

*These notes refer to the Preservation of Documents (Historical Institutions) Act (Northern Ireland) 2022 (c.26) which received Royal Assent on 12 May 2022*

# Preservation of Documents (Historical Institutions) Act (Northern Ireland) 2022

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Preservation of Documents (Historical Institutions) Act (Northern Ireland) 2022 which received Royal Assent on 12 May 2022. They have been completed by the Northern Ireland Assembly Bill Office. They do not form part of the Act and has not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. In January 2021, following the publication of the research by Queen's University Belfast (QUB) and Ulster University (UU) into the operation of Mother and Baby Homes and Magdalene Laundries, the Northern Ireland Executive agreed to undertake an independent investigation into the institutions. It was also agreed that the nature and shape of the investigation would be co-designed with victims/survivors over a six month period.
4. In March 2021, the Department appointed a Panel of experts (Deirdre Mahon, Director of Women and Children's Services and the Executive Director of Social Work in the Western Health and Social Services Trust NI, Professor Phil Scraton, Professor Emeritus, School of Law, Queen's University Belfast and Dr Maeve O'Rourke, Lecturer in Human Rights at the Irish Centre for Human Rights, School of Law, National University of Ireland Galway.) known as the Truth Recovery Design Panel (TDRP), to undertake the co-design process with victims/survivors of these institutions. Locally and internationally, 186 victims/survivors engaged with the Panel during the co-design process and informed the development of the Panel's recommendations.
5. The TDRP published 'Mother and Baby Institutions, Magdalene Laundries and Workhouses in Northern Ireland Truth, Acknowledgement and Accountability Truth Recovery Design Panel Report for the Northern Ireland Executive' on 5 October 2021. The report set out five core recommendations.

- a) Recommendation 1: Adoption of Guiding Principles;
  - b) Recommendation 2: Responsibilities of The Executive Office;
  - c) Recommendation 3: An Integrated Truth Investigation;
  - d) Recommendation 4: Access to Records; and
  - e) Recommendation 5: Redress, Reparation and Compensation.
6. The Act is intended to give effect to part 1 of recommendation 4 by the TDRP as set out below:
- ““The Truth Recovery Panel recommends immediate action by the Northern Ireland Executive, supported by the Northern Ireland Assembly, to create a statutory requirement on all relevant record holders to preserve and not destroy any information relating to Mother and Baby Institutions, Magdalene Laundries, Workhouses, adoption-related institutions and ‘baby homes’, and their policies and practices, including personal records. The requirement should extend to all State and non-State institutions and agencies, officials, representatives and professionals that serviced them.”
7. The policy aim is to ensure that records relating to relevant historical institutions are safely maintained and not destroyed. The relevant institutions include Mother and Baby Institutions, and Workhouses – places where women were placed as a result of pregnancy outside of marriage and then gave birth to children, many of whom were adopted and many more of whom were taken into care – either residential care or foster care. They also include Magdalene Laundries – places to which many women from Mother and Baby Institutions were then moved in the absence of anywhere else to go subsequent to giving birth. The records relating to women held by the institutions in which they resided or by the agencies responsible for either placing them there or making arrangements for the adoption and care of their children hold the stories of many children’s early lives. They mark the start of many children’s adoption and/or care journeys.
8. These are the records sought and used by adoption agencies to supplement their own records for the purpose of assisting with tracing and facilitating contact between adopted adults and their birth relatives, where this is agreed.
9. The stated reason within the section for preserving these records is their potential relevance to a future investigation or inquiry. The Northern Ireland Executive has agreed that both – an investigation and an inquiry – will take place in the future and The Executive Office is responsible for taking both forward. However, they are also records of historical significance to individuals and society generally and, on that basis alone, are worthy of preservation. The report of the research by QUB and UU pointed to the poor state of many of these records and the conditions in which they are being held. The Truth Recovery Design Panel also recommended the establishment of a permanent archive, to which these records will be key.

## **OVERVIEW**

10. The Act has 9 sections and no schedules. A commentary on each of the sections follows below.

## **COMMENTARY ON SECTIONS**

### ***Section 1 (Preservation of relevant documents)***

Introduces a duty to preserve, not alter, destroy or dispose of a relevant document, to not remove or transfer the document to a place outside of Northern Ireland and to take appropriate measures to ensure that a “relevant document” is not lost, stolen, destroyed or otherwise damaged.

### ***Section 2 (Meaning of “relevant document”)***

Stipulates conditions which must be satisfied before a document is considered relevant. Three conditions in total are stipulated, including that the document: must contain “relevant information” [defined]; and that it is likely to be of interest to an inquiry or investigation in relation to the implementation of the recommendations made by the Truth Recovery Design Panel as set out in a statement to the Assembly made by the First Minister and deputy First Minister acting jointly on 15th November 2021. The section also provides that a document is not a “relevant document” if a copy of the document or the information it contains is generally available to the public. It also defines “relevant period” for the purpose of this section as the period between 1922 and 1995 (both inclusive).

### ***Section 3 (Meaning of “relevant information”)***

Defines “relevant information” as information: about the operation of a relevant institution; about any person resident in a relevant institution; or about the accommodation or care provided to a child born to a resident of a relevant institution. Such information may include details about the admission, treatment, care and discharge of residents, as well as information about specific residents’ admission, departure and care, information about their birth or adoption, any children born to the residents and details about their development in early life.

### ***Section 4 (Meaning of “relevant institution” etc.)***

Provides definitions of “relevant institution” and “resident of a relevant institution”. “Relevant institution” is defined as either: a workhouse; or an institution in which a voluntary organisation provided residential accommodation for women or children and took decisions about them and provided: services related to pregnancy or maternity; provided day-to-day care for the women or children; required work from the women or children (whether with or without pay); or provided such other service as may be prescribed. A “resident of a relevant institution” is defined as a person (of any age) who was provided with residential accommodation in the institution and includes periods of absence from the institution.

### ***Section 5 (Offences by bodies corporate etc.)***

Provides that an offence of not complying with the duty created at section 1 applies to: a body corporate with unlimited liability; partnerships and partners jointly; and unincorporated associations (other than a partnership) alongside any identified officer or member who committed the offence. This section also provides that proceedings for alleged offences by a partnership must be brought in the name of the partnership; offences by an unincorporated association (other than a partnership) must be brought in the name of the association; that rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate; any fines imposed on a partnership or unincorporated association on its conviction for an offence must be paid out of the respective partnership assets or out of the unincorporated association funds.

### ***Section 6 (Regulations)***

Stipulates the Assembly procedure to be followed in the making of future Regulations.

### ***Section 7 (Interpretation)***

Defines key terms used within the Act.

### ***Section 8 (Commencement)***

Provides for the Act to come into force on Royal Assent, ensuring that it is commenced at the earliest opportunity.

### ***Section 9 (Short Title)***

This cites the Act as the Preservation of Documents (Historical Institutions) Act (Northern Ireland) 2022.

## **DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN**

11. The Act is intended to ensure that records are retained securely in line with data protection legislation. While the retention period for some records may be extended by this Act, there are no negative/adverse impacts in data protection terms given the protections provided under existing law.

## **RURAL NEEDS IMPACT ASSESSMENT**

12. The Act is not considered to generate negative impacts in connection with rural needs.

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## **HANSARD REPORTS**

13. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly and the date Royal Assent was received.

| <i>STAGE</i>                | <i>DATE</i>   |
|-----------------------------|---------------|
| First Stage                 | 9 March 2022  |
| Second Stage                | 14 March 2022 |
| Committee Stage             | N/A           |
| Consideration Stage         | 21 March 2022 |
| Further Consideration Stage | 24 March 2022 |
| Final Stage                 | 24 March 2022 |
| Royal Assent                | 12 May 2022   |