STATUTORY RULES OF NORTHERN IRELAND

2020 No. 50

HISTORICAL INSTITUTIONAL ABUSE

The Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020

Made - - - -	*27th March 2020*
Coming into operation -	*31st March 2020*

The Executive Office, in exercise of the powers conferred by sections 5(4) and (5), 6(4), 9(2), 16(3) and 19(1), (2), (5) and (6) of the Historical Institutional Abuse (Northern Ireland) Act 2019(**1**), makes the following Rules.

In accordance with section 20(1) of that Act, the Executive Office has obtained the approval of the Lord Chief Justice to the making of these Rules.

Citation and commencement

1.—(1) These Rules may be cited as the Historical Institutional Abuse Redress Board (Applications and Appeals) Rules (Northern Ireland) 2020.

(2) These Rules come into operation on 31st March 2020.

Interpretation

2.—(1) In these Rules, "the Act" means the Historical Institutional Abuse (Northern Ireland) Act 2019.

(2) The Interpretation Act (Northern Ireland) 1954(**2**) applies to these Rules as it applies to an Act of the Assembly.

(3) In the application of section 24 of that Act (service of documents by post etc.) to these Rules, subsection (1) has effect as if ", registering" were omitted.

(4) Section 25 of that Act (deviation in forms) applies to a form determined by the Board under these Rules as if it were prescribed by an enactment.

(5) In these Rules, "electronic communication" has the meaning given in section 4(1) of the Electronic Communications (Northern Ireland) Act 2001(**3**).

(**1**) 2019 c. 31
(**2**) 1954 c. 33 (NI)
(**3**) 2001 c.9 (NI)

(6) A reference in these Rules to something in writing includes a reference to something in writing that is delivered by way of electronic communication.

(7) In these Rules, "oral hearing" means a hearing under section 9(3)(b) of the Act; and a reference in these Rules to an oral hearing includes a reference to any part of the hearing at which evidence is given for the purposes of section 10(1)(b) of the Act.

Application for compensation: basic matters

3.—(1) An application for compensation under the Act—

(a) must be in writing,

(b) must be in such form as the Board may from time to time determine,

(c) must be signed by the applicant or the applicant's solicitor, and

(d) must be submitted to the Board by electronic communication, by post or by direct delivery to the Board (including delivery by courier or messenger service).

(2) An application for compensation under the Act (other than an application which is only for compensation under section 12(2)(c) of the Act (child sent to Australia under the Child Migrants Programme)) must specify—

(a) the name and address of the institution to which the application relates, and

(b) the dates on which, to the best of the applicant's knowledge, the applicant or, where the application is in respect of a deceased person, the deceased person was resident in the institution.

(3) The reference in paragraph (2)(a) to the name and address of the institution is a reference to its name and address at the time when the applicant or, where the application is in respect of a deceased person, the deceased person was resident in the institution.

(4) Where the application relates to more than one institution, paragraphs (2) and (3) have effect as if the references to the institution were references to each of the institutions concerned.

(5) An application for compensation under section 12(2)(c) of the Act (whether or not the application is only for compensation under that provision) must specify the date on which, to the best of the applicant's knowledge, the applicant or, where the application is in respect of a deceased person, the deceased person was sent to Australia.

(6) An application for compensation under the Act is to be regarded as being made on the day on which it is received by the Board.

Application for compensation: supporting material

4.—(1) An application for compensation under the Act other than one in respect of a deceased person must, subject to paragraphs (3) to (5), be supported by—

(a) a certified copy of the applicant's birth certificate,

(b) a certified copy of a form of photographic identity of the applicant which is permitted by the Chief Electoral Officer of Northern Ireland as proof of entitlement to vote in an election,

(c) if the applicant's name has changed since the person was resident in an institution to which the application relates, evidence of the change of name that is sufficient to satisfy the Board,

(d) if the application is being made for the applicant by a person appointed as the controller for the applicant or acting under an enduring power of attorney or under an authority conferred in accordance with the law relating to mental capacity in the country or territory in which the applicant is residing, evidence of the authority to act for the applicant,

(e) a copy of such of the medical records of the applicant as the applicant or the applicant's solicitor considers relevant to the application, and

(f) any expert report relating to the applicant which the applicant or the applicant's solicitor considers relevant to the application (whether or not the report was obtained for the purpose of supporting the application).

(2) An application for compensation under the Act in respect of a deceased person must, subject to paragraphs (3) to (5), be supported by—

(a) a certified copy of the death certificate of the deceased,

(b) if the deceased died leaving a will, a certified copy of the will,

(c) a certified copy of the grant of probate or letters of administration,

(d) a certified copy of a document proving that the relationship between the applicant and the deceased is of a kind referred to in section 6(1)(a) or (b) of the Act,

(e) a certified copy of a form of photographic identity of the applicant which is permitted by the Chief Electoral Officer of Northern Ireland as proof of entitlement to vote in an election,

(f) if the deceased person's name changed after the person was resident in an institution to which the application relates, evidence of the change of name that is sufficient to satisfy the Board,

(g) if the application is being made for the applicant by a person appointed as the controller for the applicant or acting under an enduring power of attorney or under an authority conferred in accordance with the law of mental capacity in the country or territory in which the applicant is residing, evidence of the authority to act for the applicant,

(h) a copy of such of the medical records of the deceased as the applicant or the applicant's solicitor considers relevant to the application, and

(i) any expert report relating to the deceased which the applicant or the applicant's solicitor considers relevant to the application (whether or not the report was obtained for the purpose of supporting the application).

(3) If it is not possible for the application to be supported by the material referred to in paragraph (1)(a) or (b) or (as the case may be) paragraph (2)(e), the application must be supported by alternative evidence of the identity of the applicant or deceased.

(4) If material referred to in paragraph (1)(e) or (f) or (2)(h) or (i) was provided to the Inquiry (within the meaning of section 9(9) of the Act), the application need not be supported by that material.

(5) If the application is only for compensation under section 12(2)(c) of the Act (child sent to Australia under the Child Migrants Programme), it need not be supported by a copy of any medical records.

(6) The application may be supported by any other material which the applicant or the applicant's solicitor considers relevant to the application and wishes the panel appointed under section 8 of the Act to consider; and that material may include material in the form of audio or video recordings.

(7) A reference to a "certified copy" of a document is—

(a) in the case of a birth, death or marriage certificate, a reference to a copy certified by the General Register Office of Northern Ireland or by a solicitor or notary public, and

(b) in any other case, a reference to a copy certified by a solicitor or notary public or by the office of the Chancery Division of the Court of Judicature which deals with probate business.

(8) A reference to a person appointed as the controller for an applicant is a reference to a person appointed as such under Article 101 of the Mental Health (Northern Ireland) Order 1986(**4**).

(9) "Enduring power of attorney" means an enduring power of attorney within the meaning of the Enduring Powers of Attorney (Northern Ireland) Order 1987(**5**).

Applicant dies before application determined: continuance of application

5.—(1) Where an applicant for compensation under the Act dies before the application is determined and there is only one person who would have been entitled under section 6(1) of the Act to make the application if the applicant had died already, that person may proceed with the application.

(2) Where an applicant for compensation under the Act dies before the application is determined and there are two or more persons who would have been entitled under section 6(1) of the Act to make the application if the applicant had died already—

(a) one of them may proceed with the application, or

(b) some or all of them may jointly proceed with the application.

(3) A panel appointed by the President of the Board may, on behalf of the Board, agree to allow a person to proceed with the application if, in circumstances where the applicant had died already, the panel would have agreed under section 6(2) of the Act to receive the application from the person; and a panel appointed for the purposes of this paragraph is to be treated as if it had been appointed under section 6(2) of the Act (and is accordingly entitled by virtue of section 8(4) of the Act to determine the application).

(4) In a case where a person is allowed under paragraph (3) to proceed with the application, references in paragraphs (1) and (2) to a person who would have been entitled to make the application are to be read as including a reference to that person.

(5) To exercise the power under paragraph (1) or (2), the person or persons concerned must give a written notification to the panel appointed under section 8 of the Act to determine the application of the intention to proceed with the application.

(6) A notification under paragraph (5) must be accompanied by the material referred to in rule 4(2)(a) to (e) and (g); and for that purpose paragraphs (3) and (6) of rule 4 apply accordingly.

(7) Where a notification under paragraph (5) is given, the application proceeds accordingly.

Applicant dies before application determined: dismissal of application

6.—(1) If the Board is informed that an applicant for compensation under the Act has died without the application being determined and without any person expressing an intention to proceed with the application in accordance with rule 5, the Board must make whatever enquiries it considers reasonable for contacting relatives of the deceased.

(2) If, at the end of the period of three months beginning with the day on which the Board begins enquiries under paragraph (1), no person has expressed an intention to proceed with the application in accordance with rule 5, the application is dismissed.

(3) But paragraph (2) does not prevent a fresh application for compensation being made on behalf of the deceased under the Act after the expiry of the three-month period referred to in that paragraph.

(**4**) 1986 No. 595 (N.I. 14)
(**5**) 1987 No. 1627 (N.I. 16)

Notice of application to be given to institution

7.—(1) The Board, having received an application for compensation under the Act, must give written notice to the body, society or organisation which provided residential accommodation in an institution to which the application relates that the application has been made.

(2) The secretary to the Board must stamp each notice under this rule with the date on which the notice is issued ("the notice issue date") and must secure that the notice is delivered to the last-known address for the body, society or organisation concerned on the notice issue date or the next day by such means (electronic or otherwise) as the Board may decide.

(3) A notice under this rule must specify—

(a) the name of the applicant and, where the application is in respect of a deceased person, the name of the deceased person;

(b) the name and address of the institution in which the applicant or deceased person was resident;

(c) the period during which the applicant or deceased person was resident in the institution;

(d) the name of any person referred to in the application as having responsibility for the abuse to which the application relates.

(4) The notice must also include a request for the body, society or organisation concerned—

(a) to provide information as to whether compensation in connection with any of the matters to which the application relates has been paid and, if it has, information as to the amount of compensation and when, by whom and to whom it was paid,

(b) to indicate whether or not the body, society or organisation is able to verify the accuracy of the information specified in the notice under paragraph (3)(a) to (c), and

(c) to indicate whether or not the body, society or organisation intends to provide written evidence in response to the notice.

(5) The body, society or organisation must, within seven days of the notice issue date, respond in writing to the Board's request under paragraph (4); and any evidence to be provided pursuant to paragraph (4)(c) must be submitted to the Board within 28 days of the notice issue date.

(6) If the applicant or deceased person provided evidence to the Inquiry (within the meaning of section 9(9) of the Act) and the body, society or organisation either does not respond in accordance with paragraph (5) or indicates in its response that it does not intend to provide written evidence, the panel appointed under section 8 of the Act to determine the application may immediately begin its consideration of the application.

(7) If the body, society or organisation informs the Board that a person whose name is specified in the notice under paragraph (3)(d) has died, it is for the Board to decide whether to make further enquiries.

Case management

8.—(1) A panel appointed under section 8 of the Act to determine an application for compensation under the Act—

(a) may adjourn or postpone an oral hearing;

(b) may transfer the application to a different panel appointed under section 8 of the Act;

(c) may give whatever other directions, and may take whatever other steps, it considers necessary for managing the application and securing its efficient determination.

(2) A power under paragraph (1) may be exercised on behalf of the panel by the chair acting alone.