

The Institutions Recognised and Suspected Burial Grounds (Northern Ireland) Bill

[AS INTRODUCED]

LEGISLATIVE COMPETENCE

At Introduction [INSERT NAME(S) OF MLA's] had made the following statement on behalf of the Assembly Commission under Standing Order 30:

“In our view the The Institutions Recognised and Suspected Burial Grounds (Northern Ireland) Bill would be within the legislative competence of the Northern Ireland Assembly.”

The Institutions Recognised and Suspected Burial Grounds (Northern Ireland) Bill

[AS INTRODUCED]

CONTENTS

Section:

1. Interpretation
2. Overriding Objective
3. Identification of Burial Sites
4. Exceptional Powers
5. Boundary Changes
6. Public Accountability
7. Community Consultation
8. Accounting of Human Remains
9. Topography & Archeological Investigation
10. Timetable for Action
11. Cross-Border Issues
12. Laying of Regulations & Orders
13. Short Title & Commencement

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BILL

TO

Make provision, due to the exigencies stemming from the Mother and Baby Home and associated Institutions and the recognised or suspected burial grounds associated with the said Institutions or former Institutions; for the purpose of providing obligations in the identification of the said burial sites; to provide exceptional powers to Local of other Authorities with regards to planning applications and compliance with existing laws; to ensure proper community consultation; to introduce obligations on accountability and co-operation inter-county between Council including the identification and reporting of any breaches of statutory law; to introduce measures to properly account for remains recorded or found within the said recognised or suspected burial grounds; to secure and establish best available technology to examine the topography and archeological content of the said burial grounds along with dispute resolution provisions in the use of that technology; to provide for Public data-sets to satisfy obligations toward Public Accountability; to introduce a timetable for the delivery of this Act's provisions, and to consider cross-border issues related to the said Institutions and Burial Grounds utilising powers to deliver cross-border cooperation; and to provide for any related matters.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Interpretation

1	In this Act:
	“Act of 1832” shall mean the Anatomy Act of 1832;
	“Act of 1868” shall mean the Burial (Ireland) Act 1868;
	“Act of 1878” shall mean the Public Health (Ireland) Act 1878;
	“Act of 1888” shall mean the Rules & Regulations for the Regulation of Burial Grounds 1888;
	“Act of 1959” shall mean the Coroners Act (Northern Ireland) 1959;
	“Act of 1972” shall mean the Local Government Act (Northern Ireland) 1972;
	“Act of 1998” shall mean the Northern Ireland Act 1998
	“Act of 2004” shall mean the Human Tissue Act 2004;
	“Act of 2011” shall mean the Planning Act (Northern Ireland) 2011;
	“Act of 2013” shall mean the Crime and Courts Act 2013;
	“Act of 2014” shall mean the Local Government Act (Northern Ireland) 2014;

	“Burial Ground” (including its plural “Burial Grounds”) shall mean that defined by the Acts of 1868, 1878 & 1888 and the Regulations of 1992;
	“Community Survivor(s)” shall mean those who were former inmates, children or adoptees of any of the said Institutions, for whatever period, or those relatives of a Community Survivor or of a suspected Community Survivor;
	“Council” (including its plural or reference to District Council(s)) shall mean that which is defined by the Act of 1972 and the Act of 2014;
	“Institutions’ (including the singular “Institution”) shall mean Mother and Baby Homes, Baby Homes, (Fahan – Holding Centres), Orphanages, Industrial Schools/Reformatory Schools, Magdalene Laundries, Psychiatric Asylums, County Homes, former Workhouse Buildings; Hostels; (Miss Carr’s); Private Nursing facilities St. Rita’s and Residential Homes; Monasteries; ‘Raggy’ Schools; Hospitals; Disability Centres or other private or associated bodies or Institutions, particularly those former Institutions whose present purpose reveals their use as an enterprise (this list is not intended to be exhaustive);
	“Minister” (including its plural “Minister’s”) shall principally mean the First Minister, Deputy First Minister, Minister for Communities, Minister for Justice, Minister for Infrastructure, Minister for Culture, Arts and Leisure, and any other Minister and their Department who shall be considered as being competent to deal with any issues within this Act;
	“Order of 1995” means the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995;
	“Planning Application” shall mean the process as defined by the Act of 2011;
	“Recognised or Suspected Burial Ground” (including its plural) shall mean any land used in part or in whole for the purpose of the burial of human remains or parts of human remains that came from any time spent within Institution and owned wholly or in part or operated on behalf of third parties by any Institution; it shall also include land operated on behalf of any Institution by any third party;
	“Regulations of 1992” shall mean the Burial Grounds Regulations (Northern Ireland) 1992;
	“The Executive Committee” shall mean that defined by the Act of 1998;
	“The Northern Ireland Assembly” shall mean that defined by the Act of 1998;

Overriding Objective

2	In the furtherance of this Act, Minister(s) and Councils shall:
2 (i)	Consult and create joint strategy to support the provisions of this Act, and
2 (ii)	The Minister shall ensure that Councils planning obligations, as set out in the Act of 2011, are adequately funded and resourced to satisfy their obligations under this Act and the Act of 2011, and
2 (iii)	Minister(s) and Councils shall also import the following overriding objectives of this section to satisfy the purpose and objects of all sections found in this Act:
2 (1) (i)	Minister(s) and Councils shall recognise and promote public awareness that the archeological content of any recognised or suspected burial ground subject to this Act, as consisting of human remains or parts of human remains, require the dignity, respect and the protection of the law accorded to all citizens, and
2 (1) (ii)	Burial Grounds protection shall be a priority, and

2 (1) (iii)	It shall be recognised that all human remains or parts of human remains so found, were at birth, subject to all the rights and privileges as guaranteed under the law of the United Kingdom and such remains should be considered at death to have been full Citizens of the United Kingdom, and
2 (1) (iv)	Having United Kingdom Citizenship at birth and at the time of their death, all Human remains or parts of Human remains so found continue to enjoy the protections afforded under United Kingdom Law and they and their surviving families also receive the additional protections guaranteed under the European Convention on Human Rights, and
2 (1) (v)	No enactment of the the Executive Committee, the Northern Ireland Assembly or the United Kingdom Parliament shall override the provisions of this section.

Identification of Burial Sites

3	Without prejudice to the obligations imposed by Part 2 of the Act of 2011 and by the Overriding Objective in this Act, It shall be the duty of all Councils to enquire, identify and record all Institutions that were operational in their district from 1900 to the date of this Act;
3 (1)	Once all Institutions have been identified as part of that enquiry, Councils shall then identify and record the names and location of all currently recognised or suspected Burial Grounds, details of the ownership of the Burial Grounds, under the care or control of the said Institutions or were being managed by the Institutions on behalf of third parties or alternatively by third parties on behalf of Institutions. If any said Burial Ground was so managed by Institutions for and on behalf of any third party then that party's details shall also be added to the list compiled by Councils on Institutions, and
3 (1) (i)	For the avoidance of doubt, in addition to the Institutions identified recognised or suspected Burial Grounds, it shall also be a requirement that all private cemetery sites including those private cemetery sites that attract a classification as a cillini are identified. Councils shall also consider the provisions of Section 3 (1) (iv) below and take any required action set out in that sub-section, and
3 (1) (ii)	Such records of enquiries carried out by Councils into the Institutions recognised or suspected Burial Grounds shall also include those enquiries as set out in Section's 8 & 9 of this Act;
3 (1) (iii)	All Councils and the Minister(s) shall pay due regard and act to satisfy the obligations of Part 3 (Planning Control), Part 4 (Additional Planning Control), Part 8 (Further provisions as to historic buildings) of the Act of 2011 and the Order of 1995, in satisfaction of their obligations contained within Part 2 of the Act of 2011;
3 (1) (iv)	On enquiry by any Council, with regards to any recognised or suspected Burial Ground, where it is discovered that Exemption Certificates were issued under Section 4 of the Act of 1868, Council shall take immediate steps and measures to revoke any certificate so granted and to cause any such recognised or suspected Burial Ground to be subject to the provisions of Part III (Burial Grounds) of the Act of 1878 along with the provisions of Section 6 below;
3 (2)	In satisfaction of this Act and of the Act of 2011, it is a requirement that all Councils shall determine and publicly list as required by Section 6 of this Act, all planning permissions and their permission type or any other category of planning classification;
3 (2) (i)	Where a Consultation has been deployed under Section 9 (2) of this Act, all Councils shall determine any any issues as required by the Act of 2011. In the event that any Council provides a grant of development and that development is appealed by the category of stakeholder as identified under Section 7 of this Act, Councils shall, in the interests of Section 2 of this Act, cover any costs of any appeal against such development(s), made by any such stakeholder(s);

Exceptional Powers

4	Without prejudice to Section 3 above and Part 5 (Enforcement) of the Act of 2011, the following exceptional powers are granted to all Councils in order to satisfy the provisions of this Act;
4 (i)	It shall be a primary duty of all Councils, that where an Institution's recognised or suspected Burial Ground is subject to any compulsory purchase order, planning application, of whatever classification, or where work has or is about to commence on the development, on, within, or close to the recognised or suspected Burial Ground, that an immediate notice to suspend all applications or a notice to cease all development work shall be issued until further notice. Without prejudice to Part 5 and in particular Sections 135 and 136 of the Act of 2011, it shall be a requirement of this section that Councils shall review any such actions as is required by this section every 60 days from the date of any notice issued, and such a review shall also be subject to the requirements and obligations of Section 7 of this Act, and
4 (ii)	Councils shall positively protect all recognised or suspected Burial Grounds subject of this Act and the identified and unidentified remains within those burial grounds. Councils shall cause to be organised, before enquiries as detailed in Section 6 below are completed, a forensic investigation to be carried out as per Section's 8 & 9 below, and
4 (iii)	Any such notice as issued under Section 4 (i) above against any planning application or permission shall only be lifted to either satisfy the provisions contained within Section 3 (2) or where it is determined that no burials are located either on, within or close to a recognised or suspected Burial Ground subject to this Act;
4 (iv)	Without prejudice to the Act of 2011, where any person(s) contravene any notice issued under Section 4 (i) above or fail to comply with any lawful direction or order given by any agent or servant of the Council as a consequence of any notice issued under Section 4 (i), committed through or by any act by them or their agents or servants, they shall commit an offence. The maximum penalty for contravention of any aforementioned notice, direction or order given, is 10 years imprisonment;

Boundary Changes

5	To satisfy the provisions of this Act, all Councils shall have due regard to their obligations contained within Sections 2, 3 & 4 of this Act and to any inter-county change of boundaries from 1922 to the date of this Act and shall cause for enquiries to be made with other Councils;
5 (i)	This obligation shall also extend to previously recognised or suspected Burial Grounds or lands that were sold off to neighbouring farmers or other third parties by the Institutions, and
5 (iii)	Councils, the Northern Ireland Executive, Minister(s) and the Northern Ireland Assembly shall also have due regard to cross-border issues relating to Institutions and their recognised or suspected Burial Grounds, and shall take the required action as set out in Section 12 below;

Public Accountability

6	Councils shall, in satisfaction of their obligations contained within Section's 3 & 4 of this Act, deliver:
6 (1) (i)	Full information as required by this Section, set out in a Publicly accessible document along with the actions taken by Councils required under Section's 3 & 4 of this Act. This document shall be known as the Northern Ireland Institutions Burial Grounds Register;
6 (1) (ii)	The document shall demonstrate that Councils have established and acquired extensive documentation to support the provisions and objects contained within this Act,

6 (1) (iii)	The document shall list the form and nature of all enquiries carried by Councils;
6 (1) (iv)	The document shall provide a detailed declaration confirming that a thorough enquiry has been carried out as required by Section's 3 & 4 of this Act;
6 (1) (v)	The document shall contain a declaration that all recognised or suspected Burial Grounds operated by Institutions or third parties have been sourced and identified from Local Authority enquiries;
6 (1) (vi)	The document shall contain a comprehensive list of all recognised or suspected Burial Grounds along with their details or ownership or operations related to any Institutions or third parties;
6 (1) (vii)	The document shall also include additional identification information which shall include investigative report(s) on the years of usage of the Burial Grounds identified, the types of burials and approximate number of burials along with any other obligations required by this section;
6 (viii)	In identifying Institutions, private cemetery sites and/or cillini, Councils shall identify any cross-county or cross-border boundary changes and a report(s) shall include information that demonstrates that such appropriate enquiries have been carried out and that the requirements of Section's 5 & 12 have been actioned and satisfied;
6 (ix)	The document shall also include full disclosure of information and results acquired by enquiries carried out under Section's 8 & 9 of this Act;
6 (x)	The document shall also include full disclosure of information as required by Section 3 (2) of this Act,;
6 (1) (xi)	In the provision of information, details as to the state of any burial will be included and will indicate compliance or non-compliance with the Regulations of 1992;
6 (2)	It shall be an overriding obligation in satisfaction of this Section, placed upon all Councils, that all information, results or data as defined by this Section shall be pooled into one publicly available and searchable data-set for the benefit of Citizens, Councils & the The Executive Committee and the Northern Ireland Assembly and all government departments or their agencies;
6 (3)	In the course of satisfying the requirements or obligations of Sections 3 and 4, and of this Section of the Act, if during the course of any enquiries criminal or suspected criminal offences are detected, then those offences shall be reported by the Council to the relevant Authorities and in any event to the Police Service of Northern Ireland immediately, and such reports shall be accompanied by all documentation that is subject to the actual or suspected criminal offences arising from any enquiry. In satisfying this Section, Council shall consult and inform Stakeholders as to such reports, such Stakeholders are as defined by Section 7 of this Act;

Community Consultation

7	It is a requirement that all Councils shall contact, maintain contact and work with the Institutions survivors, survivor groups and their communities (Community Survivors), respecting their knowledge, local knowledge and sensitivities, for the purpose of seeking information, other than documentary evidence, in support of Section's 2, 3, 4, 5, 6, 8 & 9 of this Act;
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Accounting of Human Remains

8	To satisfy its obligations as required by this Act, Councils shall take the following steps in order to properly account for the archeological content of any recognised or suspected Burial Grounds:
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8 (i)	In satisfaction of this Section, Councils shall have due regard to their obligations under Section 9 (iv) below;
8 (ii)	Where Councils are required to carry out enquiries, as detailed within this Act, they shall have due regard to the Women and Girls within Institutions who had still-born babies (or other immediate birth or subsequent trauma leading to the death of those Children or the Women of Girls), or where Children who at the time of their deaths were inmates or were connected to the Institutions or other associated third parties, and
8 (iii)	In the identification of Women, Girls and Children, such enquiries shall identify registration deficits along with information that identifies the route(s) deployed for the internment or other disposal of any Human remains;
8 (iv)	Councils shall have consideration to the issues contained within the Act of 1832 and of the Act of 2004 and compile a report on any Human remains forwarded for the purpose of anatomical research and such enquiries shall include the details of all anatomical research laboratories and universities, both private and public and shall include information as to the method of the Human remains subsequent treatment and/or disposal and location of such remains, and
8 (v)	In the collation of such information, Councils shall obtain documentation as was required by the Act of 1832 and is required by the Act of 2004, that either reveals or does not reveal the extent of permission or consents sought to delivered during the period from 1900 until the date of this Act so as to properly account for for Human remains arising from Institutions;
8 (vi)	In satisfaction of 8 (iv) above, documentation sought shall also include the details of deaths and disposal of Human remains, as outlined in this Section, that were dealt with by any hospital both public and private;
8 (vii)	Councils shall include all information acquired under this Section within the document required by Section 6 above;
8 (viii)	To satisfy its obligations as required by this Act, Councils shall at all times consult local Coroners, who shall also satisfy their Public obligations as contained within the Act of 1959;

Topography & Archeological Investigations

9	To satisfy all the provisions of this Act, Councils shall deploy and use either land or aerial-operated, best available technology, to examine and explore the topography and archeological content of the Institutions recognised or suspected Burial Grounds or private cemetery or cillini;
9 (i)	Where man-made structures, furniture or facilities are considered to potentially affect the use of such technology, then alternative forms of best available technology shall be deployed and used to satisfy all the provisions of this Act;
9 (ii)	In addition to the use of best available technology, the Council shall also use the services of person(s) with demonstrable qualifications who are considered to be practitioners in the field of forensic archeology and forensic anthropology. Councils shall use both disciplines to satisfy the requirements of this Section and of this Act;
9 (iii)	The primary purpose of this Section is to obtain information and publicly provide mapping results of the topography and archeological content of the recognised and suspected Burial Grounds;
9 (iv)	In satisfaction of Section 9 (iii) above, due regard shall be had to the recognised or suspected Burial Grounds where multiple or mass burials are known or suspected and the distinction of designated graves and their stated content, against tandem or stacked burials. To satisfy this Section, Councils shall take all necessary measures to determine the content of graves and record the results of such determinations to satisfy the provisions of Section 6 of this Act;

9 (1)	In the event that a disputes arises or a complaint is made over the type or use of best available technology as defined in this Section or of the person(s) as identified by Section 9 (ii) above, then Councils shall acknowledge such disputes or complaints and create and introduce a Dispute Resolution Process whilst giving recognition to the obligations required by Section 7 of this Act;
9 (2)	Without prejudice to the Act of 2011, it shall be a requirement on all Councils that the obligations of this Section shall be made a primary condition on all future planning applications from the date of this Act and in any event the said obligations are carried out by applicants before the consideration, grant or rejection of any planning application is made by any Local Authority. It shall be a condition of any such applications that have satisfied the requirements of this Section that the said planning applications are subject to a Public Consultation for a period of 60 days. To further the obligation of a Public Consultation, Councils shall consult with stakeholders as identified under Section 7 of this Act. Those seeking planning permission shall be required to bear the full costs of any of the obligations of this Section;
9 (3)	Where it is discovered that Human remains or part(s) of Human remains are found through the methodology of this Section, Councils shall cause for the exhumation of those remains under the provisions of the Regulations of 1992, and
9 (3) (i)	Where Human remains or part(s) of Human remains are exhumed, Councils shall act to extract DNA samples for the purpose of identifying missing persons and provide such samples to the National Crime Agency as formed under the Act of 2013, solely for the purposes of identification with living relatives, thereby providing good accountability as to the archeological content or any recognised or suspected Burial Ground, and
9 (3) (ii)	In satisfaction of 9 (3) (i) above, all known or suspected biological family members shall also have the opportunity to submit their DNA samples to aid the work of the National Crime Agency as defined under the Act of 2013, solely for the purpose of identification with Human remains or part(s) of Human remains so exhumed as missing persons under this Act;
9 (3) (iii)	To satisfy the objects of Section's 9 (3) (i) & (ii) above, the Northern Ireland Executive, the Northern Ireland Assembly and all Councils shall cause for a continuous Public Information Campaign to promote the aforementioned provisions and shall pay all costs associated with those provisions for the benefit of Community Survivors;
9 (3) (iv)	The provisions of Section 9 (3) and its sub-sections shall be equally applicable to the requirements of Section 8 above;

Reinterment & Memorialisation

10	It shall be an obligation upon Councils and the Minister(s) to arrange with any Community Survivor(s) for the reinterment of any identifiable Human remains or part(s) of Human remains in a manner and location of their choosing;
10 (i)	In satisfaction of Section 10 above, the Northern Ireland Executive will pay all costs associated with any reinterment;
10 (1)	Where Human remains or part(s) of Human remains continue to be unidentified through the methods described in Section 9 (3) above, for a period of 15 years after the commencement of this Act, then the Northern Ireland Executive & Councils can provide reinterment subject to a full consultation with Community Survivors under Section 7 of this Act;
10 (1) (i)	In satisfaction of Section 10 (1) above, the Northern Ireland Executive will pay all costs associated with any reinterment and the reasonable costs that arise for any party following a consultation under Section 7 of this Act;

10 (2)	It shall be a requirement of this Act that Councils and the Northern Ireland Executive shall consult, consider and design both a National and Local Memorialisation associated with issues arising from the provisions of this Act. Any such consultation shall take place through the provision of Section 7 of this Act, with the subjects in question being given equal status in the consultation, consideration and design of any memorialisation plan and its deliverables. The costs of Community Survivors defined in Section 7 shall be paid for by the Northern Ireland Executive in satisfaction of this provision;
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Timetable for Action

11	Councils shall implement a timetable to satisfy their obligations under this Act as follows:
11 (i)	Section 4 provisions shall be implemented within 30 days of the commencement of this Act;
11 (ii)	All remaining Sections of this Act shall be implemented within 60 days of the commencement of this Act
11 (iii)	Where there is a failure by any Council or its agents or servants to implement this Act without reasonable excuse, a criminal offence will be committed, the definition and sanctions of this offence to be defined by the Minister without delay and in any event within 60 days of the commencement of this Act;

Cross-border issues

12	All Councils shall consider all actual or potential cross-border issues relating to all matters set out in this Act in relation to Institutions and their recognised or suspected Burial Grounds. Where such matters are identified, Councils shall notify the Minister(s) of such issues and in any event within 30 days of the discovery of such issues. A Minister so informed of such issues shall urgently consult within 30 days and take action as defined by the Belfast or Good Friday Agreement for cross-border issues of common interest and action;
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Laying of Regulations & Orders

13	A Minister may by Regulation cause for the recoupment of any expenses from any third party in satisfaction of the provisions of this Act;
13 (1)	Where orders or regulations are required to be made to support this Act they shall be laid before the Northern Ireland Assembly by the Minister as soon as may be after it is made;

Short Title & Commencement

14 (1)	This Act may be cited as the The Institutions Recognised or Suspected Burial Grounds Act (Northern Ireland) 2021
14 (2)	The provisions of this Act come into operation on the day on which this Act receives Royal Assent.

The Institutions Recognised and Suspected Burial Grounds (Northern Ireland) Bill

[AS INTRODUCED]

A Bill to make provision, due to the exigencies stemming from the Mother and Baby Home and associated Institutions and the recognised or suspected burial grounds associated with the said Institutions or former Institutions; for the purpose of providing obligations in the identification of the said burial sites; to provide exceptional powers to Local or other Authorities with regards to planning applications and compliance with existing laws; to ensure proper community consultation; to introduce obligations on accountability and co-operation inter-county between Council including the identification and reporting of any breaches of statutory law; to introduce measures to properly account for remains recorded or found within the said recognised or suspected burial grounds; to secure and establish best available technology to examine the topography and archeological content of the said burial grounds along with dispute resolution provisions in the use of that technology; to provide for Public data-sets to satisfy obligations toward Public Accountability; to introduce a timetable for the delivery of this Act's provisions, and to consider cross-border issues related to the said Institutions and Burial Grounds utilising powers to deliver cross-border cooperation; and to provide for any related matters.

Introduced by: [INSERT NAME], on behalf of the Assembly Commission

On: [INSERT DATE]

Bill Type: Non-Executive Bill

ACCOMPANYING DOCUMENTS

[TEXT TO BE INSERTED]



Northern Ireland Assembly

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