There was a strong legal presumption that children in these circumstances were the children of the marriage and therefore not eligible for adoption. In order to make the child eligible for adoption, the mother would have had to establish that the child was not a child of the marriage. This could be difficult and one way in which such a child could be “adopted” was by means of a false birth registration. The Commission is aware of records from a mother and baby home which describe a child in this situation as having been “placed for adoption”. The Commission will investigate this and any other similar cases if they exist.

6.6 The extent of the practice of false registration of birth is very difficult to establish. The Adoption Authority of Ireland (AAI) is aware of about 160 cases. The Commission recognises that the AAI is keeping the issue under review.

6.7 In some cases, the “adoptive” parents told the child that he or she was falsely registered as their child. Sometimes, other people told the child or the child discovered the

³⁰ The Adoption Authority of Ireland was established by the *Adoption Act 2010*; among other things, it took over the functions of the former Adoption Board.

situation by accident. Some had been told by the parents that they were adopted but when they tried to trace, they found that they were registered as the child of the “adoptive” parents. It may be that there are numbers of people affected by this practice who have no reason to know or suspect it.

6.8 The Commission understands and sympathises with the deep seated need for people in this situation to establish their true identity. Unfortunately, it is not at all clear how this can be done. If there are no records and the people involved in the false registration do not come forward, it is difficult to see what assistance could be provided by further investigation.

6.9 The analysis of all existing adoption records would not necessarily reveal such registrations. Not even a national DNA database would assist all of the people concerned as it would not necessarily reflect the effects of emigration and immigration.

6.10 The false registration of a birth is a criminal offence. It may be of assistance to people affected to encourage those responsible to come forward and correct the record. An amnesty for people in this situation may help.

Appendix 1: Interim Report, July 2016

Interim Report

July 2016

A request for the revision of the timeframe for submitting two final reports under Section 6(6) of the Commissions of Investigation Act 2004

1. Introduction

1.1 The Commission of Investigation into Mother and Baby Homes and Certain Related Matters was established on 17 February 2015. Its Terms of Reference are set out in Statutory Instrument 57/2015.

1.2 The Minister for Children and Youth Affairs appointed Judge Yvonne Murphy as Chairperson of the Commission and Professor Mary Daly and Dr William Duncan as members of the Commission.

1.3 The Terms of Reference of the Commission require it to produce three final reports:

- Confidential Committee report: to be submitted by 17 August 2016
- Social History report: to be submitted by 17 August 2016
- Report of the investigation into the 14 named Mother and Baby Homes and a representative sample of county homes: to be submitted by 17 February 2018

1.4 The purpose of this interim report is to request the revision of the timeframe for submitting the first two final reports. Under Section 6(6) of the Commissions of Investigation Act 2004, the Commission requests that the timeframe for submitting these reports be the same as for the submission of the third report.

1.5 The Commission does not consider that this change will require any change to the statement of costs which accompanied the Terms of Reference.

2. The Work of the Commission to date

2.1 The Commission has been working on all three reports in tandem. As this work has progressed, it has become clear that these reports cannot be treated as if they were totally separate and distinct. The work of the Confidential Committee has been informing the investigation and the investigation work has been informing the Commission's understanding of social history. The Commission is of the view that

- more time is needed to hear the many people who wish to give evidence to the Confidential Committee
- the social history report, if completed on the basis of published sources, would not “establish an objective and comprehensive historical analysis”.

3. Confidential Committee

3.1 The role of the Confidential Committee is to “provide a forum for persons who were formally resident in the homes [listed in the Terms of Reference] or who worked in these institutions ... to provide accounts of their experiences...as informally as is possible in the circumstances”. The Commission used its power to appoint appropriately qualified people to be members of this committee. The establishment of the Committee and the putting in place of arrangements for its operation took some considerable time. Staff had to be recruited; procurement processes had to be put in place for services such as advertising and IT and arrangements had to be made for the payment of expenses to witnesses while maintaining strict confidentiality.

3.2 On 15 May 2015, the Commission appointed Mr Kevin Healy and Ms Lucy Scaife as Members of the Confidential Committee. On 15 June 2015, a researcher was appointed to work primarily with the Confidential Committee. A member of staff was delegated to be the Confidential Committee Liaison Officer. Training was organised for the committee members and for all staff who would interact with witnesses.

Advertising the Confidential Committee

3.3 After a tendering process, an advertising campaign was conducted in June/July 2015 in national and local press and local radio. A commission representative gave a number of interviews on local radio stations encouraging relevant people to come forward. Further advertising and related interviews took place in June 2016 after the Commission had chosen the representative sample of county homes.

Operation of Confidential Committee

3.4 A dedicated Freephone number to call the Confidential Committee team was installed. A database to record the information provided by witnesses to the Confidential Committee was set up.

3.5 Arrangements were put in place to enable the Commission pay expenses to witnesses who came to the Confidential Committee. The officially preferred method of payment – electronic funds transfer – was not suitable for many of the people for a number of reasons, the most important of which was the need to maintain their confidentiality. It took some considerable time to get approval to open a bank account in the Commission’s name and to get a cheque book. This was eventually issued in September 2015.

3.6 The Confidential Committee became fully operational in September 2015.

3.7 The number of people who wish to give evidence to the Confidential Committee is larger than was expected. To date, just over 500 people have expressed an interest in meeting the committee. There has been a steady stream of contacts since June 2015 and a significant number contacted the Commission after its advertising campaign in early June 2016 in relation to the chosen county homes. (These contacts were in relation to all the homes being investigated).

3.8 Over 150 hearings have been held in the Commission’s offices in Dublin, in private homes outside the Commission’s premises and also in Galway, Cork, Donegal, Limerick and London. Plans are in place for hearings in a number of other locations including further locations in the UK.

3.9 The work of the Confidential Committee is continuing and the Commission estimates that it will take at least another year to meet all the people who wish to speak to the Committee. A report will then have to be compiled.

4. Social history report

4.1 The Commission is required to compile a literature based social history report.

4.2 The Commission, having reviewed the existing literature on this topic has come to the conclusion that it would not be possible “to establish an objective and comprehensive historical analysis” based on the existing published literature. While books, articles and reports have been published on single mothers, Mother and Baby Homes and related issues, this research is patchy, and much of it relates to recent years. There is very little published information on the early or mid-twentieth century. The Commission is determined to rectify these shortcomings, and it is committed to producing a comprehensive historical analysis, that will cover the period 1922-1999.

4.3 The investigation being conducted by the Commission into the named Mother and Baby homes and the chosen county homes has unearthed information which is particularly relevant to a social history report. The Commission has engaged in extensive work to identify archival records that are relevant – the files of government departments, local authorities, Catholic dioceses and the surviving records of the institutions listed in the terms of reference. A very large volume of new information is coming to light and this research is not yet complete.

4.4 This information will significantly enhance understanding of the topics to be covered in the social history report. The Commission believes that it will form the basis for a comprehensive social history.

4.5 The Commission is satisfied that any social history module compiled on the basis of published literature would not constitute a comprehensive historical analysis. Such a report would have no long-term value, given that it would be superseded and significantly modified by the Commission's current research.

5. Further Interim report

5.1 This interim report is exclusively concerned with the request for the revision of the timeframe for submitting the first two final reports. The Commission recognises that this request, if granted, has repercussions for the requirements of Article (6) of the Terms of Reference.

5.2 Article (6) of the Commission's Terms of Reference provides that "The Commission may include in its reports any recommendation that it considers appropriate, including recommendations in relation to relevant matters identified in the course of its investigation which it considers may warrant further investigation in the public interest. In any event, on the completion of the Report on the wider social and historical context required under Article (11) the Commission shall report to the Minister on whether it considers specific matters not included in the existing scope may warrant further investigation as part of the Commission's work in the public interest."

5.3 The Commission appreciates that the Minister for Children and Youth Affairs, the Government and the people who are affected by the issues being investigated expected that further clarity would be brought to the scope of the investigation by the requirement set out in

Article (6). The request for the revision of the timeframe for the production of the social history report, if granted, will mean that any further clarity would not be provided in the timeframe originally set out. Accordingly, the Minister for Children and Youth Affairs has asked the Commission to issue an Interim Report under Section 33 of the Commissions of Investigation Act 2004 on the issues raised in Article (6). The Commission is happy to accede to this request and will provide this Interim Report in September 2016.

Appendix 2: Terms of Reference



STATUTORY INSTRUMENTS.

S.I. No. 57 of 2015



COMMISSION OF INVESTIGATION (MOTHER AND BABY HOMES
AND CERTAIN RELATED MATTERS) ORDER 2015

COMMISSION OF INVESTIGATION (MOTHER AND BABY HOMES
AND CERTAIN RELATED MATTERS) ORDER 2015

WHEREAS, pursuant to section 3(1) of the Commissions of Investigation Act 2004 (No. 23 of 2004), the Minister for Children and Youth Affairs, with the approval of the Minister for Public Expenditure and Reform, made a proposal to the Government for the establishment of a commission to investigate the matters specified in Article 3 of the following Order and to make any reports required under that Act in relation to its investigation;

AND WHEREAS the Government by decision made on 8 January 2015 considered those matters to be of significant public concern;

AND WHEREAS a draft of the following Order has been laid before each House of the Oireachtas, together with a statement of the reasons for establishing the commission, and a resolution approving that draft has been passed by each such House;

NOW, the Government, in exercise of the powers conferred on them by sections 3 and 7(2)(a) of the Commissions of Investigation Act 2004 (No. 23 of 2004), hereby order as follows:

1. This Order may be cited as the Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015.
2. In this Order “Act” means the Commissions of Investigation Act 2004 (No. 23 of 2004).
3. A commission is hereby established to—
 - (a) investigate the matters, which are considered by the Government to be of significant public concern, referred to in the terms of reference (the text of which is, for convenience of reference, set out in the Schedule) of the commission, and
 - (b) make any reports required under the Act in relation to its investigation.
4. The Minister for Children and Youth Affairs is—
 - (a) specified as the Minister of the Government responsible for overseeing administrative matters relating to the establishment of the commission, for receiving its reports and for performing any other functions given to him or her under the Act, and
 - (b) authorised to appoint the member or members of the commission.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 20th February, 2015.*

SCHEDULE**Terms of Reference for the Commission of Investigation (Mother and Baby Homes and certain related Matters) Order 2015****Establishment of Commission, etc**

- (1) The Commission is directed to investigate and to make a report to the Minister for Children and Youth Affairs in accordance with the provisions of Section 32 of the Commissions of Investigation Act 2004 (No. 23 of 2004) on the following matters in relation to the Mother and Baby Homes listed in Appendix 1:
 - I. To establish the circumstances and arrangements for the entry of single women into these institutions and the exit pathways on their leaving these institutions; this to include consideration of the extent of their participation in relevant decisions;
 - II. To establish the living conditions and care arrangements experienced by residents during their period of accommodation in these institutions, including by reference to the literature on the living conditions and care experienced by mothers and children applying more generally during the period;
 - III. To examine mortality amongst mothers and children residing in these institutions (to determine the general causes, circumstances, and rates of mortality) and to compare it to the literature on mortality amongst such other groups of women and children as might be relevant;
 - IV. To investigate post-mortem practices and procedures in respect of children or mothers who died while resident in these institutions, including the reporting of deaths, burial arrangements and transfer of remains to educational institutions for the purpose of anatomical examination;
 - V. To establish the extent of compliance with relevant regulatory and ethical standards of the time of systemic vaccine trials found by the Commission to have been conducted on children resident in one or more of these institutions during the relevant period (including, inter alia, vaccine trials conducted using vaccines manufactured by Burroughs Wellcome in 1960/61, 1970 or 1973);
 - VI. To examine arrangements for the entry of children into these institutions in circumstances when their mother was not also resident at the time of their entry;
 - VII. For children who did not remain in the care of their parents, to examine exit pathways on leaving these institutions so as to establish patterns of referral or relevant relationships with other entities, and in particular to identify-

- (a) the extent to which the child's welfare and protection were considered in practices relating to their placement in Ireland or abroad;
- (b) the extent of participation of mothers in relevant decisions, including
 - (i) the procedures that were in place to obtain consent from mothers in respect of adoption, and
 - (ii) whether these procedures were adequate for the purpose of ensuring such consent was full, free and informed; and
- (c) the practices and procedures for placement of children where there was cooperation with another person or persons in arranging this placement, this to include where an intermediary organisation arranged a subsequent placement;

VIII. To identify, in the context of the specific examinations at (I) to (VII) above, the extent to which any group of residents may have systematically been treated differently on any grounds [religion, race, traveller identity or disability];

IX. The Commission shall not seek to provide an account of any individual case in such manner as to intervene in any effort by any individual to resolve their identity or trace a birth relative.

- (2) The investigation shall cover the period from 1922 to 1998 but the Commission may reduce the "relevant period" in respect of any component part or institution if it considers it appropriate to do so.
- (3) The Commission shall establish a Confidential Committee to provide a forum for persons who were formerly resident in the homes listed in Appendix 1, or who worked in these institutions, during the relevant period to provide accounts of their experience in these institutions in writing or orally as informally as is possible in the circumstances. Subject to the requirements of Section 8 of the Act, the Commission may appoint persons it deems to be appropriately qualified to be members of the Confidential Committee.
- (4) The Confidential Committee shall-
 - (a) operate under the direction of and be accountable to the Commission,
 - (b) provide in its procedures for individuals who wish to have their identity remain confidential during the conduct of the Commission and its subsequent reporting, and

- (c) produce a report of a general nature on the experiences of the single women and children which the Commission may, to the extent it considers appropriate, rely upon to inform the investigations set out in Article 1.
- (5) The Commission shall complete the report or reports required in relation to its investigation no later than 36 months from the date of its establishment, with the exception of the reports required by Articles (4) and (11) of this Order which should be completed within 18 months from the date of its establishment.
- (6) The Commission may include in its reports any recommendation that it considers appropriate, including recommendations in relation to relevant matters identified in the course of its investigation which it considers may warrant further investigation in the public interest. In any event, on the completion of the Report on the wider social and historical context required under Article (11) the Commission shall report to the Minister on whether it considers specific matters not included in the existing scope may warrant further investigation as part of the Commission's work in the public interest.
- (7) In order to assist public understanding the Commission should provide in its reports an outline of the archival and other sources of most relevance to these issues and the nature and extent of the records therein, together with the challenges and opportunities in exploiting these sources for the purpose of further historical research or examination.
- (8) In this order, except where the circumstances otherwise requires-
- “care arrangements” includes institutional practice with regard to the health, safety, welfare and interests of mothers and children;
- “intermediary organisation” means a person or persons involved in arranging the further placements of such children;
- “literature” references to literature are intended to include grey literature¹;
- “living conditions” means the everyday experience and circumstances of a person's life, including access to food, accommodation, clothing and basic living facilities;
- “placement” means the institutional practice for the placement of children other than with a natural parent(s) for the purposes of adoption, fostering, boarding out or other care arrangements;

¹Grey literature refers to the body of materials that cannot be found easily through conventional channels, such as publishers, but which is frequently original and usually recent. Examples of grey literature include technical reports from government agencies or scientific research groups, working papers from research groups or committees, white papers, or preprints.

“residents” means single women and children accommodated in the listed Homes for the purpose of receiving maternity and infant care services; and

“single women” means pregnant girls or women and mothers who were not married, or were widows or were separated from their husbands.

Appointment of Members

- (9) The Minister for Children and Youth Affairs has appointed her Honour Judge Yvonne Murphy as Chairperson of the Commission and Dr William Duncan and Prof. Mary E. Daly as members of the Commission.

Commission’s Working Methodology

- (10) The Commission shall adopt and implement an appropriate working methodology or framework to ensure that any report required in accordance with the Act is completed within the period specified in Article (5) above.

- (11) The methodology or framework to be applied shall include a literature based academic social history module to establish an objective and comprehensive historical analysis of significant matters. The Commission shall, as it considers appropriate, rely on this analysis as evidence to inform its investigations and to assist the Commission in framing its findings and conclusions within the wider social and historical context of the relevant period. This analysis shall detail:

- A. Family and societal attitudes and responses to pregnancy and child-birth amongst single women;
- B. The role played by religious orders, civil society, the State, families and partners/fathers in relation to single women and their children;
- C. The economic and social situation and experiences of single women and their children, including by reference to economic and social circumstances more generally applying;
- D. The types of institutional settings (e.g. mother and baby homes, county homes, private nursing homes, homes for infants or children) where single women and their children, or other children, were accommodated;
- E. The role and significance of different types of institution and their inter-relationships;
- F. Organisational arrangements for the management and operation of these different types of institutions;
- G. The involvement of state authorities in legislating for, supporting, financing or regulating different types of institution;

- H. The conditions pertaining and the welfare of those accommodated in different types of institution, including by reference to conditions elsewhere and levels of welfare more generally applying;
 - I. The typical pathways experienced by single women and their children on leaving the different types of such institutions including the role played by other institutions (e.g. adoption societies, homes for infants or children and Magdalen laundries); and
 - J. This analysis should be informed by the comparative situation in a sample of comparable countries during the relevant period.
- (12) The Commission shall, as it considers appropriate, rely on the information and findings from the social history module and such other relevant information as may be available to the Commission, to:
- (a) identify a basis for appropriate comparators in its investigations under Article 1(I) to (VIII), and
 - (b) inform the selection of a representative sample of institutions as per Article 2 of Appendix 1.
- (13) The Commission shall exercise discretion in relation to the scope and intensity of the investigation it considers necessary and appropriate, having regard to the general objectives of the investigation, including the need for the investigation to be prompt and thorough in accordance with the State's obligations under international human rights law.
- (14) In performing its functions the Commission should tailor the processes and methodologies to the individual components of its investigations so as to achieve effective investigations in the most timely and cost effective manner possible. In particular the Commission shall have the discretion to use such sampling techniques or selection of samples as it may determine.
- (15) In prioritising those issues which should be most urgently addressed in its investigations, the Commission should, in general and as it considers appropriate, take account of relevant information and findings from previous investigations, in particular those investigations already undertaken in the completion of the following Reports:
- a. Commission to Inquire into Child Abuse: Interim Reports and Final Report (2009)
 - b. Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries (2013)

- c. Report on three clinical trials involving children and babies in institutional settings 1960/61, 1970 and 1973: Chief Medical Officer (1997)
- d. Report of Dr Deirdre Madden on Post Mortem Practice and Procedures: (2005)

Appendix 1 — Institutions

(1) Mother and Baby Homes as follows:²

- 1) Ard Mhuire, Dunboyne, Co. Meath;
- 2) Belmont (Flatlets), Belmont Ave, Dublin 4;
- 3) Bessboro House, Blackrock, Cork;
- 4) Bethany Home, originally Blackhall Place, Dublin 7 and from 1934 Orwell Road, Rathgar, Dublin 6;
- 5) Bon Secours Mother and Baby Home, Tuam, Co. Galway;
- 6) Denny House, Eglinton Rd, Dublin 4, originally Magdalen Home, 8 Lower Leeson St, Dublin 2;
- 7) Kilrush, Cooraclare Rd, Co. Clare;
- 8) Manor House, Castlepollard, Co. Westmeath;
- 9) Ms. Carr's (Flatlets), 16 Northbrook Rd, Dublin 6;
- 10) Regina Coeli Hostel, North Brunswick Street, Dublin 7;
- 11) Sean Ross Abbey, Roscrea, Co. Tipperary;
- 12) St. Gerard's, originally 39, Mountjoy Square, Dublin 1;
- 13) St. Patrick's, Navan Road, Dublin 7, originally known as Pelletstown, and subsequent transfer to Eglinton House, Eglinton Rd, Dublin 4; and
- 14) The Castle, Newtowncunningham, Co. Donegal.

² Historical and official sources may refer to these institutions by various names, and in some cases the Homes may have moved premises during their period of operation.

(2) County Homes

A representative sample of those County Homes selected by the Commission as both fulfilling a function with regard to single women and their children similar to the institutions at (1) above and where the extent of the operation of this function is considered to merit their inclusion for the purposes of the investigations set out at Article 1(I) to (VIII) above having regard to factors such as the number of relevant births, the duration of such operations and the typical length of accommodation period of these mothers and children.



GIVEN under the Official Seal
of the Government

17 February 2015.

ENDA KENNY,
Taoiseach.

REVISED TERMS OF REFERENCE

Pursuant to Section 6(6) of the Commissions of Investigation Act 2004 the Terms of Reference contained in the Schedule to Statutory Instrument No. 57 of 2015 Commission of Investigation (Mother and Baby Homes and Certain Related matters) Order 2015, which were published in Iris Oifigiúil on 24 February 2015, are amended by Government decision of the 27 July 2016 by substituting Article 5 for the following:

“The Commission shall complete the reports required in relation to its investigation no later than 36 months from the date of its establishment.”

Notice of this Government decision was published in “Iris Oifigiúil” of 5 August 2016