

## **General Scheme of the Bill**

### **REDRESS FOR WOMEN WHO WERE IN CERTAIN INSTITUTIONS BILL**

A BILL TO PROVIDE FOR HEALTH PROVISIONS FOR WOMEN WHO WERE ADMITTED TO AND WORKED IN CERTAIN INSTITUTIONS, AND TO PROVIDE FOR PERSONS TO REPRESENT SUCH WOMEN WHO DO NOT HAVE CAPACITY TO ACT ON THEIR OWN BEHALF.

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Head 1 **Short title and commencement.**

- (1) This Act may be cited as the Redress for Women who were in Certain Institutions Act 2014.**
- (2) This Act shall come into operation on such day or days as the Minister for Justice & Equality may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

## **Head 2 Interpretation**

In this Bill:

### ***Interpretation***

“circumstances of the person” includes in relation to a person who is a member of a couple, the circumstances of the other member of the couple.

“court”: A reference in this Bill to a “court” is a reference to the Circuit Court and the exercise of the powers of that court conferred by this section shall be within the jurisdiction of the circuit of the Circuit Court in which—

- (a) the person to whom the application relates is residing at the time of the making of the application, or
- (b) the person to whom the application relates has resided at any time during the period of 3 years immediately prior to the making of the application.

“decision-making representative”, in relation to a relevant person, means a person appointed pursuant to a decision-making representative order to make one or more than one decision specified in the order on behalf of the relevant person;

“decision-making representative order” means an order under head 7 as the order is in force from time to time;

“ex-gratia scheme” means the scheme approved by the Government for women who were admitted to and worked in any of the institutions listed in Schedule 1.

“Minister” means the Minister for Justice & Equality.

“relevant person” means a person who is receiving moneys under the ex-gratia scheme and who is determined by the court to lack capacity in accordance with the provisions of this section,

“participant in the scheme” means a woman adjudged by the Minister for Justice and Equality to come within the scope of the ex-gratia scheme, having been admitted to and having worked in one of the institutions covered by the scheme.

“registered medical practitioner” means a registered medical practitioner within the meaning of the Medical Practitioners Act 2007;

**Note:** The above provisions are included to provide precise clarity as to the court of jurisdiction in regard to appointments of decision makers to act on behalf of persons in receipt of moneys under the ex-gratia scheme who do not have capacity to make decisions on their own behalf. The provisions also define a number of the terms that are used in the Bill.

### **Head 3 - Laying of regulations.**

**Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.**

#### **Head 4 - Expenses.**

**The expenses incurred by the Minister for Justice and Equality or the Minister for Health in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.**

## **Head 5 - Access to health services to participants in the scheme.**

Provide that:

(1) The Health Service Executive shall make available, without charge, for persons ordinarily resident in the state, who have been awarded an ex-gratia cash payment as participants in the scheme, the following services –

- (a) a general practitioner medical and surgical service;
- (b) prescribed drugs, medicines and medical and surgical appliances;
- (c) the nursing service as specified in section 60 of the Act of 1970;
- (d) the arrangements specified in section 61 of the Act of 1970, as amended, based on a care plan assessed by a medical practitioner or other health care professional;
- (e) dental, ophthalmic and aural treatment and dental, ophthalmic and aural appliances;
- (f) a counselling service, based on a referral by a medical practitioner, in respect of the time spent in the institution concerned;
- (g) a chiropody service, based on a referral by a medical practitioner or other health care professional;
- (h) a physiotherapy service, where necessary following assessment by a physiotherapist employed by the Health Services Executive.

## **Head 5A – Exemption from Public In-Patient Charge under Section 53C of Health Act**

Section 53C (9) of the Health Act, 1970 to be amended to provide that participants in the scheme resident in Ireland are exempt from charges for public acute in-patient services in a public hospital by inserting the following text in Section 53C (9):

“(h) a person who has been awarded an ex-gratia cash payment and resident in Ireland having been adjudged by the Minister for Justice and Equality to come within the scope of the ex-gratia scheme, having been admitted to and having worked in one of the institutions covered by the scheme.”



## **Head 6 Amendment of the Nursing Homes Support Scheme Act 2009**

### **Provide that:**

Schedule 1, Part 3, to the Nursing Homes Support Scheme Act 2009 is amended by the insertion of the following after paragraph 11:

“12. Where the person or his or her partner receives a payment or benefit under the *ex gratia* scheme, such payment shall not come within the definitions of income or cash assets and shall not be taken into account for the purposes of a financial assessment carried out under section 10”.

**[Note:** Section 10 of the NHSS Act provides that the financial assessment for the Nursing Homes Support Scheme shall be carried out in accordance with the relevant Parts of Schedule 1 (Assessment of Means).

Under the NHSS Scheme, a member of a couple is assessed on the basis of half of the couple's combined income and assets. The amendment will need to cater for situations where a payment was made to the wife/partner of a person entering long-term nursing home care.

Furthermore, the amendment will need to exempt both lump sum payments (which would be cash assets for the purposes of the NHSS Scheme) and on-going payments (as envisaged in the 2<sup>nd</sup> Recommendation of the Report, which would be considered as income) from the financial assessment.

**Head 7 Appointment of decision making representative in respect of person not having full capacity.**

**Provide for the following:**

***7.1 Scope of Decision Making to which this Head applies***

(1) This head applies to:

- (a) the making of an application for a payment in accordance with the terms of the ex-gratia scheme,
- (b) the signing of an Acceptance Form and statutory declaration in accordance with the terms of the ex-gratia scheme
- (c ) the management and disbursement of moneys received on behalf of and for the benefit of a relevant person.

(2) This head does not apply to a person—

- (a) who is a ward of court,
- (b) who has appointed a person to be his or her attorney under an enduring power of attorney and—
  - (i) the attorney is not prohibited or restricted by the terms of the power from performing any matter to which this section applies, and
  - (ii) the enduring power of attorney has been registered and the registration has not been cancelled, or
- (c ) in respect of whom another person is permitted by law to act on behalf of that person in relation to a matter to which this section applies notwithstanding that the person concerned does not have the capacity to make a decision in relation to such a matter.

**Note:** The purpose of this sub-head is to make very clear that the scope of these assisted-decision making provisions are confined to the making of an application on behalf of a person, and the subsequent control and use of the moneys received under the scheme, by a person appointed by the court to act on behalf of the relevant person who lacks the capacity to make decisions on their own behalf.

## ***7.2 Person's capacity to be construed functionally***

(1) It shall be presumed, until the contrary is established, that a person has full mental capacity.

**(2) A person's capacity shall be assessed on the basis of his or her ability to understand the nature and consequences of a decision to be made by him or her in the context of the available choices at the time the decision is made.**

**(3) A person lacks the capacity to make a decision if he or she is unable**

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***a) to understand the information relevant to the decision,***

***b) to retain that information,***

***c) to use or weigh that information as part of the process of making the decision, or***

***d) to communicate his or her decision (whether by talking, writing, using sign language, assisted technology, or any other means) or, if the implementation of the decision requires the act of a third party, to communicate by any means with that third party.***

***(4) A person is not to be regarded as unable to understand the information relevant to a decision if he or she is able to understand an explanation of it given to him or her in a way that is appropriate to his or her circumstances (whether using simple language, visual aids or any other means).***

***(5) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him or her from being regarded as having the capacity to make the decision.***

***(6) For the purposes of this section, information relevant to a decision shall be construed as including information about the reasonably foreseeable consequences of***

- a) each of the available choices at the time the decision is made, or***
- b) failing to make the decision.***

***(7) Any question as to whether a person lacks capacity shall be decided on the balance of probabilities.***

**Note:** This subhead is modelled on the provisions of section 3 of the Assisted Decision-Making (Capacity) Bill 2013.

**7.3 Power of court to make orders and appoint decision-making representative, etc.**

**1) Where this section applies, the court may make one or both of the following orders:**

***i) an order making the decision or decisions concerned on behalf of the relevant person where it is satisfied that the matter is urgent or that it is otherwise expedient for it to do so;***

*ii) an order appointing a person to be a decision-making representative for the relevant person for the purposes of making one or more than one decision specified in the order on behalf of the relevant person.*

- 2) In making a decision-making order or decision-making representative order, the court may make provision for such other matters as it considers appropriate, including -**

subject to *subsection (3)*, the conferral of powers on a decision-making representative,

the imposition of duties on a decision-making representative,

the attachment of conditions relating to the making of any relevant decision by a decision-making representative or the exercise of any power by a decision-making representative in his or her capacity as a decision-making representative, and

the period of time for which the order is to have effect.

- 3) In making a decision-making representative order, the court shall, in so far as the order relates to the conferral of powers referred to in *subsection (2)(a)*, ensure that the powers conferred are as limited in scope and duration as is necessary in the circumstances having regard to the interests of the relevant person the subject of the order.**
- 4) The court may appoint one or more than one person as a decision-making representative for a relevant person and may so appoint different persons in respect of different relevant decisions.**

**5) A decision-making representative order appointing more than one person as a decision-making representative for a relevant person in relation to the same relevant decisions shall make provision as to whether such persons are to act -**

***a) jointly,***

***b) jointly and severally, or***

***c) jointly as respects some relevant decisions and jointly and severally as respects other relevant decisions.***

**6) The court may make a decision-making order or decision-making-representative order notwithstanding that an application has not been made to it under this Part for an order in that respect or in those terms.**

**7) The court may vary or discharge a decision-making order or decision-making-representative order, whether of its own motion or pursuant to an application to it under this Part by**

**a) the relevant person,**

**b) the spouse or civil partner of the relevant person.**

**c) the decision making representative.**

**d) an attorney for the relevant person**

**e) the Minister for Justice & Equality.**

**8) Where the court is satisfied that a decision-making representative for a relevant person has behaved, is behaving or is proposing to**

**behave in a manner outside the scope of the authority conferred on him or her by the court, or in a manner that is not in the interests of the relevant person, the court may -**

***a) revoke the appointment of the decision-making representative, or***

***b) vary the terms of a decision-making representative order relating to -***

- i. the appointment of the decision-making representative,**
- ii. the nature or extent of the powers conferred on the decision-making representative, or**
- iii. the duties imposed on the decision-making representative.**

**Note:** The Above provisions are modelled on section 23 of the Assisted Decision Making (Capacity) Bill 2014.

#### **7.4 Decision-making representatives - general.**

**(1) The court shall not appoint a person to be a decision-making representative for a relevant person unless it considers that the person is suitable for appointment as a decision-making representative as respects the powers which it is proposed to give the decision-making representative for that relevant person.**

**(2) Subject to *subsection (4)*, a person (in this section referred to as the “proposed appointee”) shall not be appointed as a decision-making representative for a relevant person if -**

***a) the proposed appointee has not attained the age of 18 years,***

- b) the proposed appointee has been convicted of an offence in relation to the person or property of the relevant person or the person or property of a child of the relevant person,*
- c) a safety or barring order has been made against the proposed appointee in relation to the relevant person or a child of the relevant person,*
- d) the proposed appointee is an undischarged bankrupt or currently in a debt settlement arrangement or personal insolvency arrangement or has been convicted of an offence involving fraud or dishonesty,*
- e) the proposed appointee is a person in respect of whom a declaration has been made under section 150 of the Companies Act, 1990.*
- f) the proposed appointee is a person who is or was the subject of a disqualification order by virtue of Part VII of the Companies Act, 1990, or*
- g) the proposed appointee is the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or a residential facility for persons with disabilities, in which the relevant person resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the proposed appointee is a spouse or civil partner, parent, child or sibling of the relevant person.*

**(3) Where, subsequent to the appointment of a decision-making representative for a relevant person -**



- a) the decision-making representative is convicted of an offence in relation to the person or property of the relevant person or the person or property of a child of the relevant person,*
- b) a safety or barring order is made against the decision-making representative in relation to the relevant person or a child of the relevant person,*
- c) the decision-making representative becomes an undischarged bankrupt or subject to a debt settlement arrangement or personal insolvency arrangement which is current or is convicted of an offence involving fraud or dishonesty,*
- d) the decision-making representative becomes a person in respect of whom a declaration has been made under section 150 of the Act of 1990,*
- e) the decision-making representative becomes a person who is the subject of a disqualification order by virtue of Part VII of the Act of 1990, or*
- f) the decision-making representative becomes the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or residential facility for persons with disabilities, in which the relevant person resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, where the decision-making representative is not a spouse or civil partner, parent, child or sibling of the relevant person,*

*the decision-making representative order concerned shall be invalidated, to the extent that it relates to the appointment of that decision-making representative, with effect from the day on which the decision-making representative falls within any of paragraphs (a) to (f).*

- (4)** *A decision-making representative for a relevant person acts as the agent of the relevant person in relation to a relevant decision made by the decision-making representative.*
- (5)** *(a) Except where the court otherwise orders, a decision-making representative for a relevant person shall be entitled to be reimbursed out of the assets of the relevant person in respect of his or her fair and reasonable expenses which are reasonably incurred in performing his or her functions as such decision-making representative.*
- (b) Where the court so directs in a decision-making representative order appointing a decision-making representative for a relevant person, the decision-making representative shall be entitled to be paid a reasonable amount in respect of remuneration in relation to the performance of his or her functions as such decision-making representative and which functions are carried out in connection with his or her trade or profession or in other exceptional circumstances specified in the order, and such remuneration shall be paid from the assets of the relevant person.*

**(6) (a) A decision-making representative for a relevant person shall once every 12 months, prepare and submit to the Minister a report as to the performance of his or her functions as such decision-making representative.**

**(b) Every such report submitted to the Minister shall be in such form as may be determined by rules of court and shall in particular include details of all expenses and remuneration paid or reimbursed to the decision-making representative concerned for the relevant person concerned.**

**(7) A decision-making representative order shall, unless it provides otherwise, be invalidated to the extent that it relates to a decision-making representative who is the spouse of the relevant person and subsequently -**

**a) the marriage is annulled or dissolved either -**

- i) under the law of the State, or**
- ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the State,**

**b) either a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having like effect,**

**c) a written agreement to separate is entered into between the spouses, or**

*d) subject to section 2(2), the spouses separate and cease to cohabit for a continuous period of 12 months.*

**(8)** *A decision-making representative order shall, unless it provides otherwise, be invalidated to the extent that it relates to a decision-making representative who is the civil partner of the relevant person and subsequently -*

*a) the civil partnership is dissolved,*

*b) a written agreement to separate is entered into between the civil partners, or*

*c) the civil partners separate and cease to cohabit for a continuous period of 12 months.*

**(9)** *A decision-making representative order shall, unless it provides otherwise, be invalidated to the extent that it relates to a decision-making representative who is the cohabitant of the relevant person and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months.*

**(10)** *The invalidation of all or part of a decision-making representative order under subsection (3), (9), (10) or (11) shall not of itself affect a relevant decision made by the decision-making representative concerned for the relevant person prior to the occurrence of the event which caused such invalidation.*

- (11) In subsections (2)(g) and (3)(f) “owner” includes a person managing a nursing home, mental health facility, or residential facility for persons with disabilities, or a director (including a shadow director within the meaning of section 27 of the Act of 1990 of, or a shareholder in or an employee or agent of, a company which owns or manages such a home or facility.**

**Note:** The Above provisions are modelled on section 24 of the Assisted Decision Making (Capacity) Bill 2014.

**7.5 Scope of decision-making order or decision-making representative order relating to moneys received from the ex-gratia fund.**

- (1) A decision-making order or decision-making representative order, as appropriate, relating to the moneys received from the ex-gratia payments -**

***(a) may, without prejudice to the generality of subhead 7.3 (2)(b), authorise a decision-making representative for the relevant person to make decisions on behalf of the relevant person in respect of any one or more than one of the following matters, where such matters relate to the use and disbursement of moneys received under the ex-gratia scheme:***

- i. the custody, control and management of the moneys;**
- ii. the acquisition of property in the name of the relevant person, or on his or her behalf, from the moneys received;**
- iii. the carrying out of any contract entered into by the relevant person;**

- iv. the discharge of the relevant person's debts or other obligations, whether or not any such debt or obligation is legally enforceable against the relevant person;
- v. the execution or exercise of any of the powers or discretions vested in the relevant person as a tenant for life;
- vi. providing, to the extent that the relevant person might have been expected to do so, for the needs of the decision-making representative or of other persons;
- vii. the conduct of proceedings before any court or tribunal, whether in the name of the relevant person or on his or her behalf;
- viii. making an application for housing, social welfare or other benefits or otherwise protecting or advancing the interests of the relevant person in relation to those matters,

and

(b) may make provision for such other matters as the court considers appropriate.

- (2) If a decision-making representative for a relevant person is empowered by the decision-making representative order appointing him or her as such decision-making representative to dispose of the relevant person's moneys by way of gift, then, without the specific approval of the court, the power to make such a gift shall be limited to -**
- a) gifts to other persons (including the decision-making representative) who are related to or connected to the relevant person, and which gifts are -***

- b) of a seasonal nature or made on customary occasions,
- c) made to such other person on the occasion of the birth of a child to such other person,
- d) made to such other person on the occasion of the marriage of such other person,
- e) made to such other person on the occasion of the registration of a civil partnership in respect of which such other person is a civil partner, or
- f) made to such other person on the occasion of the anniversary of his or her birth, marriage or civil partnership, and
- g) *gifts to any charity to which the relevant person made or might reasonably be expected to make gifts,*

provided that the value of the gift is reasonable having regard to all the circumstances and in particular the extent of the relevant person's moneys received from the ex-gratia fund.

**Note:** The Above provisions are modelled on section 26 of the Assisted Decision Making (Capacity) Bill 2014, excluding provisions in that section relating to the role of the Public Guardian under that Act.

Subhead (1) sets out the legitimate uses towards which the moneys can be expended. Subhead (2) sets out the limits within which moneys can be paid as gifts for third parties.

As the Public Guardian will not be appointed until after that Act is commenced it is not possible to make reference to such provisions in this Bill.

## **7.6 Restrictions on decision-making representatives.**

- (1) An order under this section appointing a decision making representative shall not permit the decision making representative to make any decision or take any action on behalf of the relevant person unless that decision is one to which this section applies and is specified in the order. In particular:

**(a) Nothing in this Part shall permit a decision-making representative for a relevant person to be given the power to prohibit a particular person from having contact with the relevant person.**

**(b) A decision-making representative for a relevant person shall not, without the express approval of the court -**

*i. exercise any powers in relation to the settlement of any part of the property of the relevant person, whether for the relevant person's benefit or for the benefit of others, or*

*ii. exercise any power (including the power to consent) vested in the relevant person, whether beneficially or as trustee or otherwise.*

**(c) A decision-making representative for a relevant person shall not refuse consent to the carrying out or continuation of life-sustaining treatment for the relevant person.**

**(d) A decision-making representative for a relevant person shall not do an act that is intended to restrain the relevant person.**



**Note :** These provisions are based on the provisions of section 27 of the Assisted Decision-Making (Capacity) Bill. They make it explicit that the role of the decision-making representative in managing or disbursing moneys from the ex-gratia scheme does not provide any greater controlling role in making of medical or other decisions beyond the scope of any order of the court under the provisions of this Bill.

**Background Note: Commission Recommendation No. 10:**

“to allow the appointment of certain persons who are bound to act in the best interests of the person and who are subject to supervision and accountable to the court for their actions” (to be modelled on the role of Care Representatives appointed under the Nursing Homes Support Schemes Act 2009).

Refinement proposed subsequently by Interdepartmental Committee:

“Preparation of a limited statutory provision drawing from the models provided by the NHSS Act 2009 and the Assisted Decision Making (Capacity) Bill 2013 to provide for the appointment by the Circuit Court of a person who will act on behalf of the applicant taking into account her will and preferences and may manage monies received under the scheme until the Assisted Decision Making (Capacity) Bill 2013 is enacted and commenced. Procedures will have to be introduced to identify applicants lacking capacity.”

Policy principles:

- If a person with power of attorney has already been appointed in respect of a recipient of Magdalen funds, or that person is already a ward of court, then no further requirement for a person to act on their behalf will arise.
- Where there is no person with power of attorney, any power conferred on a person to represent the fund recipient must be limited to a role in regard to the moneys received from the Magdalen fund.
- It must be borne in mind that the lifespan of any provisions will be short-term, as the Assisted Decision-Making (Capacity) Bill will repeal and replace any

provisions set out above. This is therefore a stop-gap, short-term measure and it is suggested therefore that any powers conferred on persons should therefore be modelled on the role of **Decision Making Representative**, as envisaged in Part 4, Chapter 5 of the Assisted Decision-Making (Capacity) Bill. It is not proposed to convey an enduring power of attorney, or appointment of assisted decision making or co-decision making roles, as is provided for in Part 3 or Part 6 of the Assisted Decision-Making (Capacity) Bill. When that Bill is commenced the recipients of Magdalen funds will then have the full entitlement to avail of such provisions.

## Schedule 1

### List of Institutions

- (a) the Magdalen Laundries operated by the Good Shepherd Sisters at
  - St Mary's, Cork Road, Waterford
  - St Mary's, New Ross, Wexford
  - St Mary's, Pennywell Road, Limerick
  - St Mary's, Sunday's Well, Cork.
  
- (b) the Magdalen Laundries operated by the Sisters of Our Lady of Charity at
  - St Mary's Refuge, High Park, Grace Park Road, Drumcondra, Dublin 9
  - Monastery of Our Lady of Charity, Sean McDermott Street (formerly Gloucester Street), D1;
  
- (c) the Magdalen Laundries operated by the Sisters of Mercy at
  - Magdalen Home (formerly Magdalen Asylum), 47 Forster Street, Galway
  - St Patrick's Refuge, Crofton Road, Dun Laoghaire, Co. Dublin
  
- (d) the Magdalen Laundries operated by the Sisters of Charity at
  - St Mary Magdalen's, Floraville Road, Donnybrook, Dublin
  - St Vincent's, St Mary's Road, Peacock Lane, Cork
  
- (e) the House of Mercy Training School, Summerhill, Wexford (Laundry operated in the Training School)
  
- (f) St Mary's Training Centre, Stanhope Street (Laundry operated in the Training School)