

Draft of

ORDER

entitled

Commission of Investigation (Mother and Baby Homes and certain related Matters)

Order 2015

To be made by the Government

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.

SCHEDULE

Terms of Reference for 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 Schedule 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;

¹ Grey 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.

“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;

“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.

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 childbirth 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, Eglington 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, and
- 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 Eglington House, Eglington Rd, Dublin 4, and
- 14) The Castle, Newtowncunningham, Co. Donegal.

(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.

²Historical 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.

GIVEN under the Official Seal
of the Government

_____ 2015.

Taoiseach