

Chapter 1: State Structures, Supports and Legislation

Introduction

- 1.1 The county homes and the main mother and baby homes were established, financed and regulated (to some extent) under poor law/public assistance/health legislation. Other arrangements for the care of children were governed by this legislation as well as by the *Children Acts*. The general legislation on local authority structures and powers also affected the operation of these institutions. The national and local, but particularly the local, administrative structures for the delivery of poor law, public assistance, health and related services changed a number of times over the period covered by this report (1922-1998). The different names used for the local health/public assistance authorities can be quite confusing. A particular feature of the structures as they changed was the interaction between national government and local government which, in the Commission's view, led to confusion and lack of coordination about who was responsible. This chapter describes the development of these structures in so far as they are relevant to State involvement with single mothers and children.¹
- 1.2 This chapter also gives a brief overview of the laws which applied to children, residents in institutions and other issues relevant to this report. With the exception of the introduction of legal adoption in 1953 (see Chapter 32), there was very little change in the law relating to the care of children during the period 1922 - 1998.
- 1.3 The relevant authorities for the period covered by this report were as follows:

National government

- Pre 1920: The Local Government Board Ireland had overall national responsibility for the poor law. (It was established in 1872).
- 1920-22: The Department of Local Government of Dáil Éireann encouraged the development of county schemes.
- 1922: The Department of Local Government of the Irish Free State (Saorstát Éireann) was established.

¹ The descriptions given here cannot be regarded as comprehensive descriptions of all the legislation and practice; the aim is to explain how the State interacted with single mothers and their children. The various health authorities were responsible for general health services, mental health services, sanitary services and a number of other services. Their services for unmarried mothers and their children were a relatively minor aspect of their overall work.

June 1924: The Department of Local Government and Public Health was established under the *Ministers and Secretaries Act 1924*.²

1947: A separate Department of Health was established under the *Health (Transfer of Departmental Administration and Ministerial Functions) Order 1947*, which came into effect on 18 March 1947.³

Local government

Boards of Guardians: until 1922/23 in most counties and 1931 in Dublin.

Boards of Health/Boards of Public Assistance: from 1922/3 until 1942.

Public Assistance Authorities from 1942 until 1953 in most counties and until 1960 in Cork, Dublin and Waterford.

Local authorities (county councils and county borough councils) from 1953 until 1970 in counties other than Cork, Dublin and Waterford (Limerick until 1960).

Health authorities in counties Dublin, Cork, Limerick and Waterford: 1960-70.

Regional Health Boards: 1970-98.

Poor law

- 1.4 The *Poor Relief (Ireland) Act 1838* introduced a system for the relief of the poor modelled on the existing English system. Poor relief was the responsibility of an elected board of guardians in each poor law union. By 1921, there were 127 poor law unions in the area that became the Free State.⁴ Each poor law union had a workhouse where 'indoor relief' was provided, that is, people had to live in the workhouse. Over the years, the boards of guardians were given further responsibilities, including the making of arrangements for the care of deaf, blind and other children with disabilities. 'Outdoor relief', that is, assistance for certain people outside of the workhouse, was introduced in 1847. It was administered by 'Relieving Officers'.⁵ Among the potential beneficiaries were families who were unable to provide for themselves because they were unable to work and destitute poor widows having two or more dependent legitimate children. These groups could be provided with either indoor or outdoor relief. In 1862, the boards of guardians were given powers to arrange the boarding out of children - this was

² <http://www.irishstatutebook.ie/eli/1924/act/16/enacted/en/html>; the department had responsibility for, among other things, local government, public health and relief of the poor.

³ <http://www.irishstatutebook.ie/eli/1947/sro/58/made/en/print>

⁴ These are listed in the *Report of the Commission on the Relief of the Sick and Destitute Poor* (1927); this report provides a summary of the poor law as it developed between 1838 and 1927: <https://lenus.ie/handle/10147/238535>

⁵ This title continued in general use long after it had been officially replaced by Assistance Officer (1923) and by Community Welfare Officer (1977).

described as placing the child 'at nurse'.⁶ The age limit for boarding out was 15 in 1922.

- 1.5 Workhouses were built mainly in the early 1840s. They were all similar in design. They generally had separate wards for the main groups involved, that is older people ('the elderly'); unmarried mothers and children; and people who had disabilities or psychiatric illnesses.⁷ They generally included a nursery and maternity ward and many had schools attached.
- 1.6 The Local Government Board Ireland which was established in 1872 (originally the Irish Poor Law Board established in 1847) had overall central responsibility for the administration of the poor law. Locally, it was administered by the elected boards of guardians. In 1898, the local government system of county councils, city councils and town commissioners was established. This did not change the poor law itself but the county and city councils took over responsibility for its financing and administration.
- 1.7 The report of the Vice-Regal Commission on Poor Law Reform in Ireland (1906)⁸ recommended replacing workhouses with separate institutions catering for 'the elderly, the insane and unmarried mothers'.

The county schemes

- 1.8 Changes were made to the poor law arrangements in the period 1920 - 1922. During these years, a number of county councils, with the support of the Minister for Local Government of Dáil Éireann, began to introduce poor law schemes for their counties. These schemes mainly tried to ensure a move away from workhouses as the location for the relief of the poor and provided for the centralisation of administration under one authority in each county. There was considerable resistance to some of the changes as they involved the closure of

⁶ The terms 'boarded out' and 'at nurse' are sometimes used interchangeably but it became common practice later to refer to children who were placed by their parent(s) or others for reward, and who were consequently subject to the Children Acts, as 'nursed out' children while children placed by the local authorities, and consequently subject to the poor law/public assistance/health legislation, were described as 'boarded out'. From about the 1960s, the term used was generally 'fostering'.

⁷ People with mental disabilities or psychiatric illnesses were usually described as 'lunatics' or 'insane'; in some cases, these terms seem to have also included people with physical disabilities.

⁸ <https://archive.org/details/reportofvicerega01irel/page/4/mode/2up>

local institutions including hospitals.⁹ The changes that were made in the 1920s were sometimes described as involving the ‘abolition’ of the poor law.¹⁰

- 1.9 In fact, while changes were made, the poor law was not abolished. Significant parts remained in place until 1977 - see below. In practice, in the 1920s, a number of workhouses closed and others were designated as county homes or county hospitals. By 1927, 33 workhouses had been converted into county homes; 19 of these were used in part as hospitals. Nine workhouses had been converted into county hospitals and 32 into district or fever hospitals; 50, some of which had been partially or completely destroyed, were no longer in use.¹¹ The role of the workhouses which became county homes did not change significantly for quite some time. Outdoor relief or home assistance as it was called from the early 1920s continued to operate in broadly the same way as it had before independence.
- 1.10 The *Local Government (Temporary Provisions) Act 1923*¹² provided a legislative basis for the county schemes and gave power to the council of a county to which no existing scheme related to prepare a scheme and submit it to the Minister for Local Government. The minister had the power to confirm such schemes either without alteration or with such amendments, omissions, and additions as he deemed necessary, or to reject the scheme. The Act also contained a provision under which the council of a county and the council of an adjoining county borough, instead of preparing separate schemes, might prepare a joint scheme for the county and the county borough. Only two such schemes were prepared, one for Cork county and county borough and the other for Waterford county and county borough. The Cork scheme provided for the division of the county into three areas with separate administration for each area.
- 1.11 The councils of Dublin county and the county borough did not prepare either a joint scheme or separate schemes. Dublin county and city continued to have boards of guardians in each of the three poor law areas: Dublin Union, Rathdown and Balrothery. The *Poor Relief (Dublin) Act 1929* removed the restrictions on

⁹ Mary E. Daly: *The Buffer State, The Historical Roots of the Department of the Environment* (Dublin, 1997), pp 75-78.

¹⁰ See, for example, the speech of the Minister for Local Government (Ernest Blythe) when introducing the *Local Government (Temporary Provisions) Bill 1923* on 12 January 1923: ‘the existing Poor Law has been blown sky high’.

¹¹ *Sick and Destitute Poor report* (1927).

¹² Although it was described as temporary, it remained in force until 1942 when the *Public Assistance Act 1939* came into effect; it had been renewed annually between 1923 and 1941.

providing outdoor relief in the Dublin areas and provided for relief in or out of the workhouse. The *Local Government (Dublin) (Amendment) Act 1931* provided for the establishment of boards of assistance in the three Dublin areas.

- 1.12 The 1923 Act gave power to the Minister for Local Government to dissolve local authorities in certain circumstances and to appoint individuals to carry out the powers of that local authority. Between 1923 and 1925, 19 local authorities were dissolved; between 1925 and 1931, a further 17 were dissolved. These included Dublin and Cork corporations, the Dublin board of guardians (see Chapter 13) and all the boards of health in the Cork area.¹³ Generally a number of commissioners were appointed to carry out the functions of the dissolved boards. They had the same legal powers as the boards. (In order to avoid confusion, this report generally refers to the legal entity, that is, the board of guardians, board of health, county council even when the functions were being exercised by commissioners).
- 1.13 The county schemes varied somewhat from one county to another. In general, they provided for a board of health (to be appointed by the local authority) to be in charge of the poor law. In some cases the name of the entity was the board of public assistance. In Cork, there were three boards - the North Cork county board of health, the South Cork county board of public assistance and the West Cork county board of health. In 1927, they all became boards of public assistance.¹⁴
- 1.14 The members of the boards of health/public assistance were generally county councillors and town councillors. Some had other members, for example, Clare board of health had a number of priests (see Chapter 16). Some boards established sub-committees to deal specifically with institutions and these also had non-councillor members including priests, for example, the sub-committee for Tuam (see Chapter 15).
- 1.15 Some county schemes made specific provision for unmarried mothers while others did not. Some provided that the county home would cater for unmarried mothers (for example, the Kerry county scheme). The Limerick county scheme provided that 'unmarried mothers with their children to take their discharge from the different workhouses' but did not provide for any alternative arrangements. The original

¹³ Mary E. Daly: *The Buffer State, The Historical Roots of the Department of the Environment* (Dublin, 1997), p. 119.

¹⁴ County Scheme Order, Cork (Amendment), 1927, SI 909/1927:
<http://www.irishstatutebook.ie/eli/1927/sro/909/made/en/print>

Galway county scheme provided for the establishment of a children's home in Glenamaddy (see Chapter 15) and also specifically provided that unmarried mothers who were 'first offenders' would be 'dealt with' there while 'old offenders' were to be sent to the Magdalen Asylum. This was changed in 1923 with the reference to the Magdalen Asylum being removed.¹⁵

- 1.16 These changes all left the law in a quite unclear state as was accepted by the Parliamentary Secretary to the Minister for Local Government and Public Health, Dr Ward, when he was introducing the *Public Assistance Bill 1939* - see below.

Assistance officers

- 1.17 The *County Boards of Health (Assistance) Order 1924* dealt with the administration of home assistance and the role of assistance officers.¹⁶ Home assistance (outdoor relief) was administered by assistance officers. They were frequently described as home assistance officers; they were formerly relieving officers. Under the regulations, widows with one child or more were not subject to all the restrictions on the payment of home assistance; there were no special provisions for unmarried mothers and children.

- 1.18 The assistance officers were supervised by superintendent assistance officers who were required to attend all meetings of the relevant board of health to ensure that the board's decisions were carried out. The superintendent assistance officer was a new role which took over some of the duties formerly carried out by the Clerk of the Union particularly in relation to outdoor relief. Among other things, the superintendent assistance officer (or sometimes the assistance officer) examined applications for admission to county institutions, for example, county homes and institutions such as Pelletstown, Tuam and Kilrush. There were 312 assistance officers in June 1926.¹⁷

Boarded out children

- 1.19 The assistance officers also dealt with boarded out children. These were the children who were boarded out by the local authorities and in respect of whom the

¹⁵ The original Galway scheme is set out in the *Local Government (Temporary Provisions) Act 1923*. It was amended by the County Scheme Order, Galway No 1, 1923; see the McAleese report: [http://www.justice.ie/en/JELR/2013Magdalen-P%20I%20Chapter%205%20Legislation%20\(PDF%20-%20380KB\).pdf/Files/2013Magdalen-P%20I%20Chapter%205%20Legislation%20\(PDF%20-%20380KB\).pdf](http://www.justice.ie/en/JELR/2013Magdalen-P%20I%20Chapter%205%20Legislation%20(PDF%20-%20380KB).pdf/Files/2013Magdalen-P%20I%20Chapter%205%20Legislation%20(PDF%20-%20380KB).pdf)

¹⁶ <http://www.irishstatutebook.ie/eli/1924/sro/943/made/en/print>

¹⁷ There were also 22 relieving officers in the three Dublin areas, *Sick and Destitute Poor report* (1927), p. 55.

local authorities paid maintenance. The assistance officers were responsible for selecting foster parents, handing over boarded out children to the foster parents, paying the maintenance to the foster parents and, if necessary, arranging for the vaccination of the children. They were obliged to visit the children once a month and report on their condition to the board of health. If the boarded out child died, the assistance officer was responsible for arranging the burial.

1.20 Under the *County Boards of Health (Assistance) Order 1924*, the board of health could not board out a child without the consent of the minister unless the child was an orphan or deserted; this meant that, in general, the children of unmarried mothers could be boarded out only with the minister's consent. The maximum age for boarding out was 15. The child had to be boarded out within the board of health's area. The child had to be:

properly and sufficiently nursed or boarded, and shall be suitably lodged and clothed, and kept clean in its person by being washed once at least every day, and at all times when necessary, and the clothes provided shall not be of such shape or colour as may denote connection with any institution, and no child shall be nursed or boarded out in any house unless there is a woman living there who is of full age and has experience in the management of children.

1.21 Foster parents had to sign a contract¹⁸ to do all of this and had to have a recommendation from a clergyman, peace commissioner, member of a board of health, or medical officer living in the neighbourhood who 'may be willing to answer for his or her good conduct and respectability'. The dwelling of the proposed foster parent had to be 'in a healthy situation'. The house had to have more than one room and allow for 'the sexes being completely separated'. There had to be 'a supply of pure and wholesome drinking water' readily accessible at all times; good food and milk had to be 'easily obtainable' and there had to be a national school or other public school 'situate at a convenient distance from the dwelling'. In general the maximum number of boarded out children in a house was two unless they were siblings or there were other special circumstances. Children could not be boarded out by the board of health in a house where there were children boarded out by some other body (for example, by one of the voluntary organisations). They could not be boarded out with anyone 'who keeps any pig, cow, horse, donkey or other

¹⁸ 27/01/1925: The Boarded Out Children (Contracts) Order, 1925. <http://www.irishstatutebook.ie/eli/1925/sro/970/made/en/print>

such animal within the dwelling-house, or who keeps any manure-pit or accumulation of filth in dangerous proximity to the dwelling'. Boarding out was also prohibited in a licenced premises and was possible in a town or village only with the consent of the minister. Foster parents were invariably women.

- 1.22 Boards of health had the power to appoint 'Ladies Committees' to visit boarded out children but were not required to do so.
- 1.23 In practice, there was conflict between central and local government about the inspection of boarded out children. The Department of Local Government and Public Health inspectors and the local health/public assistance authorities frequently disagreed on the standards of care (see Chapter 11)

County institutions

- 1.24 The *County Boards of Health (General Regulations) Order 1924* set out the detailed rules about the operation of boards of health. Among other things, the regulations required the boards to ensure that county institutions were clean and well maintained. County institutions included county homes and institutions such as Kilrush (Chapter 16) Pelletstown (Chapter 13) and Tuam (Chapter 15). The boards were required to:
- once at least in every year and as often as may be necessary for cleanliness, cause all the rooms, wards, offices and privies of or belonging to any County Institution to be thoroughly cleaned and painted or limewashed and the cesspools to be emptied.
- 1.25 They were required to:
- keep in good and substantial repair the premises constituting any County Institution, and shall from time to time remedy without delay any such defect in the repair of such institution, its drainage warmth or ventilation, or in the furniture or fixtures thereof, as may tend to injure the health of the inmates.
- 1.26 There were detailed rules about the role of the matron of the county home including a requirement to ensure that residents who were capable of working were actually doing so. There was also a requirement to keep a matron's journal. The regulations also covered the rules for admission to county institutions and the role of the porter.

- 1.27 The *Report of the Commission on the Relief of the Sick and Destitute Poor* (1927) concluded that the orders and regulations made by the Minister for Local Government and Public Health in relation to the operation of the boards of health meant that these boards were ‘as much, if not more, under the rigid control of the Minister for Local Government and Public Health as the Boards of Guardians were under the control of the Local Government Board, and that, therefore, very little initiative or freedom of action rests in the Boards of Health’.
- 1.28 The *Sick and Destitute Poor report* (1927) was very clear about the inadequacy of the county homes for all residents:
- We desire to state emphatically that in our opinion the County Homes are not fit and proper places for the reception of the various classes which we have found in them, and, therefore, in so far as the Schemes, either through omission to make provision for or through actual commission in bringing together these classes, have conduced to that state of affairs they must on that ground, if on no other, be deemed inadequate and unsatisfactory. We believe that it was originally intended that Homes should be reserved only for the reception of the aged and infirm poor and the chronic invalids, and that separate provision should be made for the other classes. This has not been done.

Public Assistance Act 1939

- 1.29 The *Public Assistance Bill 1939* was introduced because it was recognised that the various changes that had occurred in the period since independence had left the law ‘in a quite unclear state’ according to the Parliamentary Secretary at the Department of Local Government and Public Health, Dr Ward. It was also designed as a permanent replacement for the *Local Government (Temporary Provisions) Act 1923* which had been renewed annually since it came into effect.
- 1.30 Dr Ward said that one of the reasons for introducing it was ‘the great difficulty of interpreting the law under the present complicated code of enactments’. The *Poor Relief (Ireland) Act 1838* had been amended over 30 times (a list of amendments is included in the 1st Schedule to the 1939 Act; most of these were repealed by that Act) and so were difficult to follow. In his reply to the Dáil debate (probably unscripted), Dr Ward was more trenchant: ‘...the public assistance legislation operating in this country at the present time is in an absolutely chaotic condition

and...it is almost beyond the wit of man to determine what is the public assistance legal code in certain respects at the present time'.¹⁹

- 1.31 In his 2nd stage speech to the Dáil, Dr Ward described the purpose of the Bill as being 'to consolidate the existing law relating to the relief of the poor by local authorities, amending it to suit present conditions, and repealing provisions considered obsolete or inapplicable in existing circumstances'. He said it contained 'very little that is new in principle'. Senator Mrs Concannon in the debate on the Bill in the Seanad said: 'It is full of delicate charity, and it preserves the human rights of the poor people, and especially of the children'.²⁰
- 1.32 The *Public Assistance Act 1939* came into effect on 26 August 1942.²¹ The *County Management Act 1940* and the *Local Government Act 1941* came into effect on the same day and the three are interrelated. The *County Management Act* set out the role and functions of county managers, delineated the respective roles of the elected members and the county manager and, among other things, introduced the 'Managers Orders' (Section 19). Decisions on, for example, paying for women admitted to mother and baby homes were made by such orders.
- 1.33 The following are the main provisions of the *Public Assistance Act 1939* that are relevant to this report. As already stated, the Act did not significantly change the poor law but it did make it more coherent.

Public assistance authorities

- 1.34 The 1939 Act replaced the term 'poor relief' with 'public assistance'. It provided that the administration of the law relating to public assistance would be subject to the general direction and control of the Minister for Local Government and Public Health. The areas of local administration did not change. Each board of health/public assistance district became a public assistance district and a public assistance authority (PAA) was appointed for each district. The PAA was either the local authority for the area or a board appointed jointly by two local authorities. In practice, this meant that the county council was the PAA for all counties other than Cork, Dublin, Limerick and Waterford.²² The South Cork board of public

¹⁹ Dáil Debates, 6 June 1939: <https://www.oireachtas.ie/en/debates/debate/dail/1939-06-06/8/>

²⁰ <https://www.oireachtas.ie/en/debates/debate/seanad/1939-07-06/12/>

²¹ The *Public Assistance Act, 1939* (Date of Commencement) Order, 1942, SI 413/1942.

²² The *Public Assistance (Names of Districts) Regulations 1942* (SI 312/1942) set out the public assistance districts.

assistance was appointed by Cork county council and Cork corporation.²³ In Dublin city and county the existing areas of the former unions/boards of assistance became the public assistance authorities (the Dublin board of assistance, the Balrothery board of assistance and the Rathdown board of assistance). The local authorities and the PAA had separate administrations. Limerick city and Waterford city each had a PAA separate from the county PAA.

District institutions

1.35 Sections 31-38 of the *Public Assistance Act 1939* provided that the public assistance authorities could maintain district institutions - that is, homes, hospitals and other institutions - at such places as the minister directed. The minister had the power to order the PAA to, for example:

- restore, alter or enlarge any such institution;
- provide new, improved or additional drainage, ventilation, water supply, lighting, heating or any other service for any district institution;
- provide and maintain fixtures, fittings, furniture, surgical and medical appliances, and other conveniences.

1.36 County homes, Tuam and Pelletstown were all district institutions (Kilrush was closed in 1932). Clearly, the minister had the power to order, for example, Galway county council to carry out various works in Tuam but the Commission has not seen any evidence that this power was ever used.

Other institutions

1.37 Public assistance authorities had the power to maintain people who were eligible for public assistance in homes, hospitals or institutions other than district institutions. This was the legal basis for the maintenance of residents in mother and baby homes such as the Sacred Heart homes and Dunboyne. The minister had the power to make regulations requiring people assisted in this way to make payments towards their stay. The PAAs were obliged to pay for chaplains to these institutions.

²³ In the Dáil 2nd stage debate on the Bill, the issue of which Cork local authority met most of the costs was raised – this was a fairly constant theme in all discussions about local government.

Work

- 1.38 The Act provided that people receiving public assistance could be required to carry out work 'suitable to the sex, age, strength, and capacity of such person'. (This did not involve any change).

Public assistance authority and parental authority

- 1.39 The 1939 Act provided that the PAA could take over the guardianship of a child in certain circumstances. For example, this could happen if 'illegitimate' children under the age of 16 were orphaned or were deserted by their mothers. The PAA could become the guardian of children in these circumstances if the children were maintained by the PAA and if the mother was unfit to have control of the child (for example, because of mental deficiency or was in jail). In order to assume guardianship rights in these circumstances, the PAA had to pass a resolution to that effect. In practice, the PAAs seem to have rarely passed such resolutions.

Certified schools

- 1.40 In general, industrial schools were under the control of the Department of Education. They were often used as orphanages when no other suitable place could be found for children. The PAAs who were responsible for children in industrial schools did not have any role in regulating the industrial schools. The *Public Assistance Act 1939* gave the Minister for Local Government and Public Health a role in inspecting and approving such schools. It provided that the managers of any school other than a national school or a reformatory could apply to be a certified school under the PAA. The minister could then appoint an inspector to report on the condition of the school. If satisfied with this report, the minister could certify that the school was fit for the reception of children sent under the Act and specify the total number of children for which it was fit. If subsequently dissatisfied, the minister could cancel the certification. The Act empowered the minister's inspector to visit and inspect a certified school. Any PAA which sent a child to a certified school could also visit and inspect the school.
- 1.41 All industrial schools did not become certified schools under the *Public Assistance Act 1939*. Those industrial schools which catered for girls and young boys were generally certified (they are sometimes described as 'convent industrial schools'). The Commission has not seen evidence that the powers of inspection provided by the 1939 Act were used either by the department or the local health authorities. The *Ryan Report* describes inspections by the Department of Education but does

not refer to any inspections by the Department of Health or the local health authorities. In a memorandum in 1969, a Department of Health inspector, Miss Murray, said that when Miss Litster, the General Inspector, retired in 1957, the Inspectors of Boarded Out Children were instructed not to visit institutions. These instructions had not been rescinded.

Law on children

- 1.42 The *Public Assistance Act 1939* did not significantly change the law in relation to children. It did provide for an increase from 15 to 16 in the age at which a child could continue to be regarded as a dependant. It also prohibited the placing of a child under the age of 14 years at service or in a trade, calling or business (generally known as 'hiring out').

Liability to maintain children

- 1.43 The *Public Assistance Act 1939* set out who was liable to maintain family members. The following were liable to maintain children, spouses and parents:
- Every man was liable to maintain his 'legitimate' children up to the age of 16 and every woman was liable to maintain her 'legitimate' and 'illegitimate' children up to age 16;
 - Every married man was liable to maintain his wife and any 'legitimate' or 'illegitimate' children of his wife who were born before her marriage to him and who were under 16;
 - Every married woman was liable to maintain her husband;
 - All 'legitimate' people were liable to maintain their parents;
 - All 'illegitimate' people were liable to maintain their mothers.²⁴
- 1.44 In family law proceedings, the liability to maintain all children was extended by the *Family Law (Maintenance of Spouses and Children) Act 1976* to also cover children between the ages of 16 and 21 if they were in full time education and to all children who were unable to maintain themselves because of a physical or mental disability. The *Family Law Act 1995* further extended this to all children under the age of 18 and those aged between 18 and 23 if in full time education.

²⁴ The liability to maintain parents ended in 1977 when the *Social Welfare (Supplementary Welfare Allowances) Act 1975* came into effect – see below.

- 1.45 The public assistance/health authorities could have required the parents of many of the young women who were resident in mother and baby homes to contribute towards their maintenance. There is some evidence that the Galway authorities did seek and receive some such contributions (see Chapter 15) but this does not seem to have happened in respect of the other institutions.

Boarding out of children

- 1.46 Section 48 of the *Public Assistance Act 1939* gave the PAA the power to place children at nurse, board out or send to a certified school or, if 14 or over, place at service or place in any suitable trade, calling, or business. If the PAA was the child's guardian, this decision was made by the PAA. If not, as was the case with the vast majority of the children in mother and baby homes, such decisions had to have the approval of the minister. The minister could require the PAA to remove the child from any such placement.
- 1.47 The PAA had the power to support, maintain and provide education to a child with a disability in an institution established for the care of such children (The Act uses the term 'defective children').

Placement in other institutions

- 1.48 Section 3 of the *Pauper Children (Ireland) Act 1898* provided that children could be accommodated in places other than workhouses. Institutions could be certified for the reception of poor children under this Act. For example, St Philomena's was certified for the reception of a number of children in 1932 - see Chapter 2. This Act was repealed by the *Public Assistance Act 1939* but was replaced by similar provisions.
- 1.49 Section 35 of the *Public Assistance Act 1939* provided that, subject to the consent of the minister, a PAA had the power to provide assistance in a home, hospital, or other institution not provided or maintained by the PAA. This was the legal basis for maintaining unmarried mothers and children in the 'extern' homes, for example, the Sacred Heart homes.

Burials

- 1.50 The Act gave the PAAs the power to provide for the burial of people who had been receiving public assistance (among others). This meant that they had the power to

arrange the burial of children who died in the mother and baby homes in their area. They did not have an obligation to do so.

Health Acts 1947 and 1953

- 1.51 Further changes to local health authority structures were made by the *Health Act 1947* and the *Health Act 1953*. Neither made any major changes to the institutional arrangements for unmarried mothers and their children but there were name changes and there were some minor changes to the public assistance law and some further detailed regulations.

Maternity and infant welfare services

- 1.52 The 1947 and 1953 Acts provided for improvements to maternity services; these did not distinguish between married and unmarried mothers. There was never any distinction between unmarried mothers and married mothers in relation to entitlement to maternity services. Similarly there was no distinction between 'legitimate' and 'illegitimate' children in relation to entitlement to infant welfare services. It is clear that some members of the health authorities thought that unmarried mothers should not be able to avail of the same maternity services as married mothers - see, in particular, Chapter 15; however, no legal distinction was made in respect of entitlement.

- 1.53 In 1953, there were about 1,100 hospital beds for maternity patients (excluding about 640 beds in private maternity homes). According to the Minister for Health:

The number of births each year is about 63,000, so that if we take it that each bed can on average take 25 patients in a year, nearly 28,000 out of this 63,000 or 44 per cent can at present be accommodated for child birth in a hospital.²⁵

This meant that more than half of all births took place at home.

Health authorities and public assistance authorities

- 1.54 The *Health Acts of 1949 and 1953* did not change the administrative arrangements in Dublin, Cork and Waterford. In other areas the distinction between the health authority and the public assistance authority was largely removed. In effect the PAAs retained responsibility for the administration of home assistance while the

²⁵ 2nd stage speech, *Health Bill 1953*, Dáil 26 February 1953.

county councils and county borough councils were responsible for health and institutional services. PAAs remained responsible for home assistance until 1977.

- 1.55 The *Health Act 1947*²⁶ transferred responsibility for all health services to county councils and county borough councils. It designated the local authorities (the county councils and the county borough councils) as the health authorities in all counties other than Cork, Dublin and Waterford. The institutions maintained by the PAAs became the responsibility of the county councils and county borough councils. After the enactment of the *Health Act 1953*, these local authorities were responsible for all the general health services. When the *Health Act 1953* was being discussed the Minister for Health said that it would be impracticable to simplify the administration in Cork, Dublin and Waterford.²⁷ The local authorities in these areas were responsible for the services but the existing PAAs provided some of them on an agency basis.
- 1.56 The *Health Act 1953* repealed a number of sections of the *Public Assistance Act 1939*²⁸ and replaced them with very similar provisions.

Institutional assistance

- 1.57 Section 54 of the *Health Act 1953* provided for institutional assistance. This became the legislative basis for the maintenance of unmarried mothers and their children in mother and baby homes. It provided that people who were unable to provide shelter and maintenance for themselves or their dependants would be eligible for 'institutional assistance'. 'Institutional assistance' was defined as 'shelter and maintenance in a county home or similar institution'.
- 1.58 The detailed rules for the implementation of institutional assistance were set out in the *Institutional Assistance Regulations 1954*.²⁹ These rules came into effect on 1 August 1954. They provided that health authorities could provide institutional assistance in a county home or similar institution maintained by them or by making arrangements to provide this in other institutions. There were specific rules about admission to a county home or similar institution maintained by the health authority. Pelletstown (Chapter 13) and Tuam (Chapter 15) were in this category.

²⁶ <http://www.irishstatutebook.ie/eli/1947/act/28/enacted/en/print.html>

²⁷ See 2nd stage speech on the *Health Authorities Bill 1959* for an outline of some of the issues: Dáil reports, 4 November 1959.

²⁸ Sections 21, 22, 31 to 38, 40 to 51, 79, 81 and 82.

²⁹ <http://www.irishstatutebook.ie/eli/1954/si/103/made/en/print>

These rules largely reflected the practices that were already in place. The regulations did not set out detailed rules about admission to other institutions. They did provide that people receiving institutional assistance in any institution could be required to make a contribution towards the cost. The health authorities could require people who had an income of more than 10s a week to make a contribution towards their maintenance. This was increased to £1 in 1965.³⁰

- 1.59 The health authorities had the power to require that a person seeking institutional assistance undergo a medical examination. Recipients of institutional assistance were required to give notice of intention to leave the institution but there was no specified sanction for failure to do this. The minister had to approve the diet of people receiving institutional assistance.

Boarding out of children

- 1.60 Section 55 of the *Health Act 1953* dealt with the boarding out of children. The detailed regulations were set out in the *Boarding Out of Children Regulations 1954*.³¹ This came into effect on 1 August 1954. They did not make significant changes to the existing arrangements but the rules were made more explicit. An obligation was placed on the health authorities to not send a child to an approved school unless the child could not be 'suitably and adequately assisted by being boarded out'. Health authorities were obliged to keep a register of boarded out children; this register had to be available for inspection by the Bishop of the diocese in which the child was boarded out and by 'such other religious authority as the health authority may consider appropriate'. The regulation that children should not be boarded out in a town or city, unless with the minister's consent, was repealed.
- 1.61 The boarded out children had to be inspected by an officer of the health authority at least once a month or at such longer intervals as the health authority, with the consent of the minister, decided. The health authority had to get monthly reports of the child's school attendance or an explanation for non-attendance. Officers of the Department of Health were also entitled to inspect boarded out children and the houses in which they lived. The health authority could remove the child from the foster parents with the consent of the minister or the minister could order the removal of the child.

³⁰ *Institutional Assistance Regulations 1965*: <http://www.irishstatutebook.ie/eli/1965/si/177/made/en/print>

³¹ <http://www.irishstatutebook.ie/eli/1954/si/101/made/en/print>

- 1.62 As legal adoption became available from 1953 (see Chapter 32), boarding out became a less important exit pathway for children in mother and baby homes.

Health Authorities Act 1960

- 1.63 The Cork, Dublin, Limerick and Waterford health authorities were established by the *Health Authorities Act 1960*.
- 1.64 Although the *Health Acts* of 1947 and 1953 had been described as rationalising local administration,³² there were still 19 different local/health authorities in Cork, Dublin, Limerick and Waterford. There were seven in Dublin including Dublin corporation, Dublin county council, the Dublin board of assistance, the Rathdown board of assistance and the Balrothery board of assistance.³³ Cork had five including Cork corporation, Cork county council and the South Cork board of public assistance.³⁴ Waterford had Waterford corporation, Waterford county council, the board of assistance and the joint mental hospital board. Limerick had Limerick corporation, Limerick county council and the joint mental hospital board.
- 1.65 The effect of the 1960 Act was to unify the health services in the four counties concerned and set up one health authority for each county. The health authorities were appointed by the local authorities and were largely composed of local authority members. Among other things, this meant the abolition of the three boards of assistance in Dublin.
- 1.66 The 19 bodies each had its own administrative staff. The proposed new arrangements were supported by the Dublin and Limerick local authorities but not by the Cork and Waterford authorities.
- 1.67 Home assistance continued to be provided under the *Public Assistance Act 1939*. The management of home assistance was transferred to the health authorities created under the 1960 Act.

³² See for example, Dáil Éireann; *Select Committee on the Health Services: Memorandum from the Department of Health* <https://www.lenus.ie/bitstream/handle/10147/575039/helathservicescommittee.pdf?sequence=1&isAllowed=y>

³³ The others were the Grangegorman Mental Hospital Board and the Dublin Fever Hospital Board (the Dublin Fever Hospital was at Cherry Orchard).

³⁴ The others were the Joint Mental Hospital Board and the Joint Sanatoria Board.

- 1.68 The Dublin city and county manager remained legally responsible for the executive functions of the Dublin health authority (DHA) but these functions were delegated to the chief executive officer of the DHA.

Health Act 1970

- 1.69 The *Health Act 1970* provided for the establishment of eight regional health boards. They took over the health functions of the local authorities.

Regional health boards

Eastern Health Board:	Dublin, Kildare and Wicklow
Midland Health Board:	Laois, Offaly, Longford, Westmeath
Mid-Western health Board:	Clare, Limerick, Tipperary North
North-Eastern Health Board:	Louth, Meath, Cavan and Monaghan
North-Western Health Board:	Donegal, Sligo, Leitrim
South Eastern Health Board:	Carlow, Kilkenny, Waterford, Wexford, Tipperary South
Southern Health Board:	Cork, Kerry

- 1.70 The Eastern Health Board took over the administration of the health services within its functional area from 1 April 1971. On 30 March 1971, the Dublin, Cork, Limerick and Waterford health authorities were dissolved.³⁵

Later changes

- 1.71 Further structural changes were made after the period covered by the Commission. The *Health (Eastern Regional Health Authority) Act 1999* which came into effect in 2000 established three health boards within the existing Eastern Health Board area. The *Health Act 2004* which came into effect on 1 January 2005 abolished all the health boards and established the Health Service Executive (HSE).

Funding of services, hospitals and institutions

- 1.72 Initially institutional services, home assistance and health services were paid for by the ratepayers in the relevant local health/public assistance areas. The *Health Services (Financial Provisions) Act 1947* started the process whereby these

³⁵ SI 117/1971.

services were paid half by the local authorities and half by the State. In the 1970s, the State became responsible for all funding.

- 1.73 Capital funding was provided by the Hospitals Trust Fund and it also provided for the shortfall in voluntary hospitals. A number of the institutions being investigated by the Commission received funding from the Hospitals Trust Fund. It is not clear to this Commission why more of the institutions did not apply for funding from this source.
- 1.74 The use of the proceeds of sweepstakes for funding hospitals and institutions was initially governed by the *Public Charitable Hospitals Acts 1930 - 1932*. These were replaced by the *Public Hospitals Act 1933* which, with some amendments not relevant to this report, remained in force until 1986/7.
- 1.75 The sweepstakes proved to be a very successful method of raising funds. It would appear that over £5 million was made available from sweepstakes in the period 1930-33 for spending on hospitals.³⁶
- 1.76 The 1933 Act extended the definition of a hospital to include not only hospitals in the ordinarily understood sense, but also
- Institutions for the care and maintenance of expectant women or mothers with children who were less than five years old;³⁷
 - Institutions for the blind, deaf, dumb and mentally defective;
 - The infirmary sections of county homes.
- 1.77 The sweepstakes were conducted by the Hospitals Trust which was a limited company. The proceeds were paid into the Hospitals Trust Fund. This was governed by trustees known initially as the National Hospital Trustees and from 1938 as the Hospitals Trust Board. The trustees were appointed by the Minister for Local Government and Public Health.
- 1.78 The 1933 Act set up the Hospitals Commission. Its members were appointed by the minister. Its function was to carry out investigations into the needs of hospitals;

³⁶ 2nd stage speech, Seanad, 21 June 1933; <https://www.oireachtas.ie/en/debates/debate/seanad/1933-06-21/9/>

³⁷ A number of mother and baby homes received such funding – this is described in the chapters on the individual institutions.

to prepare schemes for improving and co-ordinating hospital facilities; and to advise the minister on applications for grants from the Hospitals Trust Fund.

1.79 The procedure was that a hospital could apply to the minister for a grant. This application was referred to the Hospitals Commission for investigation and report. The Hospitals Commission had the right to inspect hospitals (as defined under the Act) which applied for grants from the Hospitals Trust Fund and hospitals or institutions under the control of or assisted by local authorities. It could examine the premises, fittings and equipment and was entitled to get full information about the management and financial position of the hospital and 'to see and examine all accounts of the receipts and expenditure of the governing body of such hospital...and also all or any books and other documents containing any record of such receipts and expenditure'. The minister made the decision; in so doing he was not bound by the Hospitals Commission report.

1.80 Grants could be made for a number of purposes including:

- the purchase of land or buildings;
- the construction of buildings;
- the reconstruction, extension, alteration or improvement of buildings;
- the purchase of hospital, nursing and other equipment;
- the payment of maintenance expenses;
- the discharge of debts.

1.81 The *Health Act 1970* dissolved the Hospitals Commission.

Grants for maternity and related services

1.82 In 1916 the UK government introduced a programme of grants to local authorities and voluntary agencies in urban districts (including county boroughs), for health-visiting, maternity centres, midwifery facilities and day nurseries. In 1918 the sum of money provided was increased and the items covered were extended to include provision for the young children of widowed, deserted and unmarried mothers and Exchequer payments for health visitors. By 1920 this grant was providing financial support to a number of Dublin voluntary organisations that assisted unmarried mothers and their children, including the Magdalen Asylum (Denny House - see Chapter 23) and the Nursery Rescue and Protestant Children Aid Society. The grant covered half of the cost of boarding out these children up to the age of five,

which would reduce the amount of money that a single mother needed to provide, and half of the estimated costs of keeping mother and baby in the Dublin Magdalen Asylum. This scheme was continued after independence and some of the institutions being investigated by the Commission availed of this funding.

Home assistance/income maintenance payments

- 1.83 Home assistance was the only weekly income maintenance payment available to an unmarried mother for most of the period covered by this investigation. A number of new income maintenance payments were introduced but not all were available to unmarried mothers.
- 1.84 Unemployment Assistance was introduced in 1933 but unmarried mothers with small children would generally not have qualified as they would not be considered to meet the availability for work criterion. Unmarried pregnant women may have qualified. Widows and Orphans Pensions, both contributory and non-contributory, were introduced in 1935 but, of course, unmarried mothers did not qualify. Children's Allowances, which were paid monthly, were introduced in 1944 but initially applied only to the third child in a family. Maternity Allowance was introduced in 1952. This was payable for six weeks before and six weeks after the birth. Unmarried pregnant women and mothers qualified for this in the same way as married women; they were required to have a record of paid social insurance. Unmarried Mother's Allowance was introduced in 1973; this was the first specific State payment available to unmarried mothers. It was renamed Lone Parent's Allowance in 1990.

Home assistance

- 1.85 Home assistance was governed by the Poor Law/Public Assistance legislation. It was administered by relieving officers (later assistance officers) employed by the board of guardians and their successors in title. In 1975, when the legislation to replace it was being discussed, it was being administered by 31 public assistance authorities or by health boards acting on their behalf, subject to the general direction and control of the Minister for Social Welfare, and was financed from the local rates.
- 1.86 A person was eligible for home assistance if she was unable to provide the necessaries of life for herself or her dependants. It was entirely discretionary.

There were considerable variations in how it was implemented by the different public assistance authorities. The Parliamentary Secretary at the Department of Social Welfare commented:

Surveys of the service have shown that because of major defects in its structure it operates in an arbitrary and far from satisfactory manner. There are major inequalities in regard to standards of eligibility and in regard to the amount of assistance given as between one authority and another. In some cases these inequalities exist even within the same authority in regard to the treatment of basic needs. Again, in the matter of supplementation there are wide differences in the treatment of similar cases.³⁸

The cost of home assistance was met entirely by the PAAs. This was one reason for the lack of uniformity in its implementation. The numbers in receipt of home assistance had been steadily declining as new social welfare schemes were introduced for specific groups: the numbers went from a weekly average of 75,000 in the 1940s to 30,000 in the 1970s.³⁹ Some unmarried mothers received home assistance but, as it was discretionary and locally administered, there are no accurate figures for this.

Supplementary welfare allowance scheme

- 1.87 The *Social Welfare (Supplementary Welfare Allowances) Act 1975* came into effect on 1 July 1977. It provided for a new supplementary welfare allowance (SWA) scheme to replace home assistance. The SWA scheme was described by the Parliamentary Secretary at the Department of Social Welfare, Frank Cluskey, as removing the 'last vestiges of the harsh and unfeeling Poor Law'.⁴⁰ The new scheme was under the general control of the Minister for Social Welfare and was administered by the regional health boards. It was implemented by community welfare officers who were formerly assistance officers or superintendent assistance officers.⁴¹

³⁸ Frank Cluskey, 2nd stage speech on the *Social Welfare (Supplementary Welfare Allowances) Bill*, Seanad, 10 December 1975: <https://www.oireachtas.ie/en/debates/debate/seanad/1975-12-10/6/>

³⁹ *ibid.*

⁴⁰ In his Seanad 2nd stage speech, Cluskey said 'In introducing this measure I am very conscious of the lessons of history which indicate, in the words of one recent commentator, that "since other attempts to bury the Poor Law, in Ireland and in Britain, have shown the truly remarkable ability of the Poor Law to survive death sentences, a really radical reform will be necessary"'.⁴¹

⁴¹ Assistance officers and superintendent assistance officers had a wide range of responsibilities under other legislation. See *Annual Report of the Community Welfare Service 1995*, Eastern Health Board: <https://www.lenus.ie/bitstream/handle/10147/46249/979.pdf?sequence=1&isAllowed=y>

- 1.88 The main feature of the SWA scheme was that it provided that people who had no income and did not qualify for any other social welfare benefit could get a basic weekly payment. In effect, every adult became entitled to a minimum income as of right. This feature was not of particular importance to unmarried mothers and their children because of the existence, since 1973, of the Unmarried Mother's Allowance. It was important for pregnant women and there is evidence that residents in a number of mother and baby homes were in receipt of this payment before the birth of their child - see, for example, Chapters 24 and 26.
- 1.89 The SWA scheme had a number of other features which were particularly relevant to unmarried mothers. It provided that supplements could be paid to meet particular costs. A rent supplement could be payable if a person's income after paying the rent fell below a certain level. The SWA scheme also provided for payments towards once off or emergency needs, for example, heating or special diets, and for assistance with the costs of clothing and footwear. These payments could be once off payments or weekly/monthly payments. Gradually, the supplements became the more important element of the scheme and, in particular, the rent supplement became a significant housing benefit.
- 1.90 It seems likely, but it is not possible to establish, that the availability of the rent supplement, and the other supplements to a lesser extent, assisted some unmarried mothers to decide to keep their children.
- 1.91 While it was hoped that the new scheme would be implemented in a uniform manner throughout the country, in practice, its discretionary elements were implemented differently in different health boards. In 1986, the Commission on Social Welfare expressed concern about the divergence in the interpretation and application of the discretionary sections of SWA between and within health boards. A review of the SWA scheme by the Combat Poverty Agency in 1991 noted that some community welfare officers were more generous than others in assisting claimants.
- 1.92 It is not possible to extract detailed information about the degree to which unmarried mothers availed of the supplements between 1977 and 1998 because statistics were not kept in a manner that allows for such analysis. Information

about the scheme was not centrally available until a computerised system was put in place in the mid-1990s.⁴²

- 1.93 There is evidence that unmarried mothers did avail of the rent supplement and the exceptional/urgent needs payments especially assistance with electricity costs. The Commission is aware of anecdotal evidence that lone parents were assisted with the costs of furniture and kitchen equipment if they got either local authority housing or private rented accommodation.
- 1.94 A review of the scheme by the Combat Poverty Agency was published in 1991.⁴³ It included an analysis of the information available about recipients in the late 1980s. For example, on the week ending 31 March 1990, there were 6,527 recipients of rent supplement; however, the report points out that this is probably a considerable underestimate of the numbers who were receiving rent supplement as it was often paid on a fortnightly or monthly basis. There were 18,761 recipients of the Unmarried Mother's Allowance in 1990.
- 1.95 The report did not distinguish between unmarried mothers and other lone parents. Lone parents were significant recipients of rent supplement, assistance with electricity costs and clothing and footwear.

Children Acts

- 1.96 The *Children Act 1908* was the primary legislation governing the care of children in the period covered by the Commission. It was amended a number of times during this period. It remained in force until replaced by the *Child Care Act 1991* and the *Children Act 2001*.⁴⁴ Its main provisions which are of relevance to the Commission's remit are described here.

Nursing out of children

- 1.97 The Children Acts provided for controls on the nursing out of children for reward. Part 1 of the *Children Act 1908* provided that any person who undertook the nursing and maintenance of an infant under the age of seven, away from the

⁴² See Eastern Health Board, *Annual Report of the Community Welfare Service* (1995), <https://www.lenus.ie/bitstream/handle/10147/46249/979.pdf?sequence=1&isAllowed=y>

⁴³ Combat Poverty Agency, *Scheme of Last Resort? A Review of Supplementary Welfare Allowance* (1991), <https://www.lenus.ie/handle/10147/624069>

⁴⁴ The *Child Care Act 1991* came into effect at various times between 1991 and 1996.

child's parents or where the child had no parents, 'for reward' was obliged to notify the local authority in writing within 48 hours. If there were such arrangements in its area, the local authority was obliged to appoint infant protection visitors to inspect the children concerned and the premises where they lived.⁴⁵ Alternatively, the local authority could appoint people to exercise the powers of infant protection visitors; in practice, many local authorities appointed relieving officers (officially called assistance officers after 1923) to exercise these powers. The infant protection visitor was to visit each child and inspect the premises in which the child lived.

- 1.98 Where children were placed at nurse by a philanthropic society, it was open to the local authority to authorise the society to exercise the powers of the infant protection visitor if it was satisfied that the interests of the infants were properly safeguarded; the societies were obliged to provide periodic reports to the local authority.
- 1.99 The minutes of the Dublin board of guardians show that, during the 1920s, the infant protection visitors were actively pursuing illegal arrangements for caring for children. The minutes record many instances of such prosecutions and the penalties imposed. These included fines and imprisonment. For example, fines of between 10s and £5 were imposed for failure to register and the woman also had to pay the costs involved.
- 1.100 People who accepted a nursed-out infant were obliged to inform the authorities within 48 hours if the child was removed from their care or if the child died.
- 1.101 The *Children Act 1934* provided for changes to the 1908 Act which were recommended by the Commission on the Relief of the Sick and Destitute Poor, including the Insane Poor. In its August 1927 report, the commission pointed out that, while the provisions of Part I of the 1908 Act had, to some extent, brought baby farming under control, it did not go far enough.
- 1.102 The Minister for Local Government and Public Health had no functions under the infant life provisions of the 1908 Act. The 1934 Act provided that, in exercising

⁴⁵ The *Infant Life Protection Act 1879* provided for infant life protection visitors; some Boards of Guardians appointed relieving officers to this role.

these functions, the local authorities would be subject to the general regulation and control of the minister.

- 1.103 The requirement to inform the local authority arose only after the infant had been on the premises for 48 hours. This did not give local authorities any opportunity to assess the suitability of the proposed foster parents or to inspect the homes in advance in order to assess their suitability. This meant that, if the foster parents or the home were unsuitable, the only remedy was the removal of the child. There was 'a great likelihood that the child will then become a charge on the rates, and the persons who should be responsible for it will escape their liabilities'.⁴⁶ The 1934 Act provided that the local authority must be given at least 48 hours' notice before the infant was taken into the home. The 1934 Act also raised the age to which these provisions applied from seven to nine years old.
- 1.104 In the case of 'illegitimate' children, the 1934 Act provided that they would be deemed to have been accepted for reward unless the contrary was proven.
- 1.105 When introducing the Bill, the Parliamentary Secretary to the Minister for Local Government and Public Health, Dr Ward, said that these changes were supported by a wide range of societies, operating particularly in the neighbourhood of Dublin. He named the National Society for the Prevention of Cruelty to Children, the Irish Women's Citizen's Association, the Catholic Protection and Rescue Society, the Nursing and Rescue and Protestant Children's Aid Society, St Patrick's Guild and the Sacred Heart Home⁴⁷ as societies that had made representations on the matter. He said that poor law authorities had also sought changes, 'notably the Rathdown Board, whose area seems to be particularly exposed to the evils which the Bill is intended to remedy'.
- 1.106 Section 57 of the *Health Act 1953* provided that the health authorities would be the relevant authorities for the implementation of Part 1 of the *Children Act 1908*.

Abandonment of children

- 1.107 Section 12 of the *Children Act 1908* dealt with the prevention of cruelty to children. Cruelty could take many forms including the abandonment of a child. It was an offence for any person who had the custody or care of a child to abandon the child

⁴⁶ 2nd Stage speech of the *Children Bill 1934*, 15 February 1934.

⁴⁷ This was an orphanage in Dublin which was not connected with the Sacred Heart mother and baby homes.

in a manner that was likely to cause unnecessary suffering or injury to the child's health. Parents could be guilty of this offence if they failed to provide adequate food, clothing, medical aid or lodging or, if they were unable to provide these, if they failed to take steps to procure these under the poor law arrangements. Attempts were made to use this provision to prosecute women who left their children in mother and baby homes but they seem to have been unsuccessful (see Chapter 18).

Industrial schools

- 1.108 Under the *Children Act 1908*, children could be sent to industrial schools only if they were convicted of an offence. The *Children Act 1929* provided that children could be sent to industrial schools if they were destitute and their parent(s) could not support them. This was subject to the consent of the parent(s).

Registration of Maternity Homes Act 1934

- 1.109 There was no regulation of maternity homes⁴⁸ prior to 1934. Until then there was 'no official control over maternity homes. It was quite open to any person to carry on a maternity home, and there was no machinery in existence to ensure that it was efficiently managed or that the premises in which it was carried on were suitable or in a good sanitary condition'. Local authorities did have the power to enter such homes for the purposes of the supervision of midwives under the *Midwives (Ireland) Act 1918* but they had no supervisory powers over the home itself or any of the other employees.⁴⁹
- 1.110 The Commission on the Relief of the Sick and Destitute Poor including the Insane Poor had recommended in 1927 that a registration system for maternity homes be put in place.
- 1.111 This legislation defined a 'maternity home' as any premises which were, either wholly or partly, used or intended to be used for the reception of pregnant women or of women immediately after child-birth.

⁴⁸ There was also no regulation of hospitals or other health care facilities and such regulation was not introduced until after the period covered by this report.

⁴⁹ Dr Ward, Parliamentary Secretary to the Minister for Local Government and Public Health, 2nd stage speech on the *Registration of Maternity Homes Bill*, Seanad, 11 April 1934:

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad1934041100009?opendocument>

- 1.112 The Act required the local authorities to keep a register of maternity homes in their areas. Anyone who proposed to operate a maternity home could apply to the local authority for registration. The local authority could refuse to register a maternity home if it was satisfied that:
- the applicant for registration was not a fit and proper person to operate a maternity home;
 - the premises were unsuitable;
 - the superintendent nurse was not a qualified nurse or midwife: this applied only to maternity homes which did not exist before the Act came into effect.
- 1.113 If the local authority refused registration, the applicant could appeal to the Minister for Local Government and Public Health.
- 1.114 The Act made it a criminal offence to operate a maternity home without registration unless the home was specifically exempted. The minister had the power to grant an exemption to any hospital or institution which was a maternity home but was not carried on for private profit.
- 1.115 The operators of maternity homes were obliged to display their certificate of registration in a conspicuous place in the maternity home. Failure to do this was also a criminal offence.
- 1.116 The local authority could cancel the registration if any of the conditions for granting the registration were no longer being met.
- 1.117 The Act provided that records had to be kept, in a prescribed form, of all receptions into the home, all discharges, every confinement, every miscarriage, every birth and every death. A record also had to be kept of every removal of a child from the home, the name of the person who removed the child and the address to which the child was removed. It was an offence to fail to keep the specified records. It was also an offence to fail to produce such records for inspection as required by the local authority or the departmental inspector.
- 1.118 These records could be inspected at all reasonable times by authorised officers of the local authority or by any inspector; an inspector was a person authorised by the Minister for Local Government and Public Health to carry out inspections under the

Act. In effect, both the local authorities and the department had powers of inspection. The department did carry out regular inspections; the Commission does not know if all the local authorities did. While the department carried out inspections, only the local authority had the power to insist on changes or to de-register the maternity home.

- 1.119 There were specific provisions about notification of deaths. The maternity home operator was obliged to notify the local authority in writing of the death and its cause. This had to be done by registered post within 24 hours of the death. It was a criminal offence to fail to do this.
- 1.120 There were no set standards for maternity homes until the 1940s. The Department of Health set out some standards in the 1940s but these were not legally binding.
- 1.121 On 15 June 1961, the Minister for Health, Mr McEntee, told the Dáil that:
- Maternity homes are regularly inspected by authorised officers of the local authorities (usually the county medical officer of health or his deputy). These homes are also inspected by an officer of my Department and any matter adversely reported upon is drawn to the attention of the local authority. These inspections and the power conferred by the Act on local authorities to cancel registration under certain circumstances ensure that a satisfactory standard is maintained in maternity homes generally.

Other relevant legislation

Parental control/age of majority

- 1.122 For most of the period being examined by the Commission, the age of majority was 21 or on marriage, if that was earlier.⁵⁰ It was reduced to 18 by the *Age of Majority Act 1985*. The question has arisen as to whether parents had the right to decide where their minor children should live and, specifically, whether parents had the right to place a minor daughter in a mother and baby home. Neither the right of the parents of a minor mother to decide where their daughter would live before or after the birth of her child nor their right to place their daughter in a mother and baby

⁵⁰ For much of the period covered by the Commission, the legal age for marriage was 21. A person under the age of 21 needed parental consent to marry; that consent could be given if the female was at least 12 years old and the male was 14. In 1975, the minimum age for marriage was raised to 16 with provision for the courts to consent to people marrying at an earlier age. The minimum age was raised to 18 in 1995 (again with the possibility of a court order between the age of 16 and 18). This meant that very young married people were regarded as adults and had the right to make decisions about their children.

home are matters which appear to have been addressed by law or by the courts. In *Child Law*,⁵¹ Geoffrey Shannon points out that the principal source of fundamental rights in the family law arena in Ireland is the Constitution. Article 41, which recognises the family as the natural and primary unit group of society lacks a child focus and establishes the principle of parental autonomy. Article 42 provides State recognition of the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children. It seem clear that, under the Constitution of Ireland, parents enjoyed the primary right and duty to make decisions about their children's lives. The law (as outlined above) required that parents maintain their children until the age of 16 but not for the full duration of their minority.

Age of consent

- 1.123 For most of the period covered by this investigation it was an offence to have sexual intercourse with a girl under the age of 17. Sexual intercourse with a girl under the age of 15 was a particularly serious offence which carried a potential penalty of life imprisonment. These limits were set by Sections 1 and 2 of the *Criminal Law Amendment Act 1935*.⁵² Prior to its enactment, the age of consent was 16 with 13 being the age limit for the more serious offence.⁵³ With some exceptions, it seems that most of the mother and baby homes and county homes under investigation did not have a policy of reporting underage pregnancies to the Gardaí.

Legitimacy

- 1.124 The status of 'illegitimacy' remained in existence until 1987. This was clearly a major issue for the children of unmarried mothers and is considered in detail in Chapter 36.

Short form birth certificates

- 1.125 The *Vital Statistics and Births, Deaths and Marriages Registration Act 1952* provided for, among other things, a short form birth certificate. In his 2nd stage speech,⁵⁴ the Minister for Health did not specifically mention the main reason for the introduction of this form, that is, it did not give information about a person's

⁵¹ Geoffrey Shannon, *Child Law* (Dublin, 2010), pp 2-3.

⁵² Section 1 was declared unconstitutional in 2006 and the *Criminal Law (Sexual Offences) Act 2006* was enacted to rectify the unconstitutional aspects but with the same age limits.

⁵³ <https://www.oireachtas.ie/en/debates/debate/seanad/1934-12-12/18/>

⁵⁴ Dáil Reports, 20 February 1952.

parentage and, therefore, did not show whether a person was 'legitimate' or not. General Mac Eoin TD was not reticent about this:

This is a very important Bill. We are told that the chief reason for its introduction is to enable statistics to be more readily compiled and made available, but the astonishing part of it is that a very important change in one of the most essential parts of the life of the people of the country is being altered under that title. Now, I am not in any way to be taken as prudish or of having any superiority complex or inferiority complex either one way or the other. On this matter, what I am going to mention is the question of short certificates; short certificates for births, short certificates for deaths and short certificates for marriages. This is, believe it or not, the beginning of the liberalistic mind in this country. It is the opening up and the starting up of the liberalistic mind in Europe being put across in this House for the first time under vital statistics. This is not a Department in which I had any part. I am not a shadow Minister for Health or anything like that, but I am an ordinary Deputy having positive views upon certain matters which are of the utmost importance to every person in this country.

This Bill will be welcomed by a lot of cranks. There is not a crank in the country who will not say "Well done" to the Minister. Very well. If he wants the approbation of those people, he can have it, and if what I am going to say will bring the reverse to me, I am prepared to take it and to stand up to it. First, as regards the question of the short certificates. The Minister was Minister for Agriculture, and he now proposes to do with the Irish people what he would not do with Coates's herd book. He is going to show nothing as to who we are or where we came from or anything about us, and to legitimise everybody. He is going to make every one of us illegitimate. Now, that may be hard talk. I hope it will not be misunderstood, but it is direct.

1.126 Some deputies were perplexed by General Mac Eoin's view, for example, Deputy Dr ffrench O'Carroll:

I am amazed at the attitude which Deputy MacEoin has taken up here to-day, and I am not surprised, without wishing to be personal, that during his term of office we did not have a Legal Adoption Bill brought into this Dáil. I cannot understand how anybody would oppose a section in a Bill which would seek to try to release the illegitimate people in this country who are being ground under the present law as virtual lepers in society. They are people who are

admitted into the world but not into the Christian society in which we live. It is no fault of theirs.

- 1.127 Other deputies questioned the effectiveness of the new form, suggesting that it would not be accepted for significant legal transactions but it was pointed out that it could be used for many everyday activities, for example, proof of age for examinations or work.

Action for seduction

- 1.128 At common law, the parents of a minor who had a child outside marriage could bring an action for seduction against the father of the child. The essential ingredients of the action were the existence of a 'master-servant' relationship, the seduction of the servant and the deprivation of the master of the services of the servant as a result of the seduction. In *Shine v Archdeacon*⁵⁵ the plaintiff was the father of a girl who had been employed as a servant by a Mr O'Leary from the age of 16 years. At various stages the girl expressed her intention of leaving her employment but was persuaded by the defendant (a man other than Mr O'Leary) to stay. The defendant then had what was referred to in the judgment as 'immoral relations with the girl' and she became pregnant, giving birth to a child in a workhouse hospital in 1928 when she was still a minor (aged 20). The plaintiff claimed the sum of £300 for the seduction and 'carnal knowing' of his daughter as a consequence of which it was claimed he had lost her services and incurred expense in taking care of and nursing her and her child. The Circuit Court judge dismissed the plaintiff's claim. The plaintiff's appeals to both the High and Supreme Courts were dismissed on the basis that at the time the seduction had taken place the girl was in the service of Mr O'Leary and not her father and the fact that she was underage was immaterial.
- 1.129 Before 1930, an action for seduction was the only legal procedure available to the mother for recovery of money from the putative father which could be used for the maintenance of the child. As Judge Henchy described the position in the case of *O v M*,⁵⁶ aside from what he described as 'that doubtful remedy', 'the mother was left by the law to fend for herself in the task of rearing the child'.⁵⁷

⁵⁵ [1931] I IR 566.

⁵⁶ [1977] 1 I.R. 33.

⁵⁷ *Ibid*, p. 35.

Affiliation orders

- 1.130 The *Illegitimate Children (Affiliation) Orders Act 1930* provided that a mother could apply to the District Court for an order requiring the father of her child to pay maintenance in respect of the child. The mother was required to have corroborative evidence to prove paternity. In practice, unless the father admitted paternity, it was extremely difficult for the mother to provide such evidence. It was not an effective means of providing support for 'illegitimate' children.