General Scheme of a

Preservation and Transfer of Specified Records of the Commission of Investigation (Mother and Baby Homes and certain related Matters) Bill

The purpose of this General Scheme is to provide the statutory basis for the preservation of records of the Commission of Investigation (Mother and Baby Homes and certain related Matters); to further provide for the transfer of [and access to] specified records, including a specified database, of the Commission of Investigation (Mother and Baby Homes and certain related Matters); and to deem those specified records to be records of the Child and Family Agency for the purpose of its statutory functions in relation to adoption activities and to enable the Agency to discharge its obligations under GDPR and the Data Protection Acts [and for the purposes of supporting the creation of an adoption tracing service to be established];

And to provide for related matters.

**HEAD 1- Short Title**

*Provide along the following lines:*

This General Scheme may be cited as the General Scheme of a Preservation and Transfer of Specified Records of the Commission of Investigation (Mother and Baby Homes and certain related Matters) Bill.

**Explanatory Note:**

A commencement provision is not proposed because the Act should commence on the day it is signed into law. Immediate commencement is required prior to the submission of the final report of the Commission of Investigation (Mother and Baby Homes and certain related Matters) and the transfer of records to the specified Minister in accordance with Section 43(2) of the Commissions of Investigation Act 2004, at which point the Commission shall be dissolved in law.

**HEAD 2 – Interpretation**

*Provide along the following lines:*

DEFINITIONS:

In this Act –

“**Commission**” means the Commission of Investigation (Mother and Baby Homes and certain related Matters) established by Government Order made on 17th February 2015 [S.I. No 17 of 2015];

“**Record**” means a document in any form (including any electronic form) made or received, by the Commission, in the performance of its functions, and includes copies of any such records; And includes any database created by the Commission;

“**Specified database**” means the database of former residents of the institutions listed in Appendix 1 to the Schedule attached to S.I. No 17 of 2015 created by the Commission for the purpose of its functions;

**“Specified records”** means the primary source records for the data contained within the specified database;

“**Specified Minister**” is the Minister specified in the Government Order made on 17th February 2015 [S.I. No 17 of 2015] to establish the Commission of Investigation (Mother and Baby Homes and certain related Matters).

**Explanatory Note:**

This Head sets out the definitions of key terms used in the Heads of Bill.

The intention is to provide for an overarching definition of “record” which encompasses the entire archive of the Commission (all of which needs to be preserved and not redacted). The definitions of the “specified database” and “specified records” are intended to define subsets of material which come within the definition of “record” and which are intended to be transferred, in complete and unredacted form, to Tusla.

In the case of the definition of “record”, this definition must be considered further as it interplays with definitions contained in section 43 of the Commissions of Investigation Act 2004.

In the case of the definition of “specified database”, this definition needs to be consistent with the information provided by the Commission in relation to the nature of the database (design, content, functionality).

**HEAD 3 – Transfer of specified records, including specified database, on dissolution of the Commission**

*Provide along the following lines:*

Notwithstanding section 43(2) of the Commissions of Investigation Act 2004, the specified database and specified records shall, on the dissolution of the Commission -

(a) be transferred to TUSLA; and

(b) be deemed to be records of TUSLA.

**Explanatory Note:**

This Head is designed to provide for transfer of the functional database and related source records directly to Tusla by the Commission. Tusla is considered the appropriate statutory Agency because it was the source for the majority of the primary records utilised by the Commission in developing this database and because of its current statutory functions, professional social work and related expertise in adoption-related services and activities.

There is a strong policy rationale for transferring the database in the public interest. A database of this nature is undoubtedly required to support an information and tracing service for individuals who have been adopted or boarded out from mother and baby institutions and have fundamental questions about their identity. Given that the source information primarily existed in hard copy ledgers and similar format documents, the database makes this information markedly more searchable, reduces the risk of wear and tear on the primary source material, and safeguards against loss of the information in the event of accidental or malicious destruction of the primary source material.

In tandem with this provision, all records, including a copy of the specified database and specified records, would transfer to the specified Minister, for safeguarding in a sealed manner for a period of 30 years, pending subsequent onward transfer to National Archives in accordance with s.41 of the 2004 Act. In is not intended that the Bill would interfere with existing legislative arrangements in this regard.

Finally, this Head employs a non-textual amendment to section 43 of the 2004 Act. This reflects the fact that the Bill purports to provide for particular treatment of the specified records and specified database of the Commission for a bespoke and focussed purpose. It does not purport to amend section 43 of the 2004 Act in its general application. It is noted that the drafting approach will be a matter for Parliamentary Counsel and, depending on the approach taken, it may involve providing for explicit amendment of section 43 of the Commissions of Investigation Bill 2004; National Archives Act 1986; Commission of Investigation (Mother and Baby Homes and Certain Other Matters) Order, 2015 S.I. No.57 of 2015.

**HEAD 4 - Transfer of records, including specified database and specified records, from the Commission to be in complete and unredacted form**

*Provide along the following lines:*

The transfer by the Commission of the records to the Minister [as per 43(2)], and of the specified database and specified records to TUSLA, to be undertaken in their complete and unredacted form, preserving such records in their existing state that being the format as provided to the Commission.

**Explanatory Note:**

For the avoidance of any uncertainty on the application of existing statute, this Head is designed to ensure that unredacted and complete records are transferred by the Commission to the Minister and to Tusla respectively.

**HEAD 5- Access to records**

*Provide along the following lines:*

Access to specified records and the specified database transferred (under Head 2) shall be granted only in so far as required to enable the Child and Family Agency to:

1. discharge its statutory functions in relation to adoption activities as contained in Child and Family Agency Act 2013 - and s.4 (k)(i) of the Adoption Act 2010 as amended by Schedule 2 Part 21 of Child and Family Agency Act 2013;
2. discharge its obligations under Freedom of Information Acts, GDPR and the Data Protection Acts.

**Explanatory Note:**

This Head is designed to ensure that Tusla has an appropriate statutory basis for safekeeping of the specified database and specified records and their use in accordance with its statutory functions, including as a data controller in respect of these records. No enhanced or new right to access is proposed.

Unrestricted use or open public access is not being proposed. Access to personal information held in these records would continue to be regulated by the Adoption Act 2010; Freedom of Information Acts; GDPR and Data Protection Act, pending the development of future statutory information and tracing service.

**Head 6 – Expenses**

*Provide along the following lines:*

To provide that the any expenses incurred by the Minister in the administration of this Act, and the expenses incurred by Tusla shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of money provided by the Oireachtas.

**Explanatory Note:**

This Head provides the basis for the allocation of exchequer funds to support the arrangements proposed in the Bill.