

Draft of

ORDER

entitled

Institutional Burials Act 2022 (Director of Authorised Intervention, Tuam) Order 2022

To be made by the Government

The Government, in exercise of the powers conferred on them by subsection (1) of section 7 of the Institutional Burials Act 2022 (No. 18 of 2022), having considered, in accordance with that section, a proposal made by the Minister for Children, Equality, Disability, Integration and Youth with the consent of the Minister for Public Expenditure and Reform, hereby order as follows:

1. This Order may be cited as the Institutional Burials Act 2022 (Director of Authorised Intervention, Tuam) Order 2022.
2. In this Order, “Act of 2022” means the Institutional Burials Act 2022.
3.
 - (a) The Minister for Children, Equality, Disability, Integration and Youth shall, in accordance with section 9 of the Act of 2022, establish an Office of Director of Authorised Intervention.
 - (b) The Director shall perform the additional function set out in section 10(1)(ii) of the Act of 2022.
 - (c) The land, in respect of which the Director may perform his or her functions set out in paragraphs (a) to (k) of section 10 of the Act of 2022, and the additional function referred to in paragraph (b), is the land identified on the map appended to this Order.

GIVEN under the Official Seal of the Government,

_____ 2022.

Statement of the Reasons for Making the Order

[Draft Government Order directing the Minister for Children Equality, Disability, Integration and Youth to establish an Office of Director of Authorised Intervention Tuam]

Background

In March 2017, the Commission of Investigation into Mother and Baby Homes and certain related matters confirmed the presence of juvenile human remains at the site of the former Mother and Baby Home in Tuam. As an initial step, the then Minister for Children and Youth Affairs commissioned an Expert Technical Group Report on the options available for responding appropriately to the situation in Tuam which was published in December 2017. The Minister then held a consultation on the technical options and published the report of this consultation in July 2018.

On the basis of these reports, which included detailed technical advice on international best practice, and out of respect and compassion for the dignity of the children interred at the site and their families, the previous Government decided, on 23 October 2018, to direct a phased, forensic-standard excavation and exhumation to be carried out at the former Mother and Baby Institution in Tuam. It also decided that there should be a programme of identification, where possible. The Attorney General's Office advised that these actions could not be carried out under existing legislation and new legislation would, therefore, be required.

The Institutional Burials Act 2022 was signed by the President on 15 July 2022 and commenced in full by Ministerial Order on 15 July.

Requirements for Making an Order under the Institutional Burials Act 2022

The Institutional Burials Act 2022 provides a legislative basis for an intervention whereby the remains of those who died in residential institutions, and who were buried in a manifestly inappropriate manner, may be recovered and re-interred in a respectful and appropriate way. It also provides for the identification of remains and their return to family members, where possible.

Section 7(1) of the Act provides that the Government may, by order, direct a Minister, who has made a proposal, to establish an Office of Director of Authorised Intervention for a specified period, to perform specified functions in respect of land identified by reference to a map.

Section 7(2) provides that the Government may make an order where it is satisfied that:

- a) **manifestly inappropriate burials** have taken place on land associated with an institution,
- b) works to be conducted on the land would not extend within the curtilage or 10 metres (whichever is the lesser) of any **dwelling on the land**,
- c) the making of an order is necessary for the purposes of safeguarding important objectives of general **public interest**, having regard to the factors set out in section 8(3) of the Act, and
- d) a **resolution** approving the draft order has been passed by each House of the Oireachtas

Manifestly inappropriate burials

Section 8(1) sets out 4 criteria which can be used to determine whether burial sites contain manifestly inappropriate burials. These are that the human remains are:

- a) uncoffined,
- b) buried in such a manner that they would not have complied with the requirements, at the time of such burial, specified in the Burial Grounds Regulations,
- c) buried in a way that would not reasonably be considered to provide a dignified interment, or
- d) buried collectively and in a manner or in a location that is repugnant to common decency and would reasonably have been so considered at the time the burials took place.

In establishing whether the above criteria are met, section 8(2) provides that the Government shall have regard to available evidence including any expert technical reports or other reliable information or corroborated statements.

Dwellings on the land

Section 7(3)(b) provides that works to be conducted on the land would not extend within the curtilage or 10 metres (whichever is the lesser) of any dwelling on the land.

Public Interest

Section 8(3) sets out the factors which the Government shall have regard to in determining whether the making of an order is necessary for the purposes of safeguarding general public interest. These are:

- a) public health
- b) the dignity of persons buried in the land
- c) the views of relatives of persons buried in the land
- d) the potential impact on the land concerned, including the potential impact on residents whose dwellings adjoin the land and archaeological features of the land
- e) the social and economic interests of the State and,
- f) alternative options (if any) available to accord dignity to person buried in the land

Conditions for not making an Order

Section 8(4) provides that the Government shall **not** make an order where any of the following conditions are met:

- a) There is an ongoing investigation by the Garda Síochána into the circumstances surrounding human remains found on the land and the Government, having consulted with the Garda Commissioner, is of the view that the making of an order is premature pending the outcome of that investigation,
- b) There is an ongoing inquest by a coroner into the circumstances surrounding human remains found on the land and the Government is of the view, having consulted with the coroner concerned, that the making of an order is premature pending the outcome of that inquest.
- c) The land comprises a burial ground for the purposes of section 44 of the Local Government (sanitary Services) Act 1948 or the land could not be excavated without disturbing appropriately buried human remains that the Government consider, in all the circumstances, should not be recovered.
- d) Recovery of human remains would be unsafe or unreasonably difficult
- e) The last known burial was carried out before 1922 or
- f) To do so would obstruct or interfere with an official or legal inquiry, investigation or process or proceedings pending or due before a court, a tribunal of inquiry or a commission of investigation.

Finally, section 8(5) provides that the Government may refuse to make an order where other substantive reasons exist which cause the Government to form the view that memorialisation of the burials on the land is more appropriate.

Criteria: Tuam

The Minister for Children, Equality, Disability and Youth brought a proposal to Government for the establishment of a Director of Authorised Intervention, Tuam, to oversee the excavation, recovery, analysis and re-interment of remains that have been subject to a manifestly inappropriate burial at the site of the former Mother and Baby institution in Tuam, Co. Galway.

The Government is satisfied that the remains discovered at the site in Tuam satisfy the conditions for the making of a Government Order as set out under sections 7 and 8 of the Institutional Burials Act 2022. The application of each of the criteria to the situation at Tuam is set out below.

Manifestly inappropriate burials

This criterion is satisfied because there is significant evidence of manifestly inappropriate burials at the Tuam site. This was confirmed by the Commission of Investigation into

Mother and Baby Homes in March 2017 and further elaborated on in its Fifth Interim Report, as well as in the Expert Technical Group report.

It has been proven that the 20 chamber structure in which the juvenile remains are located was built within a decommissioned waste water treatment tank and it was not a purpose built burial chamber. Soil analysis suggests that it was also used in treatment of waste water.

The burials are uncoffined, buried collectively in a manner and location that is repugnant to common decency and would have been so considered at the time the burials took place.

In conclusion, there is no doubt in this case that the burial site did not provide for the dignified interment of human remains and proposals for excavation, recovery, analysis, identification and re-interment are clearly appropriate and respectful.

Dwellings on the land

The principal burial land for the Tuam site, as identified in the map attached to the draft Government Order, is owned by Galway County Council. There are no dwellings on the principal burial land and so the site satisfies the condition that works on the land will not extend within the curtilage of any dwelling on the land.

There are some houses bordering the site and it is possible that burials may extend beyond the main site. If burials are discovered in neighbouring gardens, the legislation allows the Director to carry out works within 2 metres of the site boundary provided it doesn't interfere with any dwellings on the site. This land is described as ancillary burial land in the legislation. If the Director needs to use neighbouring land to access the site or to support works on the site, he or she will engage directly with owners and occupiers on this.

Public interest

The Government is satisfied that each of the public interest criteria set out in the Act is met as indicated below.

- **Public Health**

There are no known public health risks associated with an intervention at the Tuam site.

- **Dignity of persons buried in the land**

As set out above, there is significant evidence of manifestly inappropriate burials at the Tuam site. Uncoffined, collective burials in a decommissioned waste water treatment tank does not provide a dignified resting place. The excavation, recovery and re-interment in an appropriate burial site would provide dignity to the children interred there.

- Views of relatives

The Minister for Children, Disability, Integration and Youth has met with relatives of persons buried at the site and is clear that there is strong support for a forensic the excavation, recovery and re-interment of remains at the site. There is also strong support for a DNA-based programme to identify remains where possible.

- Impact on the land

As set out above, the Tuam site is in public ownership with no private properties on the principal burial site. The Order is also subject to environmental screening requirements being completed.

The Expert Technical Group report suggests that it is possible that other historic burials may be encountered on the site in Tuam, including famine burials that may have taken place on the site during the time it operated as a workhouse. The legislation provides that the excavation will be carried out with appropriately qualified persons in line with international standards and best practice. Professionals engaged will have regard to standards and guidelines for dealing with such situations should they occur.

- Social and economic interest of the State

The Government decision of 23 October 2018 to direct a forensic standard excavation and exhumation and identification programme at the site was based on the findings of the Mother and Baby Home Commission, as well as the Expert Technical Group (ETG). The ETG report highlighted the unprecedented nature of the site noted that there were no directly comparable national or international cases. It set out the factors that make the situation in Tuam unique, including the ‘significant’ quantities of juvenile remains, the commingled or intermixed state and the position of the remains within subsurface chambers with limited access. The response to the situation is of national and international interest and it behoves the State to excavate and recover remains from the site in line with international best practice and standards.

- Alternative options

In making its decision to intervene at the Tuam site in October 2018, the Government considered a number of options set out in the Expert Technical Group’s report, ranging from memorialisation to a full-scale forensic-standard excavation and recovery at the full available site. Government decided to proceed with the latter option, which is what is provided for in the draft Government Order.

Conditions for not making an Order

The Government is also satisfied that none of the conditions under which the Government may not make an order, as set out in section 8(4) of the Act, apply to the site in Tuam:

- There is no ongoing investigation by An Garda Síochána into the circumstances surrounding human remains found on the land.
- There is no ongoing inquest by a coroner into the circumstance surrounding human remains found on the land.
- The land is not a burial ground for the purposes of section 44 of the Local Government (Sanitary Services) Act 1948.
- It is anticipated that the land can be excavated without disturbing appropriately buried human remains that should not be recovered.
- While the intervention is expected to be challenging, it is understood from the information currently available, that recovery of human remains would not be unsafe or unreasonably difficult.
- The last known burial at the Tuam site occurred in 1960.
- There are no relevant official or legal inquiries, investigations or processes and not relevant pending or ongoing proceedings before a court, a tribunal of inquiry or a commission of investigation.

The Government is also satisfied that there are no substantive reasons which would cause it to form the view that memorialisation of the burials on the land, without further intervention, is more appropriate and, thus, section 8(5) does not apply.

Government Order, Tuam

Subject to a resolution by each House of the Oireachtas, as well as the completion of any necessary environmental screening requirements, the Government has approved that the draft Order will become an Order, under section 7(1) of the Institutional Burials Act, directing the Minister for Children, Equality, Disability, Integration and Youth to establish an Office of Director of Authorised Intervention, Tuam.