

A Brief Overview of the Mother and Baby Institutions Payment Scheme Bill 2022

Background

Following the publication of the Final Report of the Commission of Investigation into Mother and Baby Homes in January 2021, the Government committed to establishing a Scheme as part of a set of restorative actions for survivors and former residents of Mother and Baby and County Home Institutions.

An Interdepartmental Group (IDG) was set up to develop detailed and costed proposals for the Scheme. To support the work of the IDG, a public consultation process on the design of the Scheme was undertaken. The Irish Human Rights and Equality Commission (IHREC) was requested by the Minister for Children, Equality, Disability, Integration and Youth to provide an advisory paper and engage with the IDG. The Government examined the Report of the IDG process and agreed proposals for a Mother and Baby Institutions Payment Scheme in November 2021. As part of the proposals, it was set out that legislation would be required to establish the Scheme. On 29th March 2022, the Government approved the General Scheme of the Mother and Baby Institutions Payment Scheme Bill.

On 11th October 2022, the Government approved the publication of the Mother and Baby Institutions Payment Scheme Bill. The Bill was published on 17th October 2022.

Purpose of the Bill

The main purpose of this Bill is to establish the Mother and Baby Institutions Payment Scheme. The Scheme will recognise the experiences of certain people who were residents of Mother and Baby and County Home Institutions in the State.

The Bill also provides for the establishment of an Office to be known as the 'Office of the Chief Deciding Officer of the Mother and Baby Institutions Payment Scheme', to administer the Scheme. The Office will be set up in the

Department of Children, Equality, Disability, Integration and Youth. A Chief Deciding Officer will be appointed to oversee the Office and the Bill sets out the functions that he or she will perform. The Chief Deciding Officer will be independent of the Minister in carrying out these functions.

Applications to the Scheme

“Relevant persons” can apply to the Scheme. The Bill defines a “relevant person” as:

- a) A person who was resident in a relevant institution as a child;
- b) A person, whether as a child or an adult, or both, who was resident in a relevant institution for reasons relating to their pregnancy, or the birth or care of the child concerned.

A “Relevant institution” means an institution specified in Schedule 1 of the Bill. These are the institutions which were covered by the Terms of Reference of the Commission of Investigation.

Eligibility for payments and provision of services under the Scheme

The Bill sets out the eligibility criteria for the payments and services available under the Scheme, as follows:

a) General Payment

A person who was resident as a child in a relevant institution for at least 180 days will be entitled to a general payment. The amount of the payment will reflect the length of time spent in the institution and be determined using the table in Schedule 2 of the Bill.

A person who was resident as a mother in a relevant institution will be entitled to a general payment, the amount of which will reflect the length of time spent in the institution and be determined using the table in Schedule 3 of the Bill.

b) Work-Related Payment

A mother who was resident in an institution listed in Part 1 of Schedule 1 of the Bill for at least 90 days will be entitled to a work-related payment.

The amount of the payment will reflect the length of time spent in the institution and, therefore, be determined using the table in Schedule 3.

c) Enhanced Medical Card

A person who was resident as a mother or a child, or both, in an institution listed in Schedule 1 for at least 180 days will be eligible for an enhanced medical card. The card provides access to the health services listed in section 29(3) of the Bill.

d) Health Support Payment

Applicants who are deemed eligible for a form of enhanced medical card under the Scheme, but who live outside of Ireland, may choose to take the card or opt instead to receive a once-off Health Support Payment of €3,000.

Application process

Applications will be accepted until the closing date of the Scheme. One application should be made by a relevant person to cover all time spent in relevant institutions as a child and/or as a mother. This can include time spent in different institutions.

A person can make more than one application to the Scheme where an additional institution is added to Schedule 1.

The section sets out what information should be supplied in an application.

Assessment of applications

To support the assessment of applications, the Bill provides for the Office of the Chief Deciding Officer to have the power to search the copy of the Commission of Investigation's database and related records, held by the Department, to seek to establish the applicant's period of residency in a relevant institution.

A temporary absence from the institution will be included in the calculation of time spent where the absence was for a period of less than 180 days.

As not all institutional records are held in the Commission of Investigation's database and related records, the Office of the Chief Deciding Officer will also have the authority to request relevant information from an 'information source' where they hold the relevant records.

The Bill allows for applicants to submit affidavits where records are limited or do not exist.

Accepting an offer

An applicant will have six months to accept or reject an offer made to him or her. They will be informed of their right to request a review of the decision made on their application.

The period of six months is offered to give applicants enough time to avail of independent legal advice in relation to the waiver which they will be asked to sign on acceptance of a payment under the Scheme. Signing the waiver means that the person will waive any right of action against the State. The applicant will be fully aware of what they are being offered under the Scheme before signing a waiver. Until the point where an offer is accepted, an applicant will have the right to pursue a case through the courts.

Reviews and appeals

The legislation sets out that, where an applicant is unhappy with the decision of the Chief Deciding Officer, they can request an internal review of this decision. The review must be requested within 60 days of receiving the decision on their application.

The legislation also sets out that, if an applicant is unhappy with the outcome of the internal review process, he or she can request that an independent appeals officer reviews the decision. The appeal must be requested within 60 days of receiving a review decision.

Finally, the Bill provides that the applicant can make an appeal to the High Court on a point of law following the independent appeals process.

Applying on behalf of someone

The Bill provides that a person can apply on behalf of a “relevant person” in circumstances where that person is empowered to act under a power of attorney, an enduring power of attorney or a wardship arrangement.

An application may also be made on behalf of a person who would have been eligible to apply, but has died since the date of the State Apology, i.e. since 13 January 2021. In these circumstances, the personal representative of the deceased relevant person may apply for a general payment or work-related payment for the benefit of the estate of the deceased person. For the purposes of this Bill a “personal representative” has the meaning assigned to it by the Succession Act 1965, i.e. the executor or the administrator for the time being of a deceased person.

Where an applicant dies after making an application, but before the process is complete, the Bill sets out that his or her personal representative may proceed with the application

Tax treatment of payments

General payments and work-related payments made under the Scheme will be exempt from income tax, capital gains tax and capital acquisitions tax.

Support in getting legal advice

Financial support will be made available to applicants to get independent legal advice when they are considering accepting a payment and signing the legal waiver.

A contribution to legal costs will also be provided in cases where an applicant makes an affidavit to apply to the Scheme. The details of this capped support will be laid out in regulations by the Minister.

Review of the Scheme

The Bill provides for two reviews of the operation of the Scheme to take place. The first review will take place as soon as possible after the second anniversary

of the establishment of the Scheme. A second review will take place as soon as possible after the closure of the Scheme.

Adding an institution

The Bill provides for the Minister to add an additional institution to the Scheme. In order to be added, the institution must have been established for the purpose of providing maternity and infant care services and the placement of children for the purposes of adoption or care arrangements. A public body must have had a regulatory or inspection function. The addition of an institution requires the consent of the Minister for Public Expenditure and Reform.

Use of the database and records of the Commission of Investigation

When the Commission of Investigation was dissolved in February 2021, the Department of Children, Equality, Disability, Integration and Youth became the data controller for all the personal data contained in the Commission's archive of records and databases. This includes the institutional records and related data which the Commission accessed in the course of its investigations.

The Bill provides for the Chief Deciding Officer to use the database and records of the Commission of Investigation in the course of administering the Scheme.

It also provides for the Chief Deciding Officer to share this data with an appeals officer, where relevant and proportionate.

The section also provides for the Child and Family Agency (Tusla) to be able to access and process personal data and special categories of personal data in the database and related records, for the purposes of performing its functions as an information source.